

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER**

ITA No. 386/Nag./2023
(Assessment Year : 2016-17)

Deputy Commissioner of Income Tax,
Central Circle-3, Nagpur

..... Appellant

v/s

Vinodkumar Rajendralal Kochhar,
J.M.Road, Near Ice Factory, Yerkheda,
Kamptee, Dist. Nagpur
PAN : ACPPK6203Q

..... Respondent

Assessee by : None

Revenue by : Shri Abhay Y. Marathe, Sr. DR

Date of Hearing – 30/07/2024

Date of Order – 31/07/2024

ORDER

PER K.M.ROY, A.M.

The present appeal has been preferred by the department challenging the impugned order dated 25/10/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), Nagpur [*"learned CIT(A)"*], for the assessment year 2016-17.

2. The grounds of appeal raised by the department are as follows:

- [1] The learned CIT(A) erred in quashing the impugned order dated 30.03.2022 u/s 147 r.w.s. 144 B without any cogent finding when the

prescribed procedure for such assessment was followed by the Assessing Officer.

- [2] The learned CIT(A) erred in deleting the addition of Rs.2,56,10,454/- for the AAAY 2016-17 in the absence of balance sheets for the AYs 2022-12 to 2015-16.
- [3] Any other ground that may be taken at the time of hearing.”

3. The facts of the case of the appellant as submitted before the CIT(A) in Form No. 35 are as follows:

- “1. *The Appellant, Mr. Vinodkumar Rajendralal Kochhar is an individual earning Income from House Property, Income from Business, Income from Capital Gains and Income from other sources.*
2. *That the assessee has during the captioned assessment year opted for computation of his income U/s. 44AD in respect of his business activity. That the assessee while filing his return of Income u/s. 139(1) has filled the PART A BS Balance Sheet as on 31st day of March of the proprietary Business or Profession which the assessee was not mandated by the law to fill the same and the assessee has not filled the same for AY 2015-16. Due to this fact (i.e Balance Sheet figures being provide in the return of Income by the appellant for AY 2016-17 and the same being not filled for AY 201-16) there appeared to substantial mismatch in capital balance and the assessee case was selected for scrutiny for verification of this aspect (substantial mismatch in capital) and accordingly notice u/s. 143(2) was issued by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur. The return filed for AY 2016-17 is marked as Annexure a 1 and return filed for AY 2015-16 is marked as Annexure a 2.*
3. *That the assessment proceedings conducted by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur was specifically for verification of Capital and the same is evident from the notice u/s. 142(1) bearing number ITBA/AST/F/142(1)/2018-19/1010490307(1) dated 13.07.2018 wherein the learned AO have specifically inquired regarding the Proprietor Capital account. The said notice is part of the submission and is marked as Annexure "b".*
4. *That the appellant was accordingly assessed u/s. 143(3) by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur wherein the appellant submitted all the requisite information called for in respect to the appellant capital balance and after verification of the same the Return Income of the appellant was accepted by the Learned AO.*
5. *That thereafter the assessee was served with notice u/s. 148 of The Income Tax Act, 1961 on 30.03.2021, intimating the assessee that the Learned AO has reasons to believe that the income has escaped assessment and*

directing the assessee to file revise return in response to Notice u/s. 148 of The Income Tax Act, 1961.

6. *That thereafter the case was transferred to the FAS 2021 for assessment proceedings. That the Learned AO, National Faceless Assessment Centre issued an notice u/s.142 (1) bearing number ITBA/AST/F/142(1)/2021-22/1037283000(1) dated 26.11.2021 wherein the learned AO is enquiring on the same issue of Proprietors capital account which has already been explained and verified during the course of assessment proceedings u/s. 143(3) of The Income Tax Act, 1961.*
7. *That a show cause notice was issued on 11.01.2022 directing the assessing to file submission in response to notice u/s. 142(1) issued on 26.11.2021.*
8. *That as the assessee being senior citizen aged about 69 years and suffering from continuous illness could not respond to the electronic communication stated herein above at Sr No 6 & 7 and when the said notice was served at the residence of the assessee, the assessee /family members become aware of the assessment proceedings and an reply for the same was filed vide acknowledgement number 278337741020322 dated 02.03.22 submitting all the information and documents called for vide notices referred at Sr No 6 & 7. The said notice has directed the assessee to submit the following information and documents to substantiate his capital balance as of 31.03.2016:*
 - a) *Copy of ITR Filed for AY 2016-17*
 - b) *Computation of Income for AY 2016-17*
 - c) *Ledger copy of the capital account for the previous year relevant to assessment year 2015-16*
 - d) *Ledger copy of the capital account for the previous year relevant to assessment year 2016-17*

