IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.369/RJT/2023

(निर्धारणवर्ष / Assessment Year: (2011-12)

(Physical Hearing)

Digjam Limited, Aerodram Road, Jamnagar - 361006	**Vs.**	The CIT, Circle – 1, 401, Manek Center 4th Floor, P.N.Marg, Jamnagar-361004
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AACCD8510D**		
(Assessee)		**(Respondent)**

Assessee by :ShriVimal Desai, AR

Respondent by :Shri Shramdeep Sinha, CIT-DR

Date of Hearing : 06/08/2024

Date of Pronouncement : 29/08/2024

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)/NFAC'], order dated 29.08.2023, which in turn arises out of an assessment order passed by the Assessing Officer (in short 'AO ') under section143(3)r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 31.12.2018.

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

"1. The assessment order passed u/s 143(3) r.w.s. 147 is bad in law.

2. The learned Assessing Officer has erred in law as well as on facts in making addition of capital receipt of Rs.49,53,18,532/- representing write back of principal amount on settlement of loan by considering it as income chargeable to tax and the learned CIT(A) has erred in confirming it.

3. The learned Assessing Officer has erred in law as well as on facts in considering the amount of Rs.49,53,18,532/-, as income from other sources."

Facts of the assessee`s case

3. The relevant material facts, as culled out from the material on record, are as follows. The assessee, before us, is a Limited Company and is engaged in the manufacturing and trading of woolen/blended worsted fabrics and readymade garments. The assessee -company, filed its original return of income on 28/09/2011, declaring total income at Rs NIL, after setting off the brought forward losses and the same was processed u/s 143(1) of the Act. Subsequently, the regular assessment was completed u/s 143(3) of the Act, on 26.03.2014, by the assessing officer, after making lump- sum disallowance of Rs.5,74,185/-, out of administrative and other expenses and the same was adjusted against brought forward losses.Thereafter, assessee`s case was re-opened u/s 147 of the Act, after following the due procedure in this regard and a notice u/s 148 of the Act was issued on 26.03.2018, which was duly served to the assessee.

4. In response to the above notice, the assessee- company, vide itsreply dated 03.05.2018, intimated that the return in response to notice u/s 148 of the Act, was filed electronically on 02.05.2018. The assessee-company also requested to provide copy of reasons recorded for re-opening of the assessment, which was provided, to the assessee, vide letter dated 13.08.2018 of the assessing officer. A notice u/s 142(1) r.w.s. 129 of the Act along with a questionnaire was also issued and served upon the assessee, on 05.12.2018. The assessing officer, observed from the reasons recorded that the assessee's case was re-opened for the reason that deduction claimed of Rs.49,53,18,532/-, under the head profits & gains from business and profession, on account of cessation of liability of

Principal amount of loan from Asset Reconstruction-Company (India) Limited (ARCIL), cannot be considered, as capital in nature, as treated by the assessee- company and the same was proposed to be covered under the residual head of income and taxed as such.

5. Against the above proposed treatment by the assessing officer, the assessee-company has raised objections, vide letter dated 12.09 2018, against re-opening of its case and issuance of notice u/s 148 of the Act. The objections raised by the assessee-company have been disposed of, by the assessing officer, by way of passing speaking order, dated 06.12.2018.

6. During the assessment proceedings, the assessee, attended from time to time and filed various details as called for. All the details filed by the assesseewere verified by the assessing officer. As discussed above, the assessing officer noticed that the assessee-company, claimed a deduction of Rs.49,53,18,532/-, on account of settlement of ARCIL loan (Principal) under the head Income from Business or Profession and accordingly, the same was not offered to tax in the return of income. Therefore, the assessing officer, was of the view that the claim of the assessee is clearly not allowable and such income is required to be taxed, as income under the head ‘income from other sources. Therefore, the assessing officer, issued, a show -cause notice, on 21.12.2018, to the assessee, which reads as under:

> *“Kindly refer to objections raised by you vide letter dated 12.09.2018 and its disposal order passed by this office on 06.12.2018.*
>
> *2. On verification of details available with this office, as well as submitted during the course of re-assessment proceedings for the year under consideration, it is noticed that you have credited a sum of Rs.62,96,36,794/- to the Profit & Loss Account as 'exceptional items out of which Rs. 49,53,18,532/-,refers to the amount of gain on settlement of loan of ARCIL (Asset Reconstruction Company (India) Limited).*

3. It is further seen from the computation of total income that you have claimed deduction of Rs.40,53,18,532/-, on account of settlement of ARCIL loan (Principal) under the head Income from Business or Profession and accordingly, the same is not offered to tax in the return of income. However, the same is income chargeable to tax considering it as income from other sources in the nature of benefit accrued to the company on waiver thereof by the lender keeping in mind the provisions of the Income Tax Act.

