

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1340/PUN/2023
Assessment Year : 2011-12**

DCIT, Aurangabad	Vs.	Vista Nirman Pvt. Ltd., F-11, 3 rd Floor, Veer Nariman Road, Churchgate, Manek Mahal, Mumbai – 400020
		PAN: AADCV5473G
(Appellant)		(Respondent)

**CO No.21/PUN/2024
Assessment Year : 2011-12**

Vista Nirman Pvt. Ltd., F-11, 3 rd Floor, Veer Nariman Road, Churchgate, Manek Mahal, Mumbai – 400020	Vs.	DCIT, Aurangabad
PAN: AADCV5473G		
(Cross Objector)		(Respondent)

Assessee by : Shri Jaiprakash Bairagra
Department by : Shri Ajay Kumar Keshari
Date of hearing : 08-07-2024
Date of pronouncement : 05-08-2024

ORDER

PER R.K. PANDA, VP :

This appeal filed by the Revenue is directed against the order dated 15.09.2023 of the CIT(A), Pune – 12, relating to assessment year 2011-12. The assessee has filed the Cross Objections against the appeal filed by the Revenue. For the sake of convenience, the appeal filed by the Revenue and the Cross

Objections filed by the assessee were heard together and are being disposed of by this common order.

2. There is a delay of 30 days in filing of the CO before the Tribunal by the assessee, for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to spinal problem of the Director. After considering the contents of the condonation application filed along with affidavit and after hearing the Ld. DR, the delay in filing of the CO is condoned and the CO is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is a private company, engaged in the business of trading in shares and securities. It filed its return of income on 23.12.2011 declaring total loss of Rs.26,873/-. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 21.03.2014 by the ITO, Ward-1(1), Kolkata assessing the total loss at Rs.2,753/-.

4. Subsequently, the assessment was reopened by recording the following reasons:

“Credible information was received wherein it was reported that a search & seizure operation u/s 132 and survey operation u/s 133A of the Income Tax Act, 1961 was conducted at the various premises of Mittal Group on 31.10.2017. During the search and survey it was found that M/s VISTA NIRMAN PRIVATE LIMITED has received share premium from various Kolkata based companies, the creditworthiness of whom remained unexplained, amounting to Rs.24,11,50,000/-, during the FY 2010-11 i.e. A.Y. 2011-12.

According to inputs received, information from credible sources revealed that various bank accounts were opened during the FY 2010-11, wherein certain bank account transactions appeared which were circular in nature and the account appeared to have been part of a chain of accounts used for routing large fund transfers. These types of transactions were wangled to obtain fictitious entries in the form of share capital / premium which included sale of investments and for obtaining unsecured loans. As part of this methodology, investments in unquoted equities were sometimes reduced and loans and advances were increased proportionately. In this process, investments of the company were sold out gradually and the unaccounted cash was brought back in the books in the form of loans / advances without paying any tax. The cash deposits were made in the Jamakharchi accounts of individuals as well as shell companies having no business activities / fixed assets. M/S. VISTA NIRMAN PRIVATE LIMITED is one such entity where such routed transaction took place.

An inquiry was made in terms of running data analysis from e-records available in the ITBA database. As the financial analysis of the 360 degree profile of the assessee in question shows, the final accounts of the company indeed did undergo a change in terms of share capital / share premium reserve / investments vis-à-vis loans and advances without any perceptible reason and corroborates with auxiliary information received as above.

In view of the such information, lending credence to the financial data, mentioned herein, which are self-explanatory, the AO had reason to believe that income of the assessee to the extent of Rs.24,11,50,000/- has escaped assessment for the AY 2011-12 in terms of sec. 147 of the Act. The kind approval of the Ld. Pr.C.I.T.-1, Kolkata was obtained, in terms of Sec.151(1) of the I.T. Act, 1961 for issue of notice u/s. 148 of the I.T. Act, 1961.”

5. However, the assessee did not file the return of income in response to the notice u/s 148 of the Act. Subsequently, the jurisdiction of the case was transferred from the office of the ITO 2(4), Kolkata to ACIT, Central Circle – 1, Aurangabad. Notice u/s 142(1) of the Act was issued. Further notices u/s 133(6) of the Act were also issued to different entities from which the share amounts were received by the assessee company during the impugned assessment year.

6. Subsequently, the assessee vide letter dated 06.12.2018 requested the Assessing Officer to provide the reasons for reopening the assessment. The assessee was duly communicated the reasons for reopening the assessment which were reproduced in the preceding para No.4. The assessee vide letter dated 12.12.2018 objected to the reopening of the assessment proceedings u/s 147 of the Act on various grounds. The Assessing Officer rejected the objections raised by the assessee by passing a speaking order dated 13.12.2018.

7. During the course of assessment proceedings the Assessing Officer noted that the assessee has received share capital and share premium money of Rs.24,11,50,000/- from nine companies, the details of which are as under:

<i>Sr. No.</i>	<i>Name & Occupation of allottee</i>	<i>Office address</i>	<i>No. of shares allotted</i>	<i>Total Amount including premium paid</i>
1	M/s. Baron Sales Private Ltd	27 Weston Street, 3 rd Floor, Room No.-338, Kolkata	20,00,000	20,00,000/-
2	M/s. Ford Developers Pvt. Ltd.	27 Weston Street, 3 rd Floor, Room No.-338, Kolkata	1,72,500	8,62,50,000/-
3	M/s. Prabhu Commercial Pvt. Ltd.	27 Weston Street, 3 rd Floor, Room No.-338, Kolkata	12,000	60,00,000/-
4	M/s. Aspiration Commercial Pvt. Ltd.	P-133, Kalandi Housing Estate, 4 th floor, flat 09, Kolkata	54,400	2,72,00,000/-
5	M/s. Merit Tracom Pvt. Ltd.	21, Amartolla street, 4 th floor, Kolkata	1,21,200	6,06,00,000/-
6	M/s. Brightstar Commosale Pvt. Ltd.	1/75/1, Azadgarh, Kolkata	38,600	1,93,00,000/-
7	M/s. Approach Tradelinks Pvt. Ltd.	21, Amartolla street, 4 th floor, Kolkata	17,600	88,00,000/-
8	M/s. Giri Financial Services	7A, Bentinck Street,	62,000	2,60,00,000/-

	<i>Pvt. Ltd.</i>	<i>4th Floor, Kolkata</i>		
9	<i>M/s. Breeze Mercantile Pvt. Ltd.</i>	<i>8, Ramtanu Bose, 2nd Lane, 2nd Floor, Kolkata</i>	<i>10,000</i>	<i>50,00,000/-</i>
<i>TOTAL</i>			<i>24,78,300</i>	<i>24,11,50,000/-</i>

8. The Assessing Officer analyzed the data obtained from the ROC and noted that the assessee had issued its share at Re.1/- on 30.03.2011 and again issued the shares on the very next date at Rs.500/-. So, there is no justification for such abnormal increase of share price from Re.1/- on 30.03.2011 to Rs.500/- on 31.03.2011. He further noted that the DDIT (Inv), Aurangabad has concluded that M/s. Vista Nirmal Pvt. Ltd. i.e. the assessee is a paper company being run by the entry operator Shri Sandeep Kumar Sureka. All the funds available with M/s Vista Nirman Private Limited have been forwarded to Mittal group of Jalna, leaving no funds with itself, therefore, this company is existing only to re-route the unaccounted money of the Mittal group in the form of share capital / premium and unsecured loans to M/s. Matsyodari Steel and Alloy Private Limited and M/s. Shakti Re-rolling Private Limited. He further noted that survey u/s 133A of the Act was conducted by the DDIT (Inv.), Aurangabad in the cases of companies based at Kolkata from which the share premiums / application money was received in consequence to the search action u/s 132 of the Act. The survey party could serve the authorization only in the case of M/s. Brightstar Commosales Private Limited. This according to the Assessing Officer shows that no other company existed in the address given. Further, majority of the companies were not found on the last known address, therefore, the allegation is confirmed that these are merely

1	30.03.2011	Equity	20,00,000	1	Nil	1	20,00,000/-
2	31.03.2011	Equity	4,78,300	1	499	500	23,91,50,000/-

The above mentioned shares were allotted to :