The said acknowledgement is part of the submission and is marked as Annexure "c".
9. *That without having regard to the full submission being made as per Notice U/s. 142(1) dated 26.11.2021 the assessee was again served on 28.03.2022 with show cause notice u/s. 144 of The Income Tax Act 1961 stating that he has not complied with the notice u/s. 142(1) dated 26.11.2021 and a draft assessment order adding to the return income an amount of Rs.2,56,10,454.00 being closing balance of Proprietors Capital Account as appearing in the Balance Sheet dated 31.03.2016 was served on the assessee and final opportunity was given to submit the reply by 23.59 hours of 29.03.2022. The said show cause notice is marked as Annexure d 1 and draft assessment order is marked as Annexure d 2.*
10. *That the assessee having regard to the statutory notice again submitted on 29.03.2022 vide acknowledgement number 478604201290322 all the*

information and documents called for vide show cause notice u/s. 144 dated 28.03.202226.11.2021. The said acknowledgement is part of the submission and is marked as Annexure "e".

- 11. The fact that the assessee had submitted all the relevant documents i.e Balance Sheet, Profit & Loss account and Books of accounts and other documents for verification during the course of assessment proceedings u/s. 143(3) of The Income Tax Act, 1961 has been categorically stated in assessment order (Page No 3) as passed by the Learned AO, National Faceless Assessment Centre, New Delhi.*
- 12. The Learned Assessing officer without having any regard to the information, explanations and clarifications as available on record as submitted during the course of Proceedings U/s. 143(3) and U/s. 148 framed the present assessment order enhancing the returned income from Rs. 22,70,420/- to Rs. 2,78,80,874/- by making the following additions:
a) Addition of Closing Balance of Proprietors Capital Account U/s. 68 of Income Tax Act amounting to Rs. 2,56, 10,454/-.*

4. Upon filing appeal with CIT(A), full relief was granted. The learned CIT(A)'s order is reproduced below for clear understanding of the controversy.

"3. Statement of facts filed by the appellant are as under

- 1. The Appellant, Mr. Vinodkumar Rajendralal Kochhar is an individual earning The Income from House Property, Income from Business, Income from Capital Gains and Income from other sources.*
- 2. That the assessee has during the captioned assessment year opted for computation of his income U/s. 44AD in respect of his business activity. That the assessee while filing his return of Income u/s. 139(1) has filled the PART A-BS - Balance Sheet as on 31st day of March of the proprietary Business or Profession which the assessee was not mandated by the law to fill the same and the assessee has not filled the same for AY 2015-16. Due to this fact (i.e Balance Sheet figures being provide in the return of Income by the appellant for AY 2016-17 and the same being not filled for AY 201-16) there appeared to substantial mismatch in capital balance and the assessee case was selected for scrutiny for verification of this aspect (substantial mismatch in capital) and accordingly notice u/s. 143(2) was issued by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur. The return filed for AY 2016-17 is marked as Annexure a 1 and return filed for AY 2015-16 is marked as Annexure a 2.*
- 3. That the assessment proceedings conducted by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur was specifically for verification of Capital and the same is evident from the notice u/s.*

142(1) bearing number ITBA/AST/F/142(1)/2018-19/1010490307(1) dated 13.07.2018 wherein the learned AO have specifically inquired regarding the Proprietor Capital account. The said notice is part of the submission and is marked as Annexure "b".