4. You are therefore, requested to show- cause, as to why the amount of Rs.49,53,18,532/- being receipt on account of settlement of loan should not be added to your total income, as income from other sources.

5. Your reply should reach the undersigned by 27.12.2018 positively, failing which it shall be presumed that you have nothing to say in the matter and the assessment will be finalized without giving any further opportunity on the basis of information available on records, which may please be noted."

7. In response to the above, show- cause notice of the assessing officer (AO), the assessee-company submitted its reply on 26.12.2018, which is reproduced below:

"During the year under consideration, the assessee- company has credited a sum of Rs.49,53,18,532/- by way of write back of principal amount on settlement of ARCIL loan to its Profit & Loss account under the head Exceptional Items and the same has been excluded in the computation of total income in the return of income.

The aforesaid exclusion has been considered since the same pertains to settlement/waiver of principal amount of loan of ARCIL, which is on capital account. In other words, the waiver of principal amount of loan is not on revenue account which can be said to be in the nature of income chargeable to tax. The loan of ARCIL wax forming part of the capital structure (loan) of the assessee company and settlement thereof was on capital account and therefore, the resultant write- back, if any, would be capital receipt not chargeable to tax.

It is a settled position of the law that a capital receipt, in principle, is outside the scope of income chargeable to tax.

The cessation of liability or debt is taxable under the Act, when it relates to trading liability or debt and that too in respect of which either deduction or allowance has been made in any earlier year. In the instant case of the assessee company, it is not a remission or cessation of trading liability.

Further, under Section 4 and Section 5 of the Act, the charging Section, the charge of income tax is upon the "total income of the previous year" The term "income' is defined under Section 2(24) of the Act.

In general, all receipts of revenue nature, unless specifically exempted are chargeable to tax. It is also a settled position of the law that a capital receipt, in principle, is outside the scope of Income chargeable to tax.

The term income as defined in Section 2(24) is though inclusive but the same will not include the receipt or income which is of capital nature. Wherever the legislature has intended to include any particular capital receipt at income chargeable to tax, the same has been specifically included as separate close to the provisions of Section 2(24).

Hence, every benefit does not amount to income chargeable to tax since a benefit which accrues on capital account is in the nature of capital receipt, not chargeable to tax. In case all the receipts or benefits are to be treated as income chargeable to tax, there would have been no concept like capital receipt.

In this connection, we also place reliance on the following judicial pronouncements:

1. ***Mahindra & Mahindra Limited-93 taxmann.com 32 (Supreme Court)***
"Section Profits and gains of business or profession 28(iv), read with section 41(1), of the Income- tax Act. 1961-Business income Value of any benefit or perquisite, arising from business or exercise of profession (Waiver of loan)-Assessment year 1976-77.Assessee had acquired certain tooling and equipments from KJC for which KJC agreed to provide loan to assessee, however, subsequently, another entity took over KJC and agreed to waive outstanding loan amount Revenue claimed that waived amount represented income under section 28(iv) or alternatively, under section 41(1)-Assessee however, pointed out that sum waived could not be brought to tax as a represented waiver of a loan liability which was on capital account and, thus, was not in nature of income. Whether, for invoking provisions of section 28(iv), benefit received has to be in some form other than in shape of money and since waiver amount represented cash money, provisions of section 28 (iv) were inapplicable-Held, yes, Whether further, for application of section 41(1), it is sine que non that there should be an allowance or deduction claimed by assessee in respect of loss, expenditure or trading liability incurred, however, assessee had not claimed deduction under section 36, for interest on loan and loan was obtained for acquiring capital assets, hence, waiver was on account of liability other than trading liability and thus, provisions of section 41(1) were inapplicable-Held, yes [Paras 13, 15, 16 and 17]."

