

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER**

Sl. No	ITA No	A.Y	Appellant / Assessee	Respondent
1	652/Hyd/2020	2013-14	Kapil Property Developers Limited, Hanumakonda. PAN - AACCV1119N	The DCIT, Central Circle - 2(3), Hyderabad.
2	654/Hyd/2020	2013-14	Kapil Foods and Structures Private Limited, Warangal. PAN - AACCK2614F	-do-
3	686/Hyd/2020	2012-13	M/s. Kapil Infra Avenues Private Limited, Vijayawada. PAN : AADC4944P.	-do-

Appellant by	:	Shri S. Ramarao, Advocate
Respondent by	:	Ms. Reema Yadav, Sr.AR
Date of Hearing	:	01.08.2024 12.08.2024
Date of Pronouncement	:	04.09.2024

ORDER

PER BENCH :

These appeals filed by the assesseees are directed against the order of learned Commissioner of Income Tax (Appeals) – 12, Hyderabad dated 18.09.2020 for the assessment years 2012-13 and 2013-14.

2. First, we will deal with assessee's appeal in ITA No.652/Hyd/2020 for A.Y. 2013-14

ITA No.652/Hyd/2020

2.1 The grounds raised by the assessee in ITA No.652/Hyd/2020 read as under :

"1. The order of the ld.CIT(A) is erroneous to the extent it is prejudicial to the appellant.

2. The ld.CIT(A) erred in confirming the action of the Assessing Officer in initiating proceedings u/s 147 of the I.T. Act particularly when the proceedings were initiated in connection with or as consequence to the search and seizure operations conducted u/s 132 of the I.T. Act.

3. The ld.CIT(A) erred in confirming the addition of Rs.7,81,900/- representing the interest on redeemable debentures without considering the explanation submitted by the appellant and without considering the additional evidence produced."

3. The brief facts of the case are that the assessee, Kapil Property Developers Limited, is a Kapil Group of company engaged in the business of real estate development. The assessee filed its return of

income for AY 2013-14 on 24.09.2013, declaring a total income of Rs.33,66,340/-. A search and seizure operation under Section 132 of the Income Tax Act, 1961 was conducted on 07-04-2017 on the group of Kapil Consultancy Services Ltd and in which, the assessee was also covered. The assessment has been subsequently re-opened under Section 147 of the Income Tax Act, 1961 for the reasons recorded, as per which income chargeable to tax has escaped the assessment. Accordingly, a notice under Section 148 of the Act, dated 29-03-2019 was issued. In response to the notice under Section 148 of the Act, the appellant filed return of income admitting the same income. The AO completed the assessment under Section 143(3) read with Section 147 on 28-12-2019 and determined total income at Rs.3,65,29,352/- by making additions towards disallowance of finance charges, disallowance under Section 14A, and addition towards estimated interest on redeemable debentures.

4. The assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) for the reasons stated in their order dated 18-09-2020, partly allowed the appeal filed by the assessee, where he has deleted the addition made by the AO towards disallowance of finance charges and disallowance under Section 14A of the Act, however, he has confirmed the addition of estimated interest on redeemable debentures at Rs. 7,81,900/-.

5. The assessee preferred a further appeal before the Tribunal. The ITAT, Hyderabad Bench vide its common order in ITA No.652/Hyd/2020 dated 21-03-2022, set aside the issue to the file of the AO for fresh examination. The assessee filed an appeal before

the Hon'ble High Court of Telangana, and the Hon'ble High Court of Telangana, in its common order dated 02-02-2023, set aside the common order passed by the Tribunal dated 21-03-2022 and directed the Tribunal to dispose of the appeal on the limited grounds urged by the appellant, namely, disallowance of interest expenditure under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the reassessment proceedings.

6. The first issue that came up for our consideration from the assessee's appeal is the validity of re-opening of assessment under Section 147 of the Act.

7. The learned counsel for the assessee, Shri S. Rama Rao, submitted that the assessment in the impugned assessment year was re-opened after 4 years from the end of the relevant assessment year, without there being any fresh material with the AO to allege that there is an escapement of income on account of failure on the assessee to fully and truly disclose all material facts necessary for the assessment. The learned counsel for the assessee further submitted that the AO re-opened the assessment on the basis of reasons recorded, which are reproduced in the assessment order itself. The AO copied the reasons recorded in the case of M/s. Indur Developers and Agencies Pvt. Ltd., for the assessment year 2016-17 and made a sweeping observation that the Kapil group of companies were resorting to uniform practice for sale of flats from the buyers and diverting funds for non-business purpose to advance loans to other group companies, without being there any specific observation with regard to the appellant and escapement of income for that

assessment year. Therefore, he submitted that the re-opening of assessment is invalid and needs to be quashed.