- 4. That the appellant was accordingly assessed u/s. 143(3) by the Office of Deputy Commissioner of Income Tax Circle -3, Nagpur wherein the appellant submitted all the requisite information called for in respect to the appellant capital balance and after verification of the same the Return Income of the appellant was accepted by the Learned AO.*
- 5. That thereafter the assessee was served with notice u/s. 148 of The Income Tax Act, 1961 on 30.03.2021, intimating the assessee that the Learned AO has reasons to believe that the income has escaped assessment and directing the assessee to file revise return in response to Notice u/s. 148 of The Income Tax Act, 1961.*
- 6. That thereafter the case was transferred to the FAS 2021 for assessment proceedings. That the Learned AO, National Faceless Assessment Centre issued an notice u/s.142 (1) bearing number ITBA/AST/F/142(1)/2021-22/1037283000(1) dated 26.11.2021 wherein the learned AO is enquiring on the same issue of Proprietors capital account which has already been explained and verified during the course of assessment proceedings u/s. 143(3) of The Income Tax Act, 1961.*
- 7. That a show cause notice was issued on 11.01.2022 directing the assessing to file submission in response to notice u/s. 142(1) issued on 26.11.2021.*
- 8. That as the assessee being senior citizen aged about 69 years and suffering from continuous illness could not respond to the electronic communication stated herein above at Sr No 6 & 7 and when the said notice was served at the residence of the assessee, the assessee /family members become aware of the assessment proceedings and an reply for the same was filed vide acknowledgement number 278337741020322 dated 02.03.22 submitting all the information and documents called for vide notices referred at Sr No 6 & 7. The said notice has directed the assessee to submit the following information and documents to substantiate his capital balance as of 31.03.2016:*
 - a) Copy of ITR Filed for AY 2016-17*
 - b) Computation of Income for AY 2016-17*
 - c) Ledger copy of the capital account for the previous year relevant to assessment year 2015-16*

d) Ledger copy of the capital account for the previous year relevant to assessment year 2016-17. The said acknowledgement is part of the submission and is marked as Annexure "c".

- 9. That without having regard to the full submission being made as per Notice U/s. 142(1) dated 26.11.2021 the assessee was again served on 28.03.2022 with show cause notice u/s. 144 of The Income Tax Act 1961 stating that he has not complied with the notice u/s. 142(1) dated 26.11.2021 and a draft assessment order adding to the return income an amount of Rs. 2,56,10,454.00 being closing balance of Proprietors Capital Account as appearing in the Balance Sheet dated 31.03.2016 was served on the assessee and final opportunity was given to submit the reply by 23.59 hours of 29.03.2022. The said show cause notice is marked as Annexure d 1 and draft assessment order is marked as Annexure d 2.*
- 10. That the assessee having regard to the statutory notice again submitted on 29.03.2022 vide acknowledgement number 478604201290322 all the information and documents called for vide show cause notice u/s. 144 dated 28.03.2022 26.11.2021. The said acknowledgement is part of the submission and is marked as Annexure "e".*
- 11. The fact that the assessee had submitted all the relevant documents i.e Balance Sheet, Profit & Loss account and Books of accounts and other documents for verification during the course of assessment proceedings u/s. 143(3) of The Income Tax Act, 1961 has been categorically stated in assessment order (Page No 3) as passed by the Learned AO, National Faceless Assessment Centre, New Delhi.*
- 12. The Learned Assessing officer without having any regard to the information, explanations and clarifications as available on record as submitted during the course of Proceedings U/s. 143(3) and U/s. 148 framed the present assessment order enhancing the returned income from Rs. 22,70,420/- to Rs. 2,78,80,874/- by making the following additions: a) Addition of Closing Balance of Proprietors Capital Account U/s. 68 of Income Tax Act amounting to Rs. 2,56,10,454/-."*

4. Procedure in Appeal:

The appellant filed submissions dated 20/02/2023 upon enablement of filing online response.