2. ***CIT vs. Chetan Chemicals Pvt. Ltd.-267 ITR 770 (Gujarat HC)***
"Before section 41(1) can be invoked, it is necessary that an allowance or a deduction has been granted during the course of assessment for any year in respect of loss, expenditure or trading liability, which is incurred by the assessee, and subsequently, during any previous year, the assessee obtains, whether in cash or in any other manner, any amount in respect of such treading liability by way of remission or cessation of such liability. In that case, either the amount obtained by the assessee or the value of the benefit accruing to the assessee can be deemed to be the profits and gains of a business or profession and can be brought to tax as income of the previous year, in which such amount or benefit is obtained. In the facts of the case on hand, without entering into the aspect as to whether the liability to repay the loans would be a trading liability or not, it was an admitted

position that there had been no allowance or deduction in any of the preceding years and, hence, there was no question of applying the provision as such [Para 5]

Section 28 deals with profits and gains of business or profession and clause (iv) thereof says that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession should be chargeable as income under the head Profits and gains of business or profession. In the facts of the instant case, it could not be said that the assessee- company was carrying on business of obtaining loans and that the remission of such loans by the creditors of the company was a benefit arising from such business. [Para 6]"

In view of above, we request you Sir to drop the idea of considering Rs.49,53,18,532/-as income of the assessee and oblige. Kindly take the same on your records and oblige."

Findings of the Assessing officer

8. However, the Assessing Officer (AO) rejected the contention of the assessee and noticed that the principal amount of loan of ARCIL is waived by the lender in favour of the assessee-company whereby the assessee- company is not required to repay such waived amount back to the lender. Accordingly, it is a case of cessation of liability and therefore, it is a benefit accruing to the assessee- company which is in the nature of income clearly chargeable to tax under the Income tax Act, 1961. The assessing officer noticed that the provisions of Section 5 of the Act, prescribes that all the income from whatever sources, that is, received or deemed to be received or accrued or deemed to be accrued is taxable under the provisions of Income Tax Act, unless it is specifically exempt under any of the provisions of the Act. It is pertinent to note that cessation of liability, which is actually in the nature of income received and accrued to the assessee, is not expressly exempt under any of the provisions of the Act and therefore, the same is taxable as income under the residuary head i.e. Income from Other Sources. The assessing officer, also noted that decisions of Hon'ble Supreme Court in case of Mahindra & Mahindra & Gujarat High Court in case of Chetan Chemical Pvt Ltd, relied upon by

the assessee, are also not relevant to the facts of the assessee's case because in these cases, the income was taxed by the assessing officer, (A.O.), as business income u/s 28(iv) read with Section 41(1) of the Act, whereas in the assessee's case, it is income from other sources. Therefore, the amount of Rs. 49,53,18,532/- in respect of waiver / cessation of Principal amount of loan of ARCIL was added to the total income of the assessee, as income from other sources.

Findings of the Commissioner of Income Tax (Appeals).

9. Aggrieved by the order of theAO the assessee carried the matter in appeal before Ld. CIT(A). In respect of reopening of the assessment under section 147 of the Act (technical ground raised by the assessee), the ld CIT(A) had confirmed the action of theAO. Before ld CIT(A), the assessee submitted that there was no failure on his part, as re-opening is based on the facts disclosed in the return of income, which was forming part of the records of the department before the assessing officer. It was further stated before ld CIT(A) that there was no tangible material before the assessing officer to reopen the assessment and as such reopening of assessment amounted to a change of opinion. The assessee has further stated that the reopening was seemingly on the basis of an audit objection.However, ld CIT(A) rejected the above arguments of the assessee and held that assessing officer has followed due process of law and procedure while reopening the assessment of the assessee for A.Y. 2011-12. The ld CIT(A) referred the judgments of the Hon'ble Supreme Court in Raymond Woollen Mills Ltd. Vs. Income Tax Officer [1999] 236 ITR 34 (SC) and Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers (P) Ltd. [2007] 161 Taxman 316 (SC), wherein it was held that the word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or

suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal conclusion or evidence. The ld CIT(A) noticed that assessing officer had sufficient material and ground to reopen the assessment under section 148 of the Act. The ld CIT(A) also referred the explanation 1 to section 147 of the Act and held that there has been no change of opinion on part of the Assessing Officer. The ld CIT(A) also held that even if, the reopening was based on an audit objection, the same has been held to be valid by judicial precedent of the Hon'ble Supreme Court in CIT vs. PVS Beedis Pvt. Ltd. (1999) 237 ITR 13(SC). This way, the ld CIT(A) rejected the ground raised by the assessee in respect of reopening of the assessment.