Sr. No.	Name of Occupation	Office address	No. of shares allotted	Total amount including premium paid
1	M/s. Barson Sales Pvt. Ltd.	27, Weston Street, 3 rd Floor, Room No. 338, Kolkata	20,00,000	20,00,000/-
2	M/s. Ford Developers Pvt. Ltd.	27, Weston Street, 3 rd Floor, Room No. 338, Kolkata	1,72,500	8,62,50,000/-
3	M/s. Prabhu Commercial Pvt. Ltd.	27, Weston Street, 3 rd Floor, Room No. 338, Kolkata	12,000	60,00,000/-
4	M/s. Aspiration Commercial Pvt. Ltd.	P-133, Kalandi Housing Estate, 4 th Floor, Flat 09, Kolkata	54,400	2,72,00,000/-
5	M/s. Merit Tracom Pvt. Ltd.	21, Arnartolla Street, 4 th Floor, Kolkata	1,21,200	6,06,00,000/-
6	M/s. Brighstar Commosale Pvt. Ltd.	1/75/1, Azadgarh, Kolkata	38,600	1,93,00,000/-
7	M/s. Approach Tradelinks Pvt. Ltd.	21, Arnartolla Street, 4 th Floor, Kolkata	17,600	88,00,000/-
8	M/s. Giri Financial Services Pvt. Ltd.	7A, Bentinck Street, 4 th Floor, Kolkata	52,000	2,60,00,000/-
9	M/s. Breeze Mercantile Pvt. Ltd.	8, Ramtanu Bose, 2 nd Lane, 2 nd Floor, Kolkata	10,000	50,00,000/-
Total			24,78,300	24,11,50,000/-

6.5 Can an addition u/s 68 be made in respect of Share Premium received during AY 2011-12? This issue is discussed hereunder.

a) Share premium is a capital receipt. As per provisions of law governing Companies and Accounting and Disclosures by Companies, Share Premium or Security Premium is considered a Capital Receipt. It has to be shown in

Reserves and Surplus as an item on liabilities side of balance sheet and these Reserves can be used only for a limited manner permitted by law. The permitted use of such reserves generally results into increase in share capital or reduction of some specified liabilities on capital account. Use of Share Premium is also to keep the strength of financial structure undiluted. It is either converted into capital or reduces liabilities. Therefore, share premium cannot be considered as revenue at any stage like time of use or time of receipt.

b) Share Premium-Treatment under IT Act, 1961

i) Till AY 2012-13 the share premium received by a Company was not deemed as income.

ii) Deeming provisions as per Sec 56(2)(viib) (inserted w.e.f 01.04.2013) is applicable only in case of shares issued at premium by closely held Companies (subject to some exceptions). This is not applicable to I Companies listed on recognized stock exchange. In case of issue of shares at premium by listed Companies, share premium is not considered as income. In case of unlisted Companies, premium can be considered as income when price charged at time of issue of share is more than face value and also is higher than FMV. In such a case, the excess of issue price above FMV will be held as income. But this is applicable from AY 2013-14 onwards and not in AY 2011-12.

iii) Therefore, as per provisions of Income Tax Act, share premium is mainly regarded as capital receipt. However, an attempt has been made to bring into tax the excess share premium received by closely held Companies from AY 2013-14 onwards.

c) In hands of a Company, share capital is not taxable u/s 68 because share holders are publicly recognized and such shares are transferable by a shareholder. Therefore, in case money received against share capital is not substantiated then even share capital cannot be treated as income u/s 68 unless the Company has introduced its own undisclosed income as share capital. However, Sec 56(2)(viib) presumes even a capital receipt as income but that is applicable w.e.f 01.04.2013 i.e. AY 2013-14 and not to AY 2011-12.

d) There is no provision under Income Tax Act fixing share premium. Share premium is supported by share allotment letter and resolution passed by shareholders and the Company. Premium is commanded in view of the book value and future growth in value of investment.

e) In this regard the CSOT Instruction No. 2/2015 dated 29.01.2015 is clear on this issue. It has been held that premium on shares issued was on account of Capital Account Transaction and does not give rise to income. As per Hon 'ble Jurisdictional Bombay High Court's decision in vodetone India

Services Pvt. Ltd. for AY 2009-10 (WP No. 87112014) it was held that the premium on share issue was on account of a Capital account transaction and does not give rise to income and hence not liable to transfer price adjustment. CBOT decided that ratiodecidenti of the said judgement must be adhered to by the field officers.

f) As regards the examination of justification of share premium is concerned it is noted that concerned provision was bought into statute book in the form of Sec 56(2)(viib) w.eJ AY 2013-14. The Hon'ble Jurisdictional Bombay High Court in MIs Gagandeep Infrastructure P. Ltd. in 394 ITR 680 (Born) dated 20.03.2017 held that this provision is prospective in nature and is applicable from AY 2013-14 onwards.

g) The Hon'ble Bombay High Court in PCIT vs Apeak Infotech in 397 ITR 148 held as under:-

Amendment to Sec 68 by the addition of proviso took place w.e.~ 01.04.2013. It is not applicable to AY 2012-13.

- *As far as pre amended Sec 68 is concerned, the same cannot be invoked in AY 2012-13 as evidence was led by the assessee before the AO w.r.t identity and capacity of investor and genuineness of investment.*
- *Therefore, the AO did not invoke Sec 68 of Act to bring share premium to tax.*
 - *CIT(A) rightly held that Sec 68 cannot be invoked.*

h) It is pertinent to note that in AY 2011-12 the definition of income u/s 2(24) of Act did not define income as any consideration received for issue of shares in excess of its FMV. This came into effect w.eJ 01.04.2013 only and would not apply to the share premium received by Appellant during AY 2011-12. Similarly the amendment to Sec 68 by addition of proviso was made subsequent to AY 2012-13 and cannot be invoked. The Hon'ble Jurisdictional Bombay High Court in CIT vs Mis Gagandeep Infrastructure (P) Ltd. in 394 ITR 680 (Born) dated 20.03.2017 held that proviso to Sec 68 will have prospective effect only from AY 2013-14 onwards.

Thus, in view of above facts the share premium received by Appellant of Rs. 24,11,50,000/- during AY 2011-12 cannot be considered as 'Income' of Appellant as it was considered as capital receipt in FY 2010-11 and addition u/s 68 cannot be made. In FY 2010-11 there was no express provision in statute to tax the said capital receipt as income. This was introduced w.eJ 01.04.2013 after introduction of Sec. 56(2)(viib) of Act.

i) In this regard, CBOT Instruction No. 2/2015 dated 29.01.2015 is clear on the issue in which it has been held that premium on shares issued was on

account of capital account transaction and does not give rise to income. The Board's Instruction is reproduced as under:-

"In reference to the above cited subject, I am directed to draw your attention to the decision of the High Court of Bombay in the case of Vodafone India Services Pvt. Ltd. for AY 2009-10 (WP No. 871/2014), wherein the Court has held, inter alia, that the premium on share issue was on account of a capital account transaction and does not give rise to income and hence, not liable to transfer pricing adjustment.

It is hereby informed that the Board has accepted the decision of the High Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgment, it is directed that the ratio decidendi of the judgment must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the TTAT, DRP's and CIT (Appeals).

This issues with the approval of Chairperson, CBDT."

Reliance is placed on judgement of Hon'ble Jurisdictional High Court in Vodafone India Services Pvt. Ltd. vs. Union of India & Others (2014) 368 ITR 01 (Born HC), wherein it is held as under:-

"For all the above reasons, we find that in the present facts issue of shares at a premium by the Petitioner to its non-resident holding company does not give rise to any income from an admitted International Transaction. Thus, no occasion to apply Chapter X of the Act can arise in such a case"

Reliance is placed on judgement of Hon'ble Jurisdictional High Court in the case of Green Infra Ltd. ITA No. 7762/Mum/2012 dated 23.08.2013, wherein it has been held that:-

"Considering the entire issue in the light of the material evidence brought on record in our considerate view, the Revenue authorities have erred in treating the share premium as income of the assessee u/s 56(1) of the Act. In our considerate view, for the reasons discussed hereinabove, we do not find it necessary to apply the provisions of sec. 68 of the Act. We, therefore, direct the AO to delete the addition of Rs. 47,97,10,0001-."