5. Reasons of additions made by the Assessing Officer (AO):

The facts of the case and reasons put-forth by the AO in making impugned additions u/s 147 r.w.s. 143 of the Income Tax Act 1961 (hereinafter referred to as the 'Act') are summarized below:

- (i) The appellant, a proprietor of M/s Minor Forest Produce Export, was engaged in the business of export of forest produce. The appellant had e-filed the return of income for A.Y. 2016-17 on 16/03/2017, therein declaring a total*

income of Rs 22,70,420/-. The scrutiny assessment in this case was completed on 25/08/2018, u/s 143(3) of I. T. Act, 1961, by accepting the returned income.

ii) Subsequently, AO noticed that there was a difference of Rs. 2,32,88,412/-, in the closing capital as on 31.03.2015 & opening capital as 01.04.2015. Since, the capital had actually increased from 0 to Rs. 2,56,10,454/-, whose non examination had resulted in under assessment of income by Rs. 2,32,88,412/-, the case was reopened and notice u/s 148 of the Act was issued by the AO on 30/03/2021, which was duly served upon the appellant.

The appellant did not comply with the notice and failed to file the return of income against the notice u/s 148 of the Act. Further, the AO issued statutory notices u/s 142(1), which were duly served upon, but not complied with. There-after, final Show Cause Notice, duly served upon the appellant had been issued on 11/01/2021 which asked the appellant for the explanation of the source of the credits in capital account, credits in bank account, copies of ITR, balance sheet etc.

The appellant replied against the show cause stating that he was regularly filing his return of income for the last 50 years and the amount of Rs.2,32,88,411/- represented opening balance of his capital account as of 01.04.2015. It was stated that the same was also evident from the capital account filed on record during the course of assessment proceedings u/s. 143(3) of the Act.

The AO noted that this was a case where the appellant had not complied with notice u/s 148 of the Act by filing the ITR within 30 days of the service of the such notice u/s 148 of the Act, that the appellant evaded responding to the notices u/s 142(1) of the Act, that the ITR filed against notice served u/s 148 of was treated as non-est, that the proceeding were concluded based on the information available on record and an ex-parte order was framed as u/s 144 of the Act. AO also held that the figures mentioned in the ITR were considered for tax calculation. AO compared the figures of 'Sources of funds' - of Part A-BS of the ITRs for AY 15-16 & 2016-17 as below:

ITR for Ay	Date of filing	Ack. No.	Proprietor's capital	Total proprietor's fund
AY 2015-16	23-03-2016	104606980230316	0	0
Ay 2016-17	16-03-2017	665408310160317	2,56,10,454	2,56,10,454

Based upon the above the AO considered the amount of capital in AY 2016-17 of Rs. 2,56,10,454/- as unexplained, treated it as deemed income for A.Y. 2016-17 as per the provisions of section 68 of the Income Tax Act 1961 and added the same to the total income declared by the appellant.

6. Contentions of the appellant:

In response to the notices issued u/s 250 of the Act, the legal heir of the appellant, Veena Vinodkumar Kochhar, wife and legal heir of the appellant,

filed the written submissions online on 20/02/2023 during these appeal proceedings which are summarized below:

(i) The appellant, Shri Vinodkumar Kochhar, left for heavenly abode on 24.11.2022 and this submission was made by her in the capacity of Legal heir of the deceased. Death certificate of the appellant was also attached.

(ii) The appellant was earning Income from House Property, Income from Business, Income from Capital Gains and Income from other sources & he had been regularly filing his return of income for the last 5 decades.

(iii) During the captioned assessment year, the appellant had opted for computation of income U/s. 44AD in respect of his business activity and while filing online return of Income u/s. 139(1) for AY 2016-17, PART A-BS-Balance Sheet as on 31st day of March of the proprietary Business or Profession was filled which otherwise he was not mandated by the law to fill. It was also stated that the particulars of the balance Sheet were not filed in the e-return for AY 2015-16 as the same was not mandated by the law.

It was submitted that due to this fact (i.e., Balance Sheet figures being provided in the e-return of Income for AY 2016-17 and the same not filled for AY 2015-16), it appeared as if there was a substantial mismatch in capital account and the income tax return was selected for scrutiny for verification of this aspect (substantial mismatch in capital) by way of issue of notice dated 28/09/2017 u/s 143(2) of the Act.