10. On merit, the Ld. CIT(A) observed that during the course of appellate proceedings, the assessee has not produced the agreement between the company and the ARCIL for waiver of the stated loan. It has only been stated by assessee before ld CIT(A) that liability/loan in respect of ARCIL arose in the books of account of the assessee- company pursuant to a scheme of demerger of erstwhile OCM division of the assessee- company and the amount was received as per the terms of such scheme. The assessee-company also reiterated the submission made before the assessing officer. However, ld CIT(A) rejected them and held that the assessee has not furnished all the details and particulars of loan, and the purpose for which the loan taken from bank, was it utilized for or whether any deduction was claimed in preceding years. All this information was within the control and specific knowledge of the assessee and, therefore, it would have been the duty of the assessee to prove and establish that the amount of loan taken from the bank was utilized for the purpose of acquiring capital assets. In fact, no details of the capital asset

so acquired or the depreciation claimed thereof have been provided. The ld CIT(A) also noticed that the assessee has not been able to elucidate that the provisions of section 41(1) of the Act, do not apply to him. Based on these facts, the ld CIT(A) had confirmed the addition of Rs.49,53,18,532/- made by the assessing officer.

11. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

Arguments of Learned Counsel for the assessee

12. Shri Vimal Desai, Learned Counsel for the assessee, strongly argued on technical ground (challenging the reassessment proceedings, initiated by the assessing officer, under section 147 of the Act) stating that there is no whisper in the reasons recorded, of any tangible material, which came to the possession of the assessing officer, subsequent to the assessment order, of the assessee -company, framed under section 143(3) of the Act.The Ld. Counsel further stated that during the original assessment proceedings, under section 143(3) of the Act, the assessee-company submitted all relevant documents and evidences, before the assessing officer and disclosed fully or truly all material facts necessary for making the assessment, for the assessment year 2011-12. However, the reassessment proceedings were initiated by issuing notice u/s 147/148 of the Act, dated 26.03.2018, which is after the period of 4 years, from the end of relevant assessment year. The reassessment notice issued by the assessing officer u/s 148 of the Act,(which is placed at paper book page no.49), is dated 26.03.2018, **therefore, the assessment was reopened, beyond the period of 4 years, and there was no failure on the part of the assessee, to disclose fully or truly, all material facts, during the original assessment proceedings.** Therefore, the reassessment

proceedings, initiated by the assessing officer, under section 147 of the Act, may be quashed.

13. Shri Desai, also pleaded that it is merely a **change of opinion,** as in the reassessment proceedings, there is noany tangible material, with the assessing officer, to reopen the concluded issue, and for that ld. Counsel heavily relied on the judgement of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Limited, 320 ITR 561. The ld Counsel stated that original assessment, in assessee`s case was framed for A.Y.2011-12 on 26.03.2014. The Ld. Counsel took us through the material furnished during the original assessment proceedings in respect of the issue for which reassessment proceedings were reinitiated and for that ld Counsel took us through paper book page No. 18, wherein profit and loss account and balance Sheet of the assessee-company, for the year ending 31.03.2011 is placed and stated that accounting policies of the company contains the entire information about the disputed amount, vide paper book page no.23.The Ld. Counsel further took us through paper book page no.81 wherein under the head secured loan, the assessee has stated in the financial statement, about the settlement with Asset Reconstruction Company (India) Limited ("ARCIL"). The Ld. Counsel, further took us through the computation of total income of the assessee-company and stated that in the computation of total income,(which is placed at paper book page nos. 8 to 12), it is clearly stated that there was settlement of 'ARCIL' loan (principle amount) of Rs.49,53,80,532/-. Therefore, Ld. Counsel stated that in the computation of income of the assessee-company, the amount is getting reflected, therefore assessing officer, has duly examined, this issue, during the original assessment proceedings u/s 143(3) of the Act, dated 26.03.2014, relating to assessment year 2011-

12.Hence, reopening of assessment u/s 147 of the Act, is merely **change of opinion, therefore reassessment proceedings may be quashed.**

14. On merit, Learned Counsel for the assessee, submitted that the disputed amount pertains to settlement/ waiver of principal amount of loan of ARCIL, which is on capital account. The ld Counsel stated that waiver of principal amount of loan is not on revenue account rather it is on capital account. The loan of ARCIL was forming part of the capital structure (loan) of the assessee-company and settlement thereof was on capital account and therefore, the resultant written back amount, if any, would be capital receipt not chargeable to tax. The ld Counsel stated that it is a settled position of the law that a capital receipt, in principle, is outside the scope of income chargeable to tax, hence, addition made by the assessing officer may be deleted.