Reliance is also placed on recent decision of Jurisdictional Hon'ble Bombay High Court in the case of SLS Energy Pvt. Ltd. dated 27-06'-2023, Writ Petition 331 of 2016, 2023-TIOL-817-HC-MUM-IT, wherein it has been held that Receipt of share capital including share premium was on capital account and give rise to no income and hence no addition can be called for u/s 56(2)(viib) of the income tax Act, 1961

Considering the Board's Instruction No. 2/2015 vide F No. 500/15/2014APA-\ dated 29.01.2015 and respectfully following the Hon'ble High Court

Bombay's decision in the case of SLS Energy Pvt. Ltd. dated 27-06-2023, Vodafone India Services Pvt. Ltd. vs Union of India & Others (2014) 368 ITR 01 (Bombay HC) and Hon'ble ITAT 'G' Bench decision in the case of Green Infra Ltd. ITA No. 7762/Mum/2012 dated 23.8.2013, I am of the Opinion that Share capital with premium amount received by the appellant of Rs.24, 11,50,0001- is in the nature of capital and same cannot be assessed u/s 68 of the IT Act.

j) In view of the above facts and respectfully following the CBDT's Instruction dated 29.01.2015 and judgements of Hon'ble jurisdictional Hon'ble High Court and Hon'ble Jurisdictional ITAT as outlined above the addition made by AO of Rs. 24,11,50,0001- u/s 68 on account of Share capital with premium is not sustainable in the eyes of law and same is hereby deleted. For the AY 2011-12, the Share capital with premium received of Rs. 24,11,50,0001- is in the nature of Capital receipt and cannot be assessed u/s 68 of Act. Thus, the total addition of Rs. 24,11,50,000/- is hereby deleted. The grounds of appeal Nos. 8 to 11 are allowed. “

10. Since the Ld. CIT(A) deleted the addition on merit, he did not adjudicate the validity of re-assessment proceedings raised by the assessee in the grounds as well as in the additional grounds.

11. Aggrieved with such relief granted by the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.24,11,50,000/- in the case of assess even after confirming that the assessee had failed to discharge the onus cast upon it to explain the Genuineness of the transactions, also financials of the nine purchaser companies i.e. who Purchased the shares of Vista Nirman Pvt. Ltd. were found suspicious/not satisfactory one. Also addresses of most of the companies who purchased the shares of the assessee were found one and same.*
2. *Ld. CIT(A) has erred in deleting the addition of Rs.24,11,50,000/-without considering the fact that the-unexplained money claimed to have been received by the assessee was held to be accommodation entries and therefore, the. same should have been taxed as unexplained credit in the hands of the assessee.*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the share premium received in the F.Y. 2010-11 relevant to A.Y. 2011-12 was nature wise capital receipts. Whereas the share premium received by the assessee company of Rs. 24,11,50,000/- was found to be accommodation entries in the assessee's books of accounts and hence the provisions of section 68 was clearly applicable.*
4. *Whether on the facts and in the Ld. CIT(A) has erred by relying on the decision of Honorable High Court Bombay in M/s. Gagandeep Infrastructure P. Ltd. in 394 ITR 680 & in PCIT Vs. Apeak Infotech in 397 ITR 148 and in the case of Vodafone India Services Pvt. Ltd.*

12. The assessee has raised the following grounds in its Cross Objection:

Grounds of cross-objections

Following grounds have not decided by the learned CIT(A) as mentioned in Para 6.6 of the order:

1. *The Ld. Assessing Officer erred in initiating the re-assessment proceedings after 4 years from the end of the A.Y.2011-12, as admittedly there is no failure to disclose all primary facts in the regular assessment proceedings completed under Sec.143(3)of the Act.*
2. *The Ld. Assessing Officer has further erred in initiating re-assessment proceedings on mere change of opinion as issues of allotment of shares and share premium were examined in the regular assessment proceedings by the Assessing Officer by issuance of notices under Sec.133(6) r/w Sec.142(2) of the Act to respective parties.*
3. *The Ld. Assessing Officer further erred in re- opening the completed assessment without any tangible material before him at the time of issuing Notice under Sec.148 of the Act and hence, the basic mandate of Section 147 of the Act, Reason to Believe is absent.*
4. *The Ld. Assessing Officer has reopened the assessment on borrowed satisfaction without verification of the alleged information/statements given by the third parties.*
5. *The Ld. Assessing Officer further erred in not supplying the exact reasons recorded for reopening of the assessment which shows who has recorded the reasons and the date on which the reasons were recorded.*
6. *The Ld. Assessing Officer further erred in not accepting the contention of the appellant that there is no valid and proper approval obtained from the Ld. Pr.CIT(A)-1 in terms of the provisions of section 151(1) of the Income Tax Act for*

reopening of the assessment as there is no date mentioned under signature of Pr.CIT(A) and the sanction is recorded mechanically

7. *The Ld. Assessing Officer further erred in rejecting the objection raised against the reasons for reopening the assessment vide order dated 13/12/2018 without fully considering and giving findings on various issues raised in the objection filed against reasons for reopening of the assessment.*

8. *The Ld.CIT(A) further erred in not considering and giving clear findings on addition made under Section 68 of the Income Tax Act 1961 in respect of share capital issued by the appellant company in spite of various details and case laws of Hon'ble Supreme Court, Hon'ble Bombay High Court and other high courts submitted from time to time. Further, the copies of which are given in Paper Book filed with Hon'ble ITAT.*

13. The Ld. DR heavily relied on the order of the Assessing Officer. Referring to the following decisions, he submitted that mere submission of PAN, bank statement, Certificate of incorporation, letter of confirmation, etc. is not sufficient for discharging the onus cast on the assessee for the addition made u/s 68 of the Act.

- 1) *Navodaya Castle Pvt. Ltd. Vs. CIT (SC)*
- 2) *CIT vs. Rathi Finlease Ltd. (Madhya Pradesh HC)*
- 3) *Par Excellence Leasing and Financial Services (P.) Ltd. vs. ACIT (Delhi ITAT)*
- 4) *J.J. Development (P.) Ltd. vs. CIT, Kolkata*
- 5) *Advance Power Infra Tech Ltd. vs DCIT (Kolkata ITAT)*
- 6) *CIT vs. Korlay trading co. Ltd. (Calcutta HC)*

14. He submitted that since the investor companies have filed their returns with meager or nil income, the creditworthiness of the investor companies remained unsatisfactory and therefore, the CIT(A) was not justified in deleting the addition

made by the Assessing Officer. For the above proposition, the Ld. DR relied on the following decisions:

1. *Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd (SC)*
2. *Shankar Industries vs CIT (Calcutta HC)*
3. *Nipun Builders and Developers Pvt. Ltd. (Delhi HC)*
4. *Kottex Industries (P.) Ltd. vs ACIT (Gujarat HC)*
5. *BalGopal Merchants (P.) Ltd. v. PCIT (Calcutta HC)*
6. *Mukesh Shaw v. ITO (Jharkhand HC)*
7. *B.R. Petroleum (P.) Ltd vs ITO (Madras HC)*
8. *Seema Jain vs ACIT, New Delhi (Delhi HC)*

15. Referring to the following decisions, the Ld. DR submitted that when the notices remained un-served and the amount received through paper or nonexistent companies, the CIT(A) was not justified in deleting the addition made by the Assessing Officer:

1. *Konark Structural Engineers (P.) Ltd. vs. DCIT (SC)*
2. *CIT Vs Nova Promoters & Finlease (P) (Delhi HC)*
3. *CIT vs Sophia Finance Ltd. (Delhi HC)*
4. *Prem Castings (P.) Ltd. v. Commissioner of Income-tax (Appeals) (Allahabad HC)*
5. *NDR Promoters (P.) Ltd. v. PCIT (SC)*
6. *CIT v. Ultra Modern Exports (P.) Ltd. (Delhi HC)*
7. *Pratik Syntex (P.) Ltd. v. ITO, Mumbai (Mumbai ITAT)*
8. *CIT v. Midas Golden Distelleries (P.) Ltd.*

9. *Konark Structural Engineers (P.) Ltd. vs DCIT (Bombay HC)*
10. *Dhingra Global Credence (P.) Ltd. v. Income-tax Officer (Delhi ITAT)*
11. *DRB Exports (P.) Ltd vs CIT (Calcutta HC)*
12. *Amtrac Automobiles India Pvt Ltd Vs ACIT (Delhi ITAT)*
13. *CIT Vs. Frostair (P.) Ltd. (Delhi HC)*
14. *Vaibhav Cotton (P.) Ltd. Vs. Income Tax Officer, 4(4) (Indore ITAT)*

16. He accordingly submitted that the order of CIT(A) not being in accordance with law should be set aside and the order of the Assessing Officer be restored. So far as the grounds challenging the validity of re-assessment proceedings are concerned, the Ld. DR submitted that the Assessing Officer has followed the due process of law and therefore, the same should be upheld. Referring to the following decisions, he submitted that mere production of books of account from which material evidence could have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of proviso:

1. *Peass Industrial Engineers (P.) Ltd. v. Deputy Commissioner of Income-tax (2016) 76 taxmann.com 106 (Gujarat)*
2. *Dr. Amin's Pathology Laboratory vs. P.N. Prasad, Joint Commissioner of Income-tax (2001) 252 ITR 673 (Bom)*
3. *ACIT v. M.P. Laghu Udyog Nigam Ltd. (2017) 83 taxmann.com 160 (Indore-Trib)*
4. *ITO v. TechSpan India (P.) Ltd. (2018) 92 taxmann.com 361 (SC)*
5. *Chetan Sabharwal vs. ACIT (2019) 110 taxmann.com 57 (Delhi)*

6. *Subhodh Agarwal v. State of U.P. (2023) 149 taxmann.com 448 (Allahabad)*
7. *ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. (2007) 291 ITR 500 (SC)*
8. *Raymond Woollen Mills Ltd. v. ITO (1999) 236 ITR 34 (SC)*
9. *DCIT v. M.R. Shah Logistics (P.) Ltd. (2022) 136 taxmann.com 373 (SC)*
10. *Munjal M Jaykrishna Family Trust v. ITO (2023) 152 taxmann.com 38 (Gujarat)*

17. He however submitted that although the assessee has taken grounds challenging the validity of reopening the assessment, however, the Ld. CIT(A) has not adjudicated these grounds. Therefore, he has no objection if the matter is restored to the file of the CIT(A) for adjudication of those grounds.

18. The Ld. Counsel for the assessee on the other hand submitted that the original assessment order was passed u/s 143(3) of the Act on 21.03.2014, copy of which is placed at pages 211 and 212 of paper book. Referring to the said assessment order, he drew attention of the Bench to the observations of the Assessing Officer at para 1.3 of the order, according to which the information were sought for by issuing letters to various parties by invoking the provisions of section 133(6) of the Act. Replies received from those companies were placed on record. After examining those details the Assessing Officer has passed the order. Referring to the copy of the reasons recorded by the Assessing Officer which were supplied to the assessee and placed at pages 39 and 40 of the paper book, he submitted that in the reasons so recorded which is after expiry of four years from

the end of the relevant assessment year, there is no mention of any allegation that the assessee failed to disclose fully and truly all material facts necessary for completion of the assessment. He submitted that this is against the proviso to section 147 of the Act.

19. Referring to the decision of the Hon'ble Bombay High Court in the case of Akshar Anshul Construction LLP vs. ACIT, 264 Taxman 65, copy of which is placed at pages 144 to 151 of the paper book, he submitted that the Hon'ble Bombay High Court in the said decision has held that where the Assessing Officer reopened the assessment to disallow the deduction u/s 80IB(10) of the Act, since reasons not having alleged / particularized any failure on part of assessee to disclose fully and truly all material facts necessary for assessment, reopening of assessment was without jurisdiction.

20. Referring to the decision of the Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R.B. Wadkar, 268 ITR 332 (Bom), he submitted that the Hon'ble Bombay High Court in the said decision has held that where reasons recorded by the Assessing Officer nowhere stated that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year and notice was clearly beyond the period of four years, re-assessment was barred by limitation.

21. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Foramer France, 264 ITR 566 (SC), copy of which is placed at pages 96 and 97 of the paper book, he submitted that the Hon'ble Supreme Court has upheld the decision of Hon'ble Bombay High Court where it had been held that when there was no failure on the part of the petitioner to make return or to disclose fully and truly all material facts necessary for the assessment, proviso to new section which bars issue of notice u/s 148 of the Act after expiry of four years from the end of relevant assessment year, clearly apply to the facts of the present case and therefore, notice was barred by limitation.

22. Referring to the following decisions, he submitted that similar view has been taken by various Courts, according to which no notice u/s 148 of the Act can be issued after expiry of four years from the end of relevant assessment year when original assessment was completed u/s 143(3) of the Act and there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment.

- i) *Naroli Resort Pvt. Ltd. vs. ACIT 2023-TIOL-1051-HC-MUM-IT*
- ii) *Everest Kanto Cylinder Ltd. vs. Union of India, 159 taxmann.com 5*
- iii) *ACIT v. Virbac Animal Health India Pvt. Ltd., 453 ITR 794 (SC)*
- iv) *PCIT v. L & T Ltd., 113 taxmann.com 48 (SC)*

23. He submitted that the issue of share capital with premium was thoroughly examined by the Assessing Officer while passing the original assessment order u/s

143(3) of the Act on 21.03.2014. The Assessing Officer while completing the assessment had issued notices u/s 133(6) of the Act to all the nine shareholder companies and got their replies along with the relevant documents. Therefore, reopening of the assessment u/s 147 of the Act is nothing but change of opinion. Referring to the following decisions, he submitted that the assessment cannot be reopened due to change of opinion:

- a) *Marico Ltd. v. ACIT (Writ Petition No.1917 of 2019, dt. 21.08.2019)*
- b) *State Bank of India v. ACIT, 96 taxmann.com 77*
- c) *GRI Towers India Pvt. Ltd. vs. Union of India, 160 taxmann.com 215*

24. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd., 320 ITR 561 (SC), he submitted that the Hon'ble Supreme Court in the said decision has held that the Assessing Officer has power to reopen, 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 formation of belief.'

25. Referring to the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Shodiman Investments (P.) Ltd., 422 ITR 337 (Bom), he submitted that the assessment cannot be reopened on borrowed satisfaction without verification of alleged information / statements given by the third parties.

26. Referring to the decision of the Hon'ble Bombay High Court in the case of Kartik Sureshchandra Gandhi v. ACIT, 154 taxmann.com 193, he submitted that sanction u/s 151 cannot be given in a mechanical manner. Referring to the sanction taken u/s 151 from the Pr.CIT-1, copy of which is placed at pages 41 and 42 of the paper book, he submitted that there is no date mentioned in the letter of Addl.CIT and Pr.CIT-1, Kolkata. Further in the letter dated 31.03.2018 sent by the CIT to ITO, the name of the assessee has not been addressed properly and it has been mentioned Vista Nirman instead of Vista Nirman Pvt. Ltd. Further, no proper satisfaction has been recorded by both the Addl. CIT as well as CIT.

27. Referring to the following decisions, he submitted that where the satisfaction was recorded in a mechanical manner and without application of mind in order to accord sanction, issue of notice u/s 148 of the Act and assumption of jurisdiction to reopen the block assessment is invalid.

- a) *Kartik Sureshchandra Gandhi v. ACIT, 154 taxmann.com 193*
- b) *CIT v. S. Goyanka Lime & Chemical Ltd., 56 taxmann.com 390*
- c) *CIT v. S. Goyanka Lime & Chemical Ltd., 150 taxmann.com 245*
- d) *Smt. Kalpana Shantilal Haria v. ACIT, 2018-TIOL-07-HC-MUM-IT*

28. So far as the merit of the case is concerned, the Ld. Counsel for the assessee submitted that when the assessee has submitted all the details and documents to prove the identity and creditworthiness of the share applicants and genuineness of the transactions, no addition u/s 68 of the Act can be made. The assessee is not required to prove the source of the source of the money received. For the above proposition, he relied on the following decisions:

- (i) *PCIT v. Veedhata Tower Pvt. Ltd., 403 ITR 415 (Bom)*
- (ii) *CIT vs. Gangadeep Infrastructure Pvt. Ltd., 394 ITR 680 (Bom)*
- (iii) *Appolo Structural Engineers Pvt. Ltd. in Writ Peition (L) No.3393 of 2017 dated 15.09.2017*
- (iv) *PCIT v. Paradise Inland Shipping (P.) Ltd., 400 ITR 439 (Bom)*
- (v) *SLP against the order has been rejected by the Hon'ble Supreme Court on 23.04.2018 reported in 93 taxmann.com 84*
- (vi) *Murlidhar Lahorimal vs. CIT, 280 ITR 512 (Guj)*
- (vii) *Labh Chand Bohra v. ITO, 219 CTR 571 (Raj)*
- (viii) *CIT vs. Dwarkadish Investment Pvt. Ltd., 330 ITR 298 (Delhi)*
- (ix) *Sarogi Credit Corporation v. CIT, 103 ITR 344 (Patna)*
- (x) *DCIT v. Rohini Builders, 256 ITR 360 (Guj)*
- (xi) *Aravali Trading Co. v. ITO, 220 CTR 622 (Raj)*
- (xii) *ITO vs. Neelkanth Finbuild Ltd., 70 SOT 368*
- (xiii) *Nemi Chand Kothari vs. CIT (2004) 264 ITR 254 (Gau)*
- (xiv) *CIT v. Shiv Dhooti Pearls & Investment Ltd., 237 Taxman 104*

29. He submitted that when the assessee has proved the source of the investor companies by producing their PAN, letters of confirmation, bank statements, audited balance sheet, etc. and the assessee is not required to prove the source of source, therefore, in view of the above decisions, the addition made by the Assessing Officer is not justified and the CIT(A) has rightly deleted the addition.

30. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed by both

the sides. We have also considered the various decisions cited before us. Before deciding the appeal of the Revenue challenging the order of CIT(A) deleting the addition of Rs.24,11,50,000/- made by the Assessing Officer u/s 68 of the Act, we would first like to adjudicate the grounds raised by the assessee in the CO challenging the validity of re-assessment proceedings. It is an admitted fact that the original assessment was completed u/s 143(3) of the Act on 21.03.2014 and the Assessing Officer in the order passed u/s 143(3) of the Act has observed as under:

“1.3 The assessee company is engaged in investments in shares & securities, during the relevant previous year. On perusal of its Profit & Loss Account and Balance Sheet for the F.Y. 2010-11, it revealed that as on 31.03.2011, it had paid up capital amounting to Rs.25,78,300/-, and share premium reserve amounting to Rs.23,86,71,700/-.

Information were also sought for, by issuing letters to various parties by invoking Section 133 (6) of the I.T. Act. Replies received in response to the same are placed on record. On examination of accounts, supporting details / documents furnished in respect of assessee company's accounts and computation disclosed in the return of income one area has been noted, which is enumerated below”

31. We find the Assessing Officer reopened the assessment by recording reasons which have already been reproduced in the preceding paragraphs. A perusal of the reasons recorded by the Assessing Officer nowhere shows that there is any allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of the assessment. Since the assessment year involved in the instant case is 2011-12 and the original assessment was completed u/s 143(3) of the Act and there is no allegation of any failure on the part of the assessee to disclose fully and truly all the material facts necessary for completion of assessment in the reasons recorded for reopening of the case,

therefore, the proviso to section 147 of the Act is clearly applicable which reads as under:

“147.....

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

.....”

32. We find the Hon’ble Bombay High Court in the case of Akshar Anshul Construction LLP vs. ACIT (supra) while quashing the re-assessment proceedings on account of reasons not having any allegation of any failure on the part of the assessee to disclose fully and truly all the material facts for completion of assessment for reopening of the assessment has observed as under:

“7. It is a settled position in law that where assessment has been completed by scrutiny under Section 143(3) of the Act, an assessment cannot be reopened beyond a period of four years from the end of the relevant assessment year in the absence of any failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. This is the mandate of the first proviso to Section 147 of the Act. In the present case, it is undisputed position that the regular assessment for Assessment Year 2010-11 was completed under Section S.R.JOSHI 5 of 8 wp-14302-2018 143(3) of the Act. The impugned notice has been issued on 27 th March, 2018 i.e. admittedly, beyond a period of four years from the end of the relevant Assessment Year 2010-11. Thus, the reasons in support of the impugned notice in cases where assessments sought to be re-opened is beyond a period of four years from the end of the relevant assessment year where assessment is completed u/s. 143(3) of the Act, must spell out the exact failure on the part of the assessee which resulted in escapement of income. The reasons recorded in support of the impugned notice, alleges that the Petitioner is not entitled to the benefit of exemption under Section 80 IB (10) of the Act as from index II of the flats sold registered with the Registrar show that three flats have been sold to the same family. It is on the basis that, this sale was post insertion of section 80IB(10)(f) of the Act w.e.f. 1st April, 2010. However, we find that during regular assessment proceedings, for the subject Assessment Year 2011-12,

the Petitioner had at the instance of the Assessing Officer given complete details with regard to the purchase of the flat, the date of agreement of purchase of the flats and also date of possession to the Assessing Officer. The same was examined by the Assessing Officer. At that time, the Assessing Officer was satisfied that the flats were sold prior to the amendment of 2010. It is consequent to the above that the Assessing Officer passed an order dated 26th March, 2014 under Section 143 (3) of the Act and accepted Petitioner's claim for deduction under Section 80 IB (10) of the Act. Thus, in view of the above, the full and true disclosure at the time of regular assessment, the impugned notice is without jurisdiction.

8. It may be pointed out that at the hearing, the Respondent contended that the assessment was re-opened on the basis of the S.R.JOSHI 6 of 8 wp-14302-2018 assessment order for Assessment Year 2015-16 where it was found that the commencement certificate for the project was received only on 21 st September, 2010 in the name of the Petitioner. Therefore, there was a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for amendments. We find that, the reasons in support of the impugned notice, merely mentions about the Assessment for Assessment Year 2015-16. However, it does not mention of any failure to disclose the correct date of commencement being a fact which came to the knowledge of the Revenue while passing the Assessment Order for Assessment Year 2015-16. This fact, according to Mr. Mohanty is evident from the Assessment Order for Assessment Year 2015-16 and it has to be read into the reasons given in support of the impugned notice. This, submission is contrary to the decision of this Court in Hindustan Lever v/s. R. B. Wadkar 268 ITR 332 - wherein this Court has held as under:-

" The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or declaration is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach the conclusions as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons S.R.JOSHI 7 of 8 wp-14302-2018 provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for

assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safe-guard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches the court, on the strength of the affidavit or oral submissions advanced."

Thus, the submission of Mr. Mohanty not being a part of the reasons recorded, cannot be read into them, in the facts of this case.

9. Therefore, in facts of this case, the reasons in support of the impugned notice not having alleged/ particularized any failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment, the impugned notice is without jurisdiction.

10. Accordingly impugned notice is quashed and set aside. Petition allowed in the above terms."

33. We find the Hon'ble Supreme Court in the case of CIT vs. Foramer France

(supra) has observed as under:

"Section 148 read with sections 147 and 153 of the Income-tax Act, 1961 – Income escaping assessment – issue of notice for – Assessment years 1988-99 to 1990-91 – Petitioner-foreign company was engaged in business of oil exploration and providing expertise and assistance in said field – Proceeds from manning and management contracts received by petitioner were originally assessed in February, 1991 under section 143(3) treating same as business income in terms of section 44BB – However, following Tribunal's decision rendered in case of petitioner's expatriate employee, Assessing Officer issued a notice under section 148 in November, 1998 seeking to reassess same income as fees for technical services – Whether law prevailing on date of issue of impugned notice would apply to instant case, and since new section 147 had come into force with effect from 1-4-1989, provisions of that section were applicable – Held, yes – Whether since admittedly there was no failure on part of petitioner to make return or to disclose fully and truly all material facts necessary for assessment, proviso to new section, which bars issue of notice under section 148 after expiry of four years from end of relevant assessment year, squarely applied to fact of instant case and, therefore, impugned notice was barred by limitation – Held, yes – Whether since notice under section 148 was without jurisdiction, there was no merit in plea that petitioner was to be relegated to alternative remedy – Held, yes."

34. We find the Hon'ble Bombay High Court in the case of Multiscreen Media (P.) Ltd. vs. Union of India (2010) 324 ITR 48 (Bom) has observed as under:

"10) In dealing with the merits of the rival contentions, it must at the outset be noted that during the course of the proceedings under section 143(3), the Assessing Officer was duly apprised of the circumstance that the petitioner was acting as an agent for the collection of subscriptions and for procuring advertisements for the benefit of its foreign principal. The order of assessment makes a reference to the nature of business of the petitioner in the following terms.

" The assessee is a private limited company incorporated on 18-9-95. The company is engaged in the business of production / acquisition and sale of television programmes / files, distribution of satellite channels and acting as advertising agent of SET Satellite (Singapore) Ple. Ltd. for canvassing for sale of advertisement time slots to Indian advertisers. "

11) During the course of the assessment proceedings, the petitioner was called upon to furnish details specifically with reference to the expenditure incurred by it on advertisements, sales promotion and market research by a communication dated 3rd December, 2004 of the Assessing officer. In response to the communication, the petitioner by a letter dated 28th December, 2004 furnished details of the selling and distribution expenses, including those incurred on marketing research and studies. A copy of those communications together with the details submitted by the petitioner have been annexed to the proceedings before the Court. Hence during the course of the assessment proceedings, the Assessing Officer was apprised of the circumstance that the business of the petitioner consisted in the collection of subscriptions from subscribers of television channels and for procuring advertisements. The fact that the petitioner was acting as an agent for a foreign principal was disclosed.