It was mentioned that the assessment proceedings were conducted by the Office of Deputy Commissioner of Income Tax Circle-3, Nagpur and verification of capital account was undertaken, which is evident from the notice u/s 142(1) bearing number ITBA/AST/F/142(1)/2018-19/1010490307(1) dated 13.07.2018 wherein specific inquiry was made regarding Proprietor's Capital Account. The said notice was available to the AO during the process of reopening and framing of impugned re- assessment order. It was part of the submissions filed during these appeal proceedings. It was also stated that after verification of the relevant documents and information as called vide notices u/s. 142(1) of the Act, order u/s. 143(3) was passed on 25/08/2018 accepting the returned income. The fact that the appellant had submitted all the relevant documents i.e., Balance Sheet, Profit & Loss account, Books of accounts and other documents for verification and the same has been verified has been categorically stated in this assessment order dated 20.08.2018 passed by the Deputy Commissioner of Income Tax Circle -3, Nagpur.

(iv) It was submitted that subsequently, the appellant was served with notice u/s. 148 of Act on 30.03.2021, intimating that there were reasons to believe that the income had escaped assessment and this notice directed the appellant to file return in response to Notice u/s. 148 of Act, that thereafter the case was transferred to the Faceless Assessment Scheme 2021 for assessment proceedings.

It was submitted that the AO, National Faceless Assessment Centre, issued notice u/s.142 (1) dated 26.11.2021 wherein the same issue of Proprietor's capital account (which had already been explained and verified during the course of assessment proceedings u/s. 143(3) of The Income Tax Act, 1961) was inquired into.

In response to show cause notice dated 11.01.2022, the appellant filed return of Income and all the information and documents called vide acknowledgement number 278337741020322 dated 02.03.22. The said notice had directed to submit the following information and documents to substantiate the capital balance as of 31.03.2016:

- a) Copy of ITR Filed for AY 2016-17*
- b) Computation of Income for AY 2016-17*
- c) Ledger copy of the capital account for the previous year relevant to assessment year 2015-16*
- d) Ledger copy of the capital account for the previous year relevant to assessment year 2016-17*

It was stated that in spite of full submissions being made in response to notice dated 26/11/2021 u/s 142(1) of the Act, the appellant was again served, on 28.03.2022, a with show cause notice u/s. 144 of Act stating that since no compliance of the notice u/s. 142(1) dated 26.11.2021 had been made, a draft assessment order adding to the return income an amount of Rs. 2,56,10,454 (being closing balance of Proprietors Capital Account as appearing in the Balance Sheet dated 31.03.2016) was served and final opportunity was given to submit the reply by 23.59 hours of 29.03.2022.

It is stated that the appellant again submitted, on 29.03.2022, vide acknowledgement number 478604201290322 all the information and documents called for vide show cause notice u/s. 144 dated 28.03.2022, enclosing the capital account, Balance Sheet, Computation of Income and ITR Acknowledgement for AY 2015-16 & 2016- 17. In appeal proceedings, the ITR, Balance sheet, capital account and from 01.04.2011 to 31.03.2016 and computation of income for 01/04/2011 to 31/03/2014 were also filed which reflected that the additions to capital account were incomes for the earlier years and the same had been offered for taxation in the Returns of Income of relevant preceding years.

It was stated that in disregard to such submissions of the appellant, the AO went ahead and added back the capital account to the total income of the appellant as unexplained amount u/s 68 of the Act.

(v) The Reliance was placed on the following decisions to state that there had been no failure of part of the appellant in submitting the relevant evidences & facts during the original proceedings u/s 143(3) of the Act, that the reopening of the case was not as per law as there was no reason for the AO to form the belief that there was escapement of income:

- (a) *Muniwar Abad Charitable Trust vs. ACIT (E) (2017) 59 ITR 204 Mum) (Trib)*
- (b) *Construction Co. vs. ACIT (2017) 188 TTJ 497 (Mum.) (Trib.)*
- (c) *M/s. Advance Construction Co. Pvt. Ltd. [INCOME TAX APPEAL NO.77 OF 2014; dt 28/6/2016 (Bom)(HC)]*
- (d) *Marico Ltd (Supreme Court) [Approved Bombay High Court decision Writ petition 1917 of 2019 dt 21/08/2019].*

In view of the above facts and case laws, it was submitted that the additions made by the AO deserve to be deleted.