Arguments of Learned DR for the Revenue

15. On the other hand, Shri Shramdeep Sinha, Learned Commissioner of Income-tax - Departmental Representative (Ld. CIT-DR) for the Revenue, pleaded that assessee has not disclosed the true facts,/ correct facts, during the original assessment proceedings u/s 143(3) of the Act. the term, "fully and truly", has two parts, viz; (i) the assessee, might have disclosed full facts, (ii) but the facts, so disclosed might not be true. During the original assessment proceedings, the assessee has not disclosed from his side, whether the disputed amount, is a 'capital item' or 'revenue item', that is, nature of capital receipt and the nature of revenue receipt are different, which were not explained by the assessee, during the original assessment proceedings.Therefore,assessee's case does not fall within the ambit of first proviso to section 147 of the Act, and hencecannot take the shelter of the plea to the effect that since four years have elapsed

therefore, reassessment proceedings cannot be initiated against the assessee.

16. The ld DR further argued that loan waived becomes the capital asset of the company and on that aspect, the assessee never submitted any explanation during the original assessment proceedings, hence there is 'tangible material' before the assessing officer, to reopen the assessment of the assessee, under section 147 of the Act, therefore, reassessment proceedings, are valid in the eye of law and it cannot be a merely change of opinion.

17. On merit, Ld. CIT-DR for the Revenue stated that it is a matter of Capital receipt Vs. Revenue receipt, therefore it should be analyzed in the context of the nature of the business. Considering the assessee`s transaction, under consideration, the waiver of loan in the assessee's case under consideration, becomes income which is chargeable to tax,for that, Ld. CIT-DR for the Revenue relied on the following judgements:

(i) CIT vs. T. V. Sundaram Iyengar & Sons Ltd., 88 Taxman 429 (SC)

(ii) Solid Containers vs. DCIT, 178 Taxman 192 (Bombay)

18. Relevant provisions of the Income Tax Act, 1961(to the extent useful for our analysis)

". Section 147. Income escaping assessment.- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable of tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

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:……..”

Analysis and Conclusion

19. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee, along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We have gone through the facts of the case, the reasons recorded for reopening u/s 147 of the Act, the submission and the various decisions of the Courts including those relied upon by the assessee.Theassessee has challenged the reopening, on basically, on the following grounds, viz: (i). The reassessment proceedings under section 147 of the Act, were initiated by the assessing officer, **after the expiry of four years, from the end of the relevant assessment year, and the assessee has disclosed fully and truly all material facts,** during the original assessment proceedings, under section 143 (3) of the Act, therefore, reopening of assessment is invalid and (ii). The reassessment proceedings, were initiated by the assessing officer, without any tangible material, hence, it is merely a **change of opinion.**We note that assessee filed the return of income on 28.09.2011 and the same was processed by the Department u/s 143(1) of the Act, by accepting the return of income. Subsequently, the assessee’s case was selected for scrutiny and assessment was completed u/s 143(3) of the Act dated 26.03.2014, wherein the assessee has disclosed all material facts fully or truly, therefore the assessing officer cannot reopen the assessment beyond the period of 4 years. Considering, these facts, let

us examine, the reasons recorded by the assessing officer, (which is placed at paper book page no.95), which reads as under:

"The assessee is engaged in the business of manufacturing and trading of woolen/blended worsted fabrics and readymade garments. The assessee has filed the return of income for A.Y. 2011-12 on 28/09/2011 declaring total income of Rs. NIL after set off income against brought forward losses. The assessment u/s. 143(3) of the Act was finalized on 13/03/2014 determining the total income of the assessee of Rs. NIL after set off income against brought forward losses.

During the year under the consideration the assessee company had claimed deduction of Rs.49,53,18,532/- in the statement for computation of income on account of settlement of ARCIL (Asset Reconstruction Company (India) Limited) loan. As per profit and loss account an income of Rs.62,96,36,794/- was shown as "exceptional items' which included Rs.49,53,18,532/- as gain on settlement of loans was credited.

As per schedule 3 (Secured loan) to Balance sheet as on 31/03/2010, balance of secured loan taken from ARCIL was Rs. 84,53,18,532/- and it was squared up to NIL as on 31/03/2011. Note 2(f) on accounts & significant accounting policies clarifies that effect has been given in these accounts to the settlement with Asset Reconstruction Company (India) Limited whose sanction, effective from July 1, 2010, envisaged, inter alia, the settlement of loans including through proceeds of Company's properties at Faridabad, transfer of shares held as long term investment, conversion into shares and waiver.

Since, all the income from whatever sources that was received or deemed to be received or accrued or deemed to be accrued were liable to income-tax under provisions of Section 5 of the Act, unless it was exempt by virtue of any provision of the Act, the amount of Rs. 49,53,18,532/- required to be included in the total income. Further, as the amount waived was of the principal loan amount, the income so accrued was covered by the head income from other sources.