12) The notice issued by the Assessing Officer under section 148 does not state that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment for assessment year 2002-03. The assessment was sought to be reopened after the expiry of a period of four years from the end of the relevant assessment year. In such a case the jurisdictional condition precedent stipulated by the proviso to Section 147 is a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment for that assessment year consequent upon which income chargeable to tax has escaped assessment.

That has not been fulfilled. The notice does not even purport to state so.

The ground furnished in the notice for reassessment would at the highest indicate that according to the Assistant Commissioner of Income Tax, allocation of expenses as between the petitioner and the foreign principal ought to have been originally considered by the Assessing Officer when the order of assessment was

passed under section 143(3). That however would not give a valid reason to reopen the assessment beyond a period of four years, even assuming that the Assessing Officer had erred in not doing so, unless there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. Absent the existence of the jurisdictional condition precedent, assessment cannot be reopened beyond a period of four years after the expiry of the relevant assessment year, as has been done in the present case. In the circumstances, the notice for reassessment is liable to be quashed and set aside solely on the ground that the Revenue has failed to establish the existence of the jurisdictional condition precedent to the exercise of the power to reopen an assessment beyond a period of four years of the expiry of the relevant assessment year.

13) The petition would accordingly have to be allowed. Rule is made absolute in terms of prayer clause (a), by quashing and setting aside the notice dated 25th March, 2009 and the order dated 29th September, 2009.

WRIT PETITION NO.8720 OF 2009

12) The facts of this Writ Petition, it is common ground between both the learned counsel, are the same as in Writ Petition No.8719 of 2009, which has been allowed for the reasons recorded in the judgment. In the present case also, assessment is sought to be reopened beyond a period of four years from the end of expiry of the relevant assessment year, A.Y. 2003-04. For the reasons already recorded while allowing the companion Writ Petition, the present Writ Petition is made absolute in terms of prayer clause (a) by quashing and setting aside the notice dated 25th March, 2009 and the order dated 29th September, 2009.”

35. We find the Hon’ble Bombay High Court in the case of Marico Ltd. vs. ACIT in Writ Petition No.1917 of 2019, order dated 21.08.2019 from para 10 of the order has observed as under:

“10. It is undisputed position before us, that query was raised on the very issue of reopening during regular Assessment proceedings. The parties have responded to it and the Assessment Order dated 30 January 2018 makes no reference to the above issue at all. However, once a query has been raised by the Assessing Officer during the assessment proceedings and the assessee has responded to that query, it would necessarily follow, as held by our Court that the Assessing Officer has accepted the Petitioner’s/Assessee’s submissions, so as to not deal with that issue in the assessment order. In fact, our Court in GKN Sinter Metals Ltd. V/s. Ms. Ramapriya Raghavan, Assistant Commissioner of Income Tax, Circle 2(1) (371)

ITR 225 had occasion to deal with the similar/identical submissions on behalf of the Revenue viz. that an assessment order passed under Section 143(3) of the Act does not reflect any consideration of the issue, it must follow that no opinion was formed by the Assessing Officer in the regular assessment proceedings. This submission was negated by this Court by observing as follows :-

14. According to the Revenue, it could only be when the assessment order contains discussion with regard to particular claim can it be said that the Assessing Officer had formed an opinion with regard to the claim made by the assessee. This Court in Idea Cellular Ltd. v/s. Deputy Commissioner of Income Tax 301 ITR 407 has expressly negated on identical contention on behalf of the Revenue. The Court held that once all the material was placed before the Assessing Officer and he chose not to refer to to the deduction/claim which was being allowed in the assessment order, it could not be contended that the Assessing Officer had not applied his mind while passing the assessment order. Moreover in this case, it is evident from the letter dated 6 th August, 2007 addressed by the Assessing Officer to the Petitioner containing the reasons recorded for issuing the impugned notice also record the fact that during the regular assessment proceedings, the Petitioner has been asked to furnish details in support of the claim for exemption under Section 80IA/IB of the Act. The letter further records that the details sought for were furnished and it is now observed that there has been a disproportionate distribution of expenses between various units belonging to the Petitioner for claiming deduction under Section 80IA/IB of the Act. This is a further indication of the fact that the Assessing Officer had during the regular assessment proceedings for Assessment Year 200203 sought information in respect of the allocation of expenses and the explanation offered by the Petitioner was found to be satisfactory. This is evident from query dated 27th December, 2004 and the Petitioner's response to the same on 25th January, 2005 explaining the manner of distribution of common expenses for delaying the process of claiming deduction under Section 80IA/IB of the Act. All this would indicate that Assessing Officer had formed an opinion while passing the order dated 9 th March, 2005. This Court in Aroni Commercials Ltd. v/s. Assistant Commissioner of Income Tax 367 ITR 405 had occasion to consider somewhat similar submission made by the Revenue and negated the same by holding that when a query has been raised with regard to a particular issue during the regular assessment proceedings, it must follow that the Assessing Officer had applied his mind and taken a view in the matter as is reflected in the Assessment Order. Besides, the manner in which an Assessing Officer would draft/frame his order is not within the control of an assessee. Moreover, if every contention raised by the assessee which even if accepted is to be reflected in the assessment order, then as observed by the Gujarat High Court in CIT v/s. Nirma Chemicals Ltd. 305 ITR 607, the order would result into an epic tome. Besides, it would be impossible for the Assessing Officer to complete all the assessments which have to under gone scrutiny at its hand. In the above view, it is clear that once a query has been raised during the assessment proceedings and the Petitioner has

responded to the query to the satisfaction of the Assessing Officer as is evident from the fact that the Assessment Order dated 9 th March, 2005 accepts the Petitioner's claim for deduction under Section 80IA/IB of the Act. It must follow that there is due application of mind by the Assessing Officer to the issue raised.

The above observations apply on all fours to this Petition, so far as the Revenue's submission of no change of opinion is concerned.

11. The further submission of Mr. Walve that in the absence of the Assessing Officer adjudicating upon the issue it cannot be said that the Assessing Officer had formed an opinion during the regular assessment proceedings leading to the order dated 30 January 2018. An adjudication would only be on such issue where the assessee's submissions are not acceptable to the Revenue, then the occasion to decide a lis would arise i.e. adjudication. However, where the Revenue accepts the view propounded by the assessee in response to the Revenue's query, the Assessing Officer has certainly to form an opinion whether or not the stand taken by the assessee is acceptable. Therefore, it must follow that where queries have been raised during the assessment proceedings and the assessee has responded to the same, then the non-discussion of the same or non-rejection of the response of the assessee, would necessarily mean that the Assessing Officer has formed an opinion accepting the view of the Assessee. Thus an opinion is formed during the regular Assessment proceedings, bars the Assessing Officer to reopen the same only on account of a different view.

12. Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 September 2017 during the assessment proceedings and the Petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017 justifying its stand. The non-rejection of the explanation in the Assessment Order would amount to the Assessing Officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set aside.

13. Petition allowed."

36. The various other decisions relied on by the Ld. Counsel for the assessee in the case law compilation also support the case of the assessee to the proposition that the re-assessment proceedings initiated beyond the period of four years from the end of the relevant assessment year is invalid where the original assessment

was completed u/s 143(3) of the Act and there is no allegation of any failure on the part of the assessee to disclose fully and truly all material facts necessary for completion of assessment in the reasons recorded. In this view of the matter, we are of the considered opinion that the re-assessment proceedings initiated by the Assessing Officer are not in accordance with law.