7. Decision:

I have perused facts of the case, assessment order and the submissions made by the appellant. Ground-wise decision in appeal is as in subsequent paragraphs.

7.1. Ground No. 3: This ground relates to the plea that the reopening of the case u/s 148 of the Act was not correct and that the AO erred in doing so.

7.1.1 The facts of the case have been elaborated upon while summarizing the submissions of the appellant in a preceding para of this order. The fact of issuance of notice u/s 143(2) dated 28/09/2017, the notice u/s 142(1) dated 13/07/2018 and assessment order dated 25/08/2018 u/s 143(3) of the Act were not only part of the physical record of the file of the Jurisdictional AO (JAO) before he issued notice dated 30/03/2021 u/s 148 of the Act, these documents were also available online on ITBA system of the Department which are instantly accessible to the JAO. The notice u/s 142(1) dated 13/07/2018 specifically had inquired into this issue of credits to capital account (which, incidentally, was the main issue for which computer-aided selection of case was made for limited scrutiny u/s 143(2) of the Act) by asking for relevant evidences and the documents. Upon being satisfied with the explanation of the appellant in response to this notice, the JAO had completed assessment u/s 143(3) vide order dated 25/08/2018.

This order also mentioned, in para 2 therein, that the details of increase in capital account were furnished by the appellant electronically, the same were verified along- with other evidences filed by the appellant and were placed on record by the then JAO. After considering these submissions of the appellant, the then JAO had not made any additions in this order dated 25/08/2018 u/s 143(3) of the Act.

7.1.2 Despite having all these evidences and information on record, the subsequent incumbent JAO issued the notice dated 30/03/2021 u/s 148 of the Act which shows utter non-application of mind on his part. These evidences on record, vide which the appellant had gone through one round of scrutiny assessment, should have been sufficient for JAO and should have prevented him, in the first place, from forming any belief regarding income escaping

taxation in terms of section 147/148 of the Act on the issue of increase in capital account.

Considering the facts of this case, I am of the firm belief that the notice dated 30/03/2021 u/s 148 of the Act was illegal, without any basis, and deserves to be quashed. The resultant proceedings and the impugned order dated 30/03/2022 u/s 147 rws 144 rws 144B of the Act are also quashed on this issue alone. Ground no. 3 of appeal is allowed.

7.2 Ground no. 1, 2 & 4 of appeal: These are related to the claim of the appellant that the AO erred in law and fact by not considering the submissions of the appellant and adding Closing Capital Balance as of 31.03.2016 amounting to Rs. 2,56,10,454/- u/s 68 of the Act.

7.2.1 Having decided upon the issue of reopening of the case u/s 148 of the Act in ground no. 3 of appeal in favour of the appellant as above in this order, the merits of the issue do not deserve any further consideration. However, for the sake of completeness, it is noted that no new capital had been introduced by the appellant during the year under consideration and the entire issue arose because of non-filling of the column related to capital account (filling up of which was not mandatory in the first place) in e-return of income in AY 2016-17 and filling of the same in AY 2015-16 This issue had been explained by the appellant to the satisfaction of the then JAO during the first round of scrutiny assessment as result of which no additions were made in assessment order dated 25/08/2018 u/s 143(3) of the Act.

Even otherwise, the appellant had been filing return of income for more than 5 decades and his returns reflect a substantial income which would justify the figure of capital account in AY 2016-17. The figures of total income declared by the appellant in his last 5 year's returns of income are tabulated as under from the online ITR data also available to AO:

Assessment Year	Total Income
2011-12	7,26,800/-
2012-13	12,97,070/-
2013-14	14,91,330
2014-15	18,57,710/-
2015-16	22,02,640/-

In view of the above facts, closing capital of Rs 2,56,10,453/- stands duly explained as also held in assessment order dated 25/08/2018 u/s 143(3) of the Act.

Since the appellant had furnished the requisite details before the Faceless Assessing Officer (FAO) during the case of proceedings u/s 147 of the Act, abject neglect of the same reflects upon non-application of mind by the FAO and Faceless Assessment Unit also.