Since, the income from waiver of loan was covered by the head income from other sources, assessee was not entitled for set off against brought forward business losses. As the assessee had sufficient amount of unabsorbed depreciation, the income may be set off against it. Due to reasons stated above, there in an underassessment of Rs.49,53,18,532/- and therefore I have reasons to believe the income to the above extent has escaped assessment.

In view of the above, I have reason to believe that the income chargeable to Income-tax has escaped the assessment within the meaning of section 147 of the Income-tax Act, 1961. The above income chargeable to tax has escaped assessment for the above assessment year by reason of failure on the part of the above assessee who has failed to disclose fully and truly all material facts necessary for his assessment for the above assessment year. Accordingly, approval u/s 151 of the Income tax Act, 1961 is required in the case for issuing notice u/s. 148 of the Income tax Act, 1961."

20. We have gone through the above reasons recorded by the assessing officer(AO) and noted that in the reasons recorded itself, the assessing officer had mentioned that during original assessment proceedings, under section 143(3) of the Act for the assessment year 2011-12,the assessee-company had claimed deduction of Rs.49,53,18,532/-, in the statement of computation of income on account of settlement of Asset Reconstruction Company India Limited (ARCIL), loan as per profit and loss and income of Rs.62,93,36,794/-, was shown as explained item, which included Rs.49,53,18,532/-, as a gain of settlement of loan, which was credited.

In the reasons recorded, the assessing officer referred schedule 3 (Secured loan) to Balance sheet as on 31/03/2010, and Note 2(f) on accounts & significant accounting policies, which were examined by the assessing officer during the original assessment proceedings u/s 143(3) of the Act. Therefore, we find that this fact was there before the assessing officer (AO) during the original assessment proceedings and the assessee has disclosed from his side fully and truly, the material facts for making the original assessment, under section 143(3) of the Act. The assessing officer in the reasons recorded also referred Schedule No.3 of secured loan, which is part of the audited Balance Sheet of the assessee- company, which was also there, during the original assessment proceedings, before the assessing officer. Therefore, the material on which the reassessment proceedings were initiated on the assessee was there before the assessing officer, during the original assessment proceedings u/s 143(3) of the Act and the assessing officer has examined the said material, therefore now the Revenue cannot reopen the concluded assessment u/s 143(3) of the Act, on the same issue and facts, which were duly examined by the assessing officer, during the original assessment proceedings u/s 143(3) of the Act, particularly after the period of four years, where there was no

failure on the part of the assessee, to disclose fully and truly all material facts.In the reasons supplied to the assessee, there is no whisper, what to speak of any allegation, that the assessee had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax.

21. The Ld. Counsel stated that during the assessment proceedings, the assessee submitted all relevant documents and evidences to disclose fully or truly all material facts necessary for making the assessment. However, the reassessment proceedings were initiated by issuing notice u/s 147/148 of the Act, dated 23.03.2018, which is after the period of 4 years from the end of relevant assessment year. The reassessment notice issued by the assessing officer u/s 148 of the Act, is placed at paper book page no.49, which is dated 26.03.2018, therefore assessment was reopened beyond the period of 4 years and there was no failure on the part of the assessee to disclose fully or truly all material facts, during the original assessment proceedings. The Ld. Counsel took us through the material furnished during the original assessment proceedings in respect of the issue for which reassessment proceedings were initiated, vide paper book page No. 18, wherein profit and loss account of the assessee-company for the year ending 31.03.2011 is placed. In the balance sheet, by way of accounting policies,(vide paper book page no.23), the assessee-company has disclosed as follows:

> *"15. Exceptional items during the period include writeback of old unsecured loans and interest provision – Rs.3,69.89 lacs, and those during the previous period included – Profit on sale of inoperative land and other fixed assets (Net) – Rs.10,36.63 lacs, Profit on transfer of Long Term Investments – Rs.58.80 lacs and Gain on settlement of loans – Rs.49,53.18 lacs."*

22. From the above accounting policies, it has clearly proved that the assessee has disclosed fully and truly all material facts in the original assessment proceedings.