37. We further find during the course of original assessment proceedings, various details were called for from the nine shareholder companies who have filed the requisite details and the Assessing Officer on the basis of their replies such as their PAN, bank statements, confirmations, audited financial statements, etc. has completed the assessment u/s 143(3) accepting the genuineness of such investments by them in the shares of the assessee company. We find an identical issue had come up before the Hon'ble Bombay High Court in the case of Godrej Projects Development Pvt. Ltd. vs. ITO & Ors. In Writ Petition No.804 of 2015, judgment dated 01.02.2024. In that case the assessee was in the business of development of real estate and assessed to income tax for the assessment year 2009-10 had filed its return of income on 07.09.2009 and the assessment was completed u/s 143(3) of the Act on 21.12.2011. While passing the order, the Assessing Officer had called for various details such as details of shareholding pattern of the company. In the Cash Flow statement filed it was stated that the assessee has received share premium of Rs.21,50,11,618/- which was used for redemption of preference shares. The assessee was also called upon to furnish

various other details which were submitted and the Assessing Officer completed the assessment accepting loss Rs.87,362/-. Subsequently, the case of the assessee was reopened on the ground that the assessee is a new company incorporated on 15.03.2007 only. It is not clear that how can a newly incorporated company with no proven track record command such a huge share premium in the open market that too at 1284.2 times of the face value of a share. The intrinsic value of shares is in fact much less than what it has got. The assessee objected to the reasons recorded which were rejected by the Assessing Officer. The assessee therefore, filed a Writ Petition before the Hon'ble High Court challenging the validity of re-assessment. The Hon'ble High Court quashed the re-assessment holding that the assessment was reopened on account of mere change of opinion which is not in accordance with law. The relevant observations of the Hon'ble High Court read as under:

“4. It is petitioner's case that the return of income having been thoroughly scrutinised and an order under section 143 of the Act having been passed, there is no fresh material for reopening and assessment proceedings are initiated on the same set of facts and, therefore, is based on mere change of opinion. It would amount to a review of the assessment order, which is impermissible.

It is also petitioner's case that the issue sought to be reopened is wholly without jurisdiction since the receipt of share premium at the time of fresh issue of shares by the company does not constitute income chargeable to tax under the Act so as to escape assessment.

It is also petitioner's case that the reasons recorded are vague indicating that there is no material on record whereof a valid belief could be formed that income chargeable to tax has escaped assessment and the reassessment proceedings have been initiated merely to make fishing and roving enquiries which is not permissible under the Act.

It is settled law that if, the jurisdictional conditions are not satisfied, the assessment cannot be reopened.

5. Mr Pardiwalla submitted as under:

(a) *It is a well settled principle of law that the existence of a valid "reason to believe" is a sine qua non for the exercise of jurisdiction under section 147 of the Act. The courts have held that the expression "reason to believe" postulates a bonafide belief that there must exist objective reasons for that belief.*

(b) *The reasons as recorded do not disclose any tangible material on the basis of which a prudent person could have formed a reasonable belief and come to a conclusion that any income has escaped assessment as there is no live link between the reasons as recorded and the material on record for forming a belief that any income chargeable under the Act has escaped assessment.*

(c) *The issue of shares and the receipt of share premium were examined during the course of regular assessment proceedings by respondent no.1 by raising specific queries. Petitioner furnished all the details relating to the receipt of share premium and the issue of shares during the year in the course of the assessment proceedings and also justified the valuation by producing the report of a valuer. The statutory compliance documents relating to the issue of shares and receipt of share premium were filed during the course of the assessment proceedings with respondent no.1. The same have been examined in the course of the assessment proceedings and hence, there is no fresh material coming into existence in relation to issue of shares and receipt of share premium. Therefore, the reopening is based on a mere change of opinion. Respondent no.1 has no power of review by engaging in a roving or fishing inquiry under the Act.*

(d) *The charge of tax under the Act is on income. The receipt of share premium on the issue of fresh shares is on capital account and constitutes a capital receipt, which is not chargeable to tax under the Act. There is no provision under the Act to tax the receipt of share premium for the assessment year under consideration. As held in Vodafone India Services (P) Ltd. Vs. Union of India the amount received on issue of shares is admittedly a capital account transaction not separately brought within the definition of income during the relevant period. Thus, capital account transaction not falling within the statutory explanation cannot be brought to tax.*

As held in SLS Energy (P) Ltd. Vs. Income Tax Officer 2 where a similar situation was considered and the Division Bench of this court came to a conclusion that there was neither any basis for the AO in his reason to believe that income had escaped assessment or there was been any tangible material, which would have otherwise given jurisdiction to reopen the assessment.

What is tangible material, the Division Bench of this court in Export Credit Guarantee Corporation of India Ltd. Vs. Additional Commissioner of Income Tax3 held is something which is not illusory, hypothetical or a matter of conjecture.

(e) *A bare perusal of the reasons recorded indicates that it is an admitted position that the re-opening is initiated at the behest of the higher authority and is not based on the formation of a belief by respondent no.1. Respondent no.1 himself*

has not formed any belief that any income has escaped assessment. As held in Principal Commissioner of Income Tax -5 Vs. Shodiman Investments (P) ltd. the settled position in law is that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction. The reasons indicate that the AO has not applied his mind but has merely issued the reopening notice on the basis of letter dated 27th March 2014 issued by him for taking necessary action as the time limit of four years for issue of notice u/s 148 of the Act will expire on 31 st March 2014, and relied on a list in respect of companies who have received the share premium during AY 2009-10.

(f) The AO in the reasons to believe only says that when assessee has been incorporated only on 15th March 2007 and assessee company not having proven track record, could not command such a huge share premium in the open market particularly when it has returned income of (-) Rs.87,362/-. According to the AO, there has been underassessment of income received in the garb of share application money. The AO has not considered the valuation report or the balance sheet of the company and, therefore, the basis to reopen is purely hypothetical or a matter of conjecture or speculative. The reasons to believe does not dispute that this is a share premium that the company received but seeks justification for charging the share premium over and above intrinsic value of the share.

6 Mr. Suresh Kumar submitted as under:-

(a) As held in Commissioner of Income Tax Vs. Sophia Finance Ltd. this would amount to cash credit under Section 68 of the Act and whenever the same is found credited in the books of account of assessee, then irrespective of the colour and nature of the sum received which is sought to be given by assessee, the ITO has the jurisdiction to enquire from assessee the nature and source of the amount.

(b) We have to reject this submission because this is not the basis on which the reasons to believe has been arrived at. It is settled law that the reasons to believe cannot be improved upon. In the affidavit in reply opposing the petition also there are no specific denials.

FINDINGS

7 Petitioner's case can be split into three parts:-

a) The AO having raised the queries during the course of scrutiny assessment regarding share premium charged and petitioner having explained vide its replies, the issue of share premium, was the subject of consideration during the assessment proceedings even though, it has not been discussed in the assessment order and therefore, re-opening on the same issue of share premium is based on change of opinion.

b) Whether the reasons to believe that income has escaped assessment for exercising power under Section 147 of the Act has to be that of the AO and not based on dictates of superior officers. Since admittedly, it is based on dictates of

superior officers respondent no.1 has himself not formed any belief that any income has escaped assessment.

c) Whether the receipt of share premium by issuing fresh shares is on the capital account and constitutes a capital receipt which is not chargeable to tax under the Act?

8 Admittedly, petitioner's case for AY-2009-10 was taken up for scrutiny. During the course of scrutiny assessment, petitioner was called upon by respondent no.1, vide letters dated 21 st February 2011 and 12th August 2011, to provide for certified copy of the annual report alongwith balance sheet, profit and loss account schedule and annexures, details of shareholding patterns of the company and securities premium / share premium received and to justify charging of the same with separate documentary evidences. Petitioner, vide its letters dated 19th July 2011 and provided all the documents and materials. In its letter dated 12th September 2011, petitioner also stated that it had charged share premium of Rs.12841.86 per equity share of face value of Rs. 10/- each on 16,730 equity shares that was issued to a Mauritius resident. Petitioner also provided the documents relating to Foreign Inward Remittance Certificate and forms filed with RBI. After considering all those documents, the assessment order dated 21st December 2011 came to be passed.

9 As held by the Division Bench of this Court in Aroni Commercials Ltd. Vs. Deputy Commissioner of Income Tax2(1) the settled law is once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the AO while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. The only requirement is that the AO ought to have considered, the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. In the case at hand, the AO having raised a query and the petitioner having replied to it, it follows that the query raised was subject of consideration of the AO while passing the assessment order dated 21 st December 2011. In our view, the re-opening of assessment by the impugned notice is merely on the basis of change of opinion of the AO from that held earlier during the course of assessment proceedings and this change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Paragraph 14 of the Aroni Commercials Ltd. (Supra) reads as under:

14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular

No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, following that the Meera Jadhav 13/18 203-wp-804-15(judgment).doc reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."