8. The Id.DR, Ms. Reema Yadav, on the other hand, supporting the order of the Id.CIT(A) submitted that the assessment has been reopened on the basis of fresh tangible material which came to the possession of the Assessing Officer, during the search proceedings, in the cases of the Kapil Group of Companies, where the modus operandi of the assessee was unearthed, which reveals that the assessee is collecting advances from customers and paying interest, whereas diverting funds for non-business purpose. Based on specific information, the AO reopened the assessment, and thus, there is no merit in the argument of the counsel for the assessee that the reopening of the assessment is invalid.

9. We have heard both parties, perused the material on record, and gone through the orders of the authorities below. We have also carefully considered the reasons recorded by the AO for re-opening of the assessment. The sole basis for the AO to form a reasonable belief of escapement of income is on the basis of search conducted in the Kapil Group of Companies on 07-04-2017. The AO, based on the assessment of M/s. Indur Developers and Agencies Pvt. Ltd for A.Y. 2016-17, observed that the assessee has been showing the finance cost under the land development cost which has actually been spent for the development of land. Based on such opinion, Assessing Officer has formed a reasonable belief of escapement of income that interest paid by the appellant on loan advances received from customers towards the sale of flats is not incurred wholly and exclusively for the purpose of the business of the assessee.

Therefore, Assessing Officer opined that there is a reason to believe that the income chargeable to tax has escaped the assessment.

10. We have given our thoughtful consideration to the reasons recorded by the AO to reopen the assessment under Section 147 of the Act, and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, there is no live nexus between the reasonable belief of escapement of income on the basis of fresh material which came to the possession of the Assessing Officer during the course of search and the escapement of income. If we go by the reasons recorded for reopening of the assessment, the AO reopened the assessment on the basis of material belonging to some other assessee and made a sweeping statement that all Kapil group companies are indulged in similar practice of collecting advances from customers for the sale of flats and diverting funds to other group companies for non-business purpose. Therefore, interest paid on customer advance is not wholly and exclusively for the purpose of the business of the assessee. In our considered opinion, the AO is entitled to reopen the assessment, if he has reason to believe that income chargeable to tax has escaped assessment for that assessment year. Further, two conditions must be satisfied for invocation of power under Section 147 of the Act. They are : (1) existence of reason to believe; (2) the escapement of any income chargeable to tax for assessment. The reason to believe by the AO should be based on fresh material which suggests escapement of income, and further, there should be a live nexus between the formation of belief and the material in the possession of the AO. In the present case, if we go by the reasons recorded by the AO, we find that the Assessing Officer formed his opinion of escapement of

income of the assessee for AY 2013-14 on the basis of material found in the case of M/s. Indur Developers for the assessment year 2016-17, though there is no material with the AO pertaining to the assessee for AY 2013-14. This legal principle is supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd reported in (2010) 320 ITR 561 (SC) wherein it has been clearly held that the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment and further reasons must have a live link for formation of belief. A similar view has been taken by the Hon'ble Delhi High Court in the case of DCIT Vs. Rolls Royce Industrial Power India Ltd and Hon'ble Gujarat High Court in the case of Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj.)

11. In the present case, the original assessment has been completed u/s 143(3) of the Income Tax Act, 1961 and the assessment has been reopened u/s 147 of the Act beyond 4 years from the end of relevant assessment year. Once the assessment has been reopened after 4 years, then proviso to Section 147(1) of the Act comes into operation and as per said provision, the assessment cannot be reopened unless there is a finding from the Assessing Officer on failure of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, going by reasons recorded by the Assessing Officer, we find that the Assessing Officer has recorded reasons on the basis of assessment proceedings of M/s. Indur Developers Pvt. Ltd for the A.Y. 2016-17 and made a sweeping statement that all the Kapil Group of companies are indulging in practice of collecting advances from

customers and diverting interest bearing funds for non-business purposes being investments with group companies in the form of share capital and loans and advances. Further, the Assessing Officer considered the loans and advances received from the customers from the notes to accounts filed by the assessee along with regular return of income to support his reasons. From the above, it is undoubtedly clear that the Assessing Officer has failed to make out a case on the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Unless the Assessing Officer make any allegations that the assessee has failed to disclose relevant facts for assessment, the assessment cannot be reopened beyond 4 years when original assessment has been completed u/s 143(3) of the Act. This principle has been supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Foramer France (2003) 264 ITR 566 (SC). Therefore, in our considered opinion, reopening of the assessment under Section 147 of the Act on the basis of the reasons recorded by the Assessing Officer, which is available in the assessment order, is a clear case of non-application of mind by the Assessing Officer, before initiating the proceedings under Section 147 of the Act. Therefore, we are of the considered view that the reopening of the assessment and consequent assessment order passed by the AO under Section 143(3) r.w.s. 147 of the Act dated 28-12-2019 is invalid and liable to be quashed. Thus, we quash the assessment order passed by the AO.