23. The Ld. Counsel further took us through paper book page no.81 wherein under the head secured loan, the assessee has stated in the financial statement,(which is fully and truly disclosed by the assessee-company), is as follows:

> *"f. Effect has been given in these accounts to the settlement with Asset Reconstruction Company (India) Limited ("ARCIL") whose sanction, effective from July 1, 2020, envisaged, inter alia, the settlement of loans including through proceeds of Company's properties at Faridabad, transfer of shares held as long term investment, conversion into shares and waiver."*

24. The Ld. Counsel further took us through the computation of total income of the assessee-company and stated that in the computation of total income, (which is placed at paper book page nos. 8 to 12), wherein it has been clearly stated that about the settlement of 'ARCIL' loan (principle amount) of Rs.49,53,80,532/-. Therefore, we find that in the computation of income of the assessee-company, the amount is getting reflected, therefore assessing officer has duly examined this issue during the original assessment proceedings u/s 143(3) of the Act, vide order dated 26.03.2014, relating to assessment year 2011-12. Thus, we reiterate the basic facts that the assessment year under consideration, the assessee filed the return of income on 28.09.2011 and the same was processed by the Department u/s 143(1) of the Act, by accepting the return of income. Subsequently, the assessee's case selected for scrutiny and assessment was completed u/s 143(3) of the Act dated 26.03.2014, wherein the assessee has disclosed all material facts fully or truly, therefore the assessing officer cannot reopen the assessment beyond the period of 4 years.

25. It is seen that the assessee's case is stated to have been re-opened for the reason that deduction of Rs. 49,53,18,532/- claimed under the head profits and gains from business or profession on account of cessation of liability of principal amount of loan from Asset Reconstruction Company (India) Limited (ARCIL) cannot be considered as capital in nature as treated by the assessee and the same should be covered under the residual head income from other sources. We find that the original assessment for A.Y. 2011-12 was framed u/s. 143(3) and the notice u/s. 148 has been issued on 26.03.2018 which is after 4 years from the end of the assessment year (31.03.2012) and therefore, the first proviso to Section 147 of the Act, is applicable. Under the first proviso to Section 147 of the Act, the reopening can be resorted to only if there is a failure on the part of the assessee, in disclosing the material facts truly and fully. As we have noted thatin the assessee's case, there is no such failure, as the reopening is based on the facts disclosed by the assessee in the return of income, which was forming part of the records of the department before the A.O. at the time of framing original assessment u/s 143(3) of the Act. Thus, it is not a case where any material particular was not disclosed and the same was discovered post assessment u/s 143(3) of the Act. In fact, in the reasons recorded, there is not even a whisper that the assessee has not disclosed any particular material fact. What was sought in the reassessment was reconsideration of allowability of exclusion claimed in respect of capital receipt based on details and particulars already lying in the assessment records. Such reconsideration of the claim for exclusion of capital receipt is not permissible u/s 147 of the Act, in view of the first proviso of the said section, which clearly puts a bar on the reopening in a case where the relevant particulars were disclosed by the assessee in original assessment, fully and truly. In this regard, reliance is placed on following direct judgments of Jurisdictional Gujarat High Court:

- ✓ Aayojan Developers vs. ITO-335 ITR 234
- ✓ FAG Bearing India Ltd. vs. DCIT - 353 ITR 405
- ✓ General Motors India (P.) Ltd. vs. DCIT-360 ITR 527
- ✓ CIT vs. Neptune Textile Mills (P.) Ltd. 41 taxmann.com 144
- ✓ SKY Diamonds vs. ACIT-55 taxmann.com 77
- ✓ Niko Resources Ltd. vs. ADIT-51 taxmann.com 568
- ✓ Ranjit Projects (P.) Ltd. vs. DCIT-372 ITR 529 Sayajı Hotels Ltd. vs. ITO-339 ITR 498
- ✓ Sayaji Industries Ltd. vs. JCIT-336 ITR 360
- ✓ Vinay Printing Press vs. ACIT-45 taxmann.com 255

In view of the above binding precedents, we find that the reassessment is impermissible in view of mandate of first proviso to Section 147 of the Act, hence the reassessment proceedings should be quashed.

26. We also note that in the reasons recorded by the assessing officer, we did not find any new tangible material, outside the books of accounts of the assessee, hence it is merely a **change of opinion**. The reasons were recorded based on the material which was examined by the assessing officer, during the original assessment proceedings, therefore the reassessment proceedings initiated against the assessee-company is not valid in the eye of law.The assessee has raised the contention that the assessing officer was not having any material information to form "a reason to believe" that there was an escapement of income. Thus, we find that in the assessee's case under consideration, the original assessment was framed for AY.2011-12 on 26.03.2014. For the purpose of re-opening the assessment u/s. 147, there should be reasonable belief and possession of tangible material on the part of the assessing officer (A.O.) to come to the conclusion that the income chargeable to tax in fact has escaped assessment. Meaning thereby, the assessment cannot be re-opened on the