The addition made by the AO to total income of Rs. 2,56,10,453/- u/s 68 of the Act is hereby deleted. AO is directed to grant relief to the appellant.

7.2.2 Before concluding this order, it is noted here that the returns of income of earlier years (including the computation of income) filed by the appellant are part of the record of the AO and furnishing of the same in these appeal proceedings does not constitute any additional evidence under rule 46A of the Act. Even otherwise, this order has relied upon the data from departmental ITS data in above para of this order to decide the issue on merits.

7.2.3 Ground no. 5: This ground is general in nature and does not require any adjudication.

8. For statistical purpose, the appeal is to be treated as allowed.”

5. At this juncture, to have a clear conspectus of the facts, we refer to the reasons for reopening and the audit objection memo, as reproduced below:

“Reasons for reopening of the assessment in the case Shri Vinodkumar R. Kochar.

PAN:- ACPPK6203Q, A.Y. 2016-17 u/s 147 of the Act

1. Brief details of the Assessee: The assessee has filed its return of income for A.Y. 2016-17 on 16.03.2017 declaring total income of Rs 22,70,420/-. The assessment u/s 143(3) of I. T. Act, 1961 was completed on 20.08.2018 by accepting the returned income.

2. Brief details of information collected:-

The assessee is a proprietor of M/s Minor Forest Produce Export engaged in the business of export of forest produce. The assessment u/s 143(3) of I.T.Act, 1961 accepting the returned income. Further, as per the ledger account of proprietor capital of F.Y. 2015-16, available on record, the opening capital is of Rs. 2,32,88,412/-, Thus it is evident that there is difference of Rs. 2,32,88,412/-, in the closing capital as on 31st march 2015 & opening capital as 01.04.2015. Since, the capital has actually increased from 0 to Rs. 2,56,10,454 whose non examination has resulted in under assessment of income by Rs. 2,32,88,412/-.

3. Analysis of information collected/received :-

Increase in capital account of Rs. 2.32 to verify.

4. Enquiries made by AO as sequel to information collected/received :-

Verification of record it is found that there is difference of Rs. 2,32,88,412/-, in the closing capital as on 31st march 2015 & opening capital as 01.04.2015. Considering the above facts, in this case, and considering the reason for scrutiny selection.

6. Basis of forming reason to believe and details of escapement of income:-

The under assessment and revenue effect are noticed in relation to the increase in capital account from 0 to Rs 2,56,10,454/-. This increase had to be verified which has not been done. Non examination of this aspect has resulted under assessment of income of Rs. 2.32 crore (Rs. 2,32,88,412/-)

7. Escapement of income chargeable to tax: There is an escapement of Rs.2.32 crore (Rs. 2,32,88,412/-) which is due to non-examination.

8. Applicability of the provisions of sec. 147/ 151 to the facts of the case : -

In this case a return of income was filed for the year under consideration and scrutiny assessment u/s 143(3) of the Act was made on 20.08.2018. since four years from the end of the relevant year has expired in this case, the requirement to initiate proceedings u/s 147 of the Act are reason to believe that the income for the year under consideration has escaped assessment because of failure on the part of assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above (refer paras 2 to 6). I have carefully considered the assessment records containing the submission made by the assessee in response to various notices issued during the assessment proceedings and have noted that the increase of capital account of Rs. 2.32 crore is to be verified.

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for its assessment for the year under consideration there by necessitation reopening u/s 147 of I.T. Act.

It is true that the assessee has filed a copy of annual report and audited P & L a/c and Balance sheet along with return of income where various information/materials were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited P&L a/c and balance sheet or other evidence as mentioned above, the requisite facts as noted above in the reasons for reopening were embedded in such a manner that materials evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Expl 1 of 147 of the Act.

It is evident from the above discussion that in this case the issue under consideration was not examined properly by the AO during the course of regular assessment/reassessment. It is important to highlight here that material facts relevant for the assessment on the issues(s) under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report, audited P&L a/c balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For the reasons discussed supra, it is also not a case of change of opinion by the AO.