12. The second issue that came up for our consideration from ground no.3 of assessee's appeal is relating to the addition on account of estimated interest on redeemable debentures. Since we have quashed the reassessment order, ground no.3 taken by the assessee relating to the issue of addition of redeemable debentures becomes infructuous and thus, the ground of appeal taken by the assessee has been dismissed as infructuous.

13. In the result, the appeal filed by the assessee is allowed.

Kapil Foods and Structures Private Limited

ITA No.654/Hyd/2020

14. The brief facts of the case are that the assessee, M/s. Kapil Foods and Structures Private Limited, is a Kapil Group of company engaged in the business of real estate development. The assessee filed its return of income for AY 2013-14 on 25.09.2013 admitting total income of Rs.1,14,02,300/-. A search and seizure operation under Section 132 of the Income Tax Act was conducted on 07-04-2017 on the group of Kapil Consultancy Services Ltd and in which the assessee was also covered. The assessment has been subsequently re-opened under Section 147 of the Income Tax Act for the reasons recorded, as per which income chargeable to tax has escaped the assessment. Accordingly, a notice under Section 148 of the Act dated 29-03-2019 was issued. In response to the notice under Section 148 of the Act, the appellant filed a return of income admitting an income of Rs.1,18,32,190/-. AO completed the assessment under Section 143(3) read with Section 147 of the

Income Tax Act, 1961 on 31-12-2019 and determined total income at Rs.6,62,17,656/- by making additions towards finance charges and estimated interest on redeemable debentures.

15. The assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) for the reasons stated in their order dated 18-09-2020, has confirmed the finance charges to the extent of Rs.1,90,52,483/- out of Rs.2,37,24,760/- and also confirmed the addition made on account of interest on redeemable debentures.

16. The assessee preferred a further appeal before the Tribunal. The ITAT, Hyderabad Bench vide its common order in ITA No.654/Hyd/2020 dated 21-03-2022, set aside the issue to the file of the AO for fresh examination. The assessee filed an appeal before the Hon'ble High Court of Telangana, and the Hon'ble High Court of Telangana, in its common order dated 02-02-2023, set aside the common order passed by the Tribunal dated 21-03-2022 and directed the Tribunal to dispose of the appeal on the limited grounds urged by the appellant, namely, disallowance of interest expenditure under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the reassessment proceedings.

17. The first issue that came up for our consideration from the assessee's appeal is the validity of re-opening of assessment under Section 147 of the Act.

18. The learned counsel for the assessee, Shri S. Rama Rao, submitted that the assessment in the impugned assessment year was re-opened after 4 years from the end of the relevant assessment year, without there being any fresh material with the AO to allege that there is an escapement of income on account of failure on the assessee to fully and truly disclose all material facts necessary for the assessment. The learned counsel for the assessee further submitted that the AO re-opened the assessment on the basis of reasons recorded, which are reproduced in the assessment order itself. The AO copied the reasons recorded in the case of M/s. Indur Developers and Agencies Pvt. Ltd., for the assessment year 2016-17 and made a sweeping observation that the Kapil group of companies were resorting to uniform practice for sale of flats from the buyers and diverting funds for non-business purpose to advance loans to other group companies, without being there any specific observation with regard to the appellant and escapement of income for that assessment year. Therefore, he submitted that the re-opening of assessment is invalid and needs to be quashed.

19. The ld.DR, Ms. Reema Yadav, on the other hand, supporting the order of the ld.CIT(A) submitted that the assessment has been reopened on the basis of fresh tangible material which came to the possession of the Assessing Officer, during the search proceedings, in the cases of the Kapil Group of Companies, where the modus operandi of the assessee was unearthed, which reveals that the assessee is collecting advances from customers and paying interest, whereas diverting funds for non-business purpose. Based on specific information, the AO reopened the assessment, and thus, there is no

merit in the argument of the counsel for the assessee that the reopening of the assessment is invalid.

20. We have heard both parties, perused the material on record, and gone through the orders of the authorities below. We have also carefully considered the reasons recorded by the AO for reopening of the assessment. The sole basis for the AO to form a reasonable belief of escapement of income is on the basis of search conducted in the Kapil Group of