basis of a mere change of opinion and the assessing officer should be in possession of some tangible material to come to the conclusion that there is an escapement of income. In present case, all the relevant details / information relating to write back of principal amount of loan from ARCIL of Rs. 49,53,18,532/- were available before the assessing officer (A.O.) during the course of original assessment proceedings and were clearly verifiable from the return and computation of income, the statement of profit & loss account and from the details furnished vide note (2) on accounting& significant accounting policies, forming part of Audited Annual Accounts. Therefore, the original assessment order u/s. 143(3) is passed after due verification, detailed examination and proper application of mind. Hence, no new facts or tangible material is there before the assessing officer (AO) that the cessation of liability of loan towards ARCIL cannot be considered as capital receipt in nature and should be taxed under the residual head of income, hence, it is nothing but mere **change of opinion,** which has been held to be invalid by the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Limited - 320 ITR 561. Following the above-mentioned Supreme Court judgment, the Hon'ble Gujarat High Court has also consistently held that reassessment on **change of opinion** on same set of facts is impermissible in law. The relevant judgments in this regard are cited as under:

- ✓ Gujarat High Court in case of Cliantha Research Ltd. vs. DCIT-35 taxmann.com 61
- ✓ Gujarat High Court in case of CIT vs. P. G. Foils Ltd., 36 ITR 594
- ✓ Gujarat High Court in case of CIT vs. Fag Bearing India Ltd., 33 taxmann.com 238
- ✓ Gujarat High Court in case of Ashwamegh Co. Op. Hous. Soc. Ltd. vs. DCIT, 353 ITR 413

- ✓ Gujarat High Court in case of MAPS Enzymes Ltd. vs. DCIT, 43 taxmann.com 422 and Delhi High Court (FB) in case of CIT vs. Usha International Ltd., 348 ITR 485

Final word

27. In the light of the aforesaid judicial precedents and other case laws, we note that to initiate reopening of the assessment, the assessing officer must have 'reason to believe' that income chargeable to tax has escaped assessment. Such reason to believe must be based on some material coming to the possession of the Assessing Officer which may trigger reason to suspect. It must be kept in mind that the "reason to believe" must have a rational connection with or relevant bearing on the formation of the belief, i.e, there must be the direct nexus or link between the material and the formation of such belief. Since in the instant case, the issues/items for which the Assessing Officer has reopened the assessment had already been disclosed by the assessee in the return of income filed by him u/s 139(1) of the Act and assessing officer has examined the same during the original assessment proceedings, and assessee has also disclosed fully and truly all material facts during the original assessment proceedings u/s 143(3) of the Act, as noted by us, in the above paras of this order, therefore, in view of mandate of first proviso to Section 147 of the Act, the reassessment proceedings should be quashed.

Besides, the reassessment proceedings, in the assessee`s case were initiated by the assessing officer, based on the same set of facts, which were already examined by the assessing officer during the original assessment proceedings under section 143(3) of the Act, hence it is merely a **change of opinion,** as we have observed that no new facts or tangible material is there before the assessing officer (AO) that the cessation of liability of loan towards ARCIL cannot be considered as capital receipt in nature and should be taxed under the residual head of income, hence, it is

nothing but mere **change of opinion.** We are of the considered opinion that 'reason to believe' which is the jurisdictional precondition, to reopen the assessment, as required by the law, has not met in the reasons recorded, in the instant case and therefore the action of the Assessing Officer to reopen the assessment, is null in the eyes of law and hence we are inclined to quash the initiation of reassessment proceedings being ab-initio void.

28. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that the reasons recorded by the Assessing Officer, as set out earlier, were defective, and not in accordance with the provisions of the Act, these are not sufficient reasons for reopening the assessment proceedings. We have, therefore, already quashed the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous and therefore, we do not adjudicate other arguments of ld Counsel for the assessee and ld DR for the Revenue, on merit.

29. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 29/08/2024

Sd/-	**Sd/-**
(DINESH MOHAN SINHA)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Rajkot
दिनांक/ Date: 29/08/2024
Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot

		Date	Initial	
1.	Draft dictated on (dictation sheet is enclosed with main file.)	06.08.2024	}	PS
2.	Draft placed before author	06.08.2024		PS
3.	Draft proposed & placed before the second member	29.08.2024		
4.	Draft discussed/approved by Second Member.	29.08.2024		
5.	Approved Draft comes to the Sr.PS/PS	29.08.2024		
6.	Kept for pronouncement on	29.08.2024		
7.	File sent to the Bench Clerk	29.08.2024		
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Draft dictation sheets are attached			PS