Audit Objection

In this case the return of income was filed by the assessee on 16.03.2017 declaring total income of Rs.22,70,420/-. Assessment u/s 143(3) of I.T. Act, 1961 was completed on 20.08.2018 by accepting the returned income. The assessee is proprietor of M/s Minor Forest Produce Export engaged in the business of export of forest produce.

2. The case was selected for limited scrutiny for verification of substantial increase in Capital in a year. 3. Proprietor's Capital as seen from the returns filed by the assessee, available on record, is as under:

Sr.No.	A.Y.	Capital in Rupees
1	2015-16	Zero
2	2016-17	Rs.2,56,10,454

Further, as per the ledger account of proprietor's capital for FY 2015-16, available on record, the opening capital is of Rs.2,32,88,412/-. Thus, it is evident that there is difference of Rs.2,32,88,412/- in the closing capital as on 31st March 2015 & opening capital as on 01.04.2015. If one goes by the figures as per the returns filed, the capital has actually increased from zero to Rs.2,56,10,454/-. This increase had to be verified which has not been done. Non- examination of this aspect has resulted in under assessment of income by Rs.2,32,88,412/- and thereby short levy of tax by Rs.71,96,119/- plus interest u/s 234 as applicable.

4. The audit objection may be looked into and compliance report may be submitted within 15 days of receipt of this Audit Objection Memo.

6. We find that the reopening has been made on the mere change of opinion without any tangible material. The Assessing Officer had applied its mind at the time of assessment since the facts were on record and reopening u/s 147 of the Act and change of opinion is not permissible even within 4 years.

“Reopening of an assessment on mere change of opinion without any tangible material is unsustainable - Assessing Officer deemed to have applied his mind if facts are on record and reopening under section 147 on change of opinion is not permissible even within 4 years

Section 147 of the Income-tax Act, 1961 Income escaping assessment General After substitution of section 147 by Direct Tax Laws (Amendment) Act, 1987, concept of 'change of opinion' must be treated as an in-built test to check abuse of power by Assessing Officer - Therefore, after 01.04.1989, Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment; reasons must have a live link with formation of belief.

In CIT v. Kelvinator of India Ltd. 256 ITR 1, the Full Bench of the Delhi High Court was considering a case of reopening under section 147 within 4 years from the end of the assessment year. The Court held that when a regular order of assessment is passed in terms of section 143(3) of the Act, a presumption can be raised that such an order has been passed on application of mind. It was held that if it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong. It was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. On appeal by the department to the Supreme Court, HELD dismissing the appeal:

Though the power to reopen under the amended section 147 is much wider, one needs to give a schematic interpretation to the words "reason to believe" failing which section 147 would give arbitrary powers to the AO to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. One must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 01.04.1989, the Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. This is supported by Circular No. 549 dated 31.10.1989 which clarified that the words "reason to believe" did not mean a change of opinion. [In favour of assessee]-[CIT, Delhi v. Kelvinator of India Ltd. (2010) 320 ITR 561: 187 Taxman 312 (SC)]

7. At the time of hearing, there was no representative from the side of the assessee. However, with the assistance from the side of the departmental representative, we have carefully and meticulously gone through the facts of the case. The learned Sr.DR vehemently argued that the order of the Assessing Officer be restored as the very fact of increase in the capital account was never examined at the time of original assessment proceeding. However, we find that his contentions are without any merit and the very fact of carrying out the assessment in the very first round was for verification

in the substantial increase in the capital account as evident from audit memo, it cannot be inferred that there was no application of mind by the Assessing Officer. It is a clear case of change of opinion and in light of the judgment of the Apex Court, the reassessment is quashed. Consequently, we uphold the order of the CIT(A). The learned CIT(A) has passed a well-reasoned order granting relief on both legal grounds as well as on merits. There is no scope to interfere with the same as the same rests on strong grounds which is unimpeachable. Accordingly, the appeal of the revenue is dismissed.

8. In the result, the appeal filed by the department is dismissed.

Order pronounced on 31/07/2024.

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 31/07/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

True Copy

By Order

Rajesh V. Jalit
Private Secretary (On contract)

Sr. Private Secretary
ITAT, Nagpur