(emphasis supplied)

10. In *SLS Energy Ltd.* (Supra) the reasons for reopening were similar. In that case also the balance sheet indicated that the assessee had issued paid up capital of Rs. 77,00,000/- and Charged Security Premium at Rs. 6,79,32,00,000/- during the year under consideration. According to the AO an analysis of the details and information of the balance sheet shows that Share Premium and value of the

shares cannot be justified on the basis of 'intrinsic valuation of shares' and 'Net Asset Value Method', i.e., Share Premium charged is found excessive as the worth of the company is not found in that extent. Hence, there was no justification for issue of shares at such a huge premium. In that case also, petitioner had argued that the very basis for reopening was misconceived inasmuch as, the receipt of premium on issuance of shares was not 'receipt of income', but was a 'capital receipt', and, therefore, could never become the basis for reopening on the ground that income had escaped assessment. It was argued that the definition of income as then prevailed did not include capital receipts. It was also submitted that there was no tangible material with the AO which would give him reasons to believe that income has escaped assessment and that the AO was in fact trying to conduct a roving enquiry, which is therefore without jurisdiction. The court came to a finding that the receipt of share capital including the premium was on capital account and gave rise to no income and, therefore, there was neither any basis for the AO for reason to believe that income had escaped assessment, nor was there any tangible material which would have otherwise given jurisdiction to re-open the assessment even when the re-opening was sought to be made within a period of four years. Paragraphs 24 to 30 of SLS Energy (Supra) read as under:

"24. In the present case neither the reasons recorded nor the order disposing of the objections in any manner reflects that there was any doubt with regard to existence of the entities in whose favour the allotment of shares had been made upon receipt of share money as also the amount of premium paid on the said shares.

25. By virtue of the impugned notice dated 23rd March, 2015, the assessing officer seeks to reopen the assessment for the assessment year 2010-11, which is within a period of four years. Admittedly, no scrutiny assessment under section 143(3) of the Act has taken place in the present case. Even in a case where no scrutiny assessment has taken place, reassessment can be ordered only if the assessing officer has reason to believe that income chargeable to tax had escaped assessment. The Apex Court in Asstt. CIT v. Rajesh Jhaveri Stock Brokers(P.)Ltd.[2007] 161 Taxman 316/291 ITR 500 (SC) has clearly held that notice for reopening an assessment under section 148 of the Act could only be justified if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment.

26. The reason for the assessing officer to reopen the assessment is his belief that the share premium charged by the Petitioner was excessive and further that the transaction of the so called share premium was not established. In other words, the assessing officer apart from questioning the excessive share premium also is doubting the transaction, whereby the share premium had been received. Whether in the aforementioned facts the assessing officer could be said to have his reason to believe that income had escaped assessment and whether the material with the said assessing officer could be said to have any tangible material justifying the reopening is the issue that falls for our consideration.

27. There is no dispute that in Vodafone India Services (P.)Ltd.'s case (supra) it stands concluded that receipt of share capital including the premium was on capital account and gave rise to no income. The

amendments incorporated in the definition of income under section 2(24)(xvi) and Section 56(2)(viib) of the Act were amendments which were to apply only from 01st April, 2013 i.e. assessment year 2013-14. The amendment to Section 68 by incorporation of the first Meera Jadhav 15/18 203-wp-804-15(judgment).doc proviso also came into effect by virtue of the Finance Act, 2012 w.e.f. 1st April, 2019 and was to apply for the assessment year 2013-14 and onwards, and, therefore, since the amendments were not applicable to the assessment year in question i.e. 2010-11, there would be no basis for the assessing officer's reason to believe that income had escaped assessment for the said assessment year. From the record it can also be seen that the preference shares allotted to M/s. Pony Infrastructure & Contractors Ltd. (formerly known as M/s. Dynamix Balwas Infrastructure Pvt. Ltd.) was assessed under section 143(3) of the Act and an order of assessment dated 22nd February, 2013 was passed.

28. Reassessment proceedings were initiated against the said entity and the appeal allowed vide order dated 11th October, 2018. We therefore agree with the contention of Mr. Shridharan, learned Counsel for the Petitioner that this was not a case where there could be any suspicion with regard to the factum of transaction having taken place between two companies. In any case the assessing officer appears to have not been in doubt regarding the transaction having taken place between the said two companies with regard to allotment of preference shares and receipt of the share premium amount inasmuch as what was sought to be questioned, was not in fact the transaction, but only the receipt of the share premium amount which was said to be excessive and much beyond the intrinsic value of the shares of the Petitioner company.

29. This can be guessed from the fact that the assessing officer had only flagged the share premium amount of Rs.6,79,32,00,000/- which according to him was chargeable to tax that had escaped assessment and did not question the amount of Rs. 68 lakhs received by the Petitioner company representing the value of Rs. 68 lakhs shares of the face value of rupee 1 per share. Had the Assessing Officer any real doubts regarding the transaction itself, then there was no justification for him to question only the transaction with regard to the extent of the amount of premium charged for the said shares.

30. We therefore of the opinion that there was neither any basis for the assessing officer for his reason to believe that income had escaped assessment nor was there any tangible material which would have otherwise given jurisdiction to reopen the assessment even when the reopening was sought to be made within a period of four years."

(emphasis supplied)

11 Even in the case at hand, the reasons recorded for reopening does not dispute that during the year assessee had issued 16730 shares of face value of Rs.10/- at premium of Rs.12842/- per share. The AO is only questioning the excessive share premium but not doubting the transaction itself Meera Jadhav 16/18 203-wp-804-15(judgment).doc whereby the share premium had been received. On this ground alone, the impugned notice and order on objections have to be quashed and set aside.

12 In any event, the amendments incorporated in the definition of income under section 2(24)(xvi) and Section 56(2)(viib) of the Act were amendments which were to apply only from 1st April, 2013, i.e., assessment year 2013-14. The amendment to Section 68 of the Act by incorporation of the first proviso also came into effect by virtue of the Finance Act, 2012 w.e.f. 1st April, 2019 and was to apply for the assessment year 2013-14 and onwards. Therefore, since the amendments were not applicable to the assessment year in question, i.e., 2009-10, there would be no basis for the AO to form a reason to believe that income had escaped assessment for the said assessment year.

13 Moreover, if one considers the reasons recorded, the AO simply says how a company with no proven track record incorporated on 15th March 2007 command such a huge share premium. The AO has not bothered to read the balance sheet or the valuation report. AO's reason to believe, therefore, is purely hypothetical and a matter of conjecture. That cannot be a tangible material for arriving at reason to believe escapement of income. In view thereof, the jurisdictional requirement of Section 147 of the Act also is not fulfilled and hence, the proposed reopening is without jurisdiction. 14 Further, as held in Shodiman Investments (P) Ltd. (Supra) there is clear breach to the settled position in the law that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction. Admittedly, notice has been issued in view of a communication received from his superior officer. It is rather obvious that the AO has not applied his mind and arrived at his own satisfaction but on borrowed satisfaction. Paragraphs 12 to 14 of Shodiman Investments (P) Ltd. (Supra) read as under:

"12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily recorded in terms of Section 148 of the Act, before re-opening notice, is issued. These reasons, must indicate the material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be a live link between

material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.

13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.

14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the Meera Jadhav 18/18 203-wp-804-15(judgment).doc DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction."

(emphasis supplied)

15 In the circumstances, the Rule is made absolute in terms of prayer clause (a) which reads as under:

"(a) this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the undated notice (received on 29th March 2014) (Exhibit A) issued by respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2009-10 and the order rejecting the objections (Exhibit O) dated 2nd February 2015."

38. Since in the instant case also the Assessing Officer has called for various details during the course of original assessment proceedings and no new tangible material exist for coming to bonafide belief as contemplated u/s 147 of the Act, therefore, such reopening of the assessment in our opinion was merely based on

change of opinion which is not in accordance with law as contemplated by the recent decision of the Hon'ble Bombay High Court in the case of Godrej Projects Development Pvt. Ltd. Vs. ITO (supra). In view of the detailed reasoning given by the Hon'ble Bombay High Court in this case, which is squarely applicable to the facts of the present case, we hold that the re-assessment proceeding initiated by the Assessing Officer is merely on account of change of opinion and therefore, is not sustainable. Accordingly, on this ground also, the re-assessment proceedings are quashed.

39. Since the assessee succeeds on this legal ground raised in the Cross Objections which was also taken before the CIT(A), but he has not adjudicated on account of deletion of the addition u/s 68 of the Act, therefore, the grounds raised by the Revenue challenging the order of CIT(A) in deleting the addition made by the Assessing Officer u/s 68 of the Act become academic in nature and therefore, do not require any adjudication.

40. In the result, the appeal filed by the Revenue is dismissed and the CO filed by the assessee is allowed.

Order pronounced in the open Court on 5th August, 2024.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 5th August, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	22.07.2024		Sr. PS/PS
2	Draft placed before author	25.07.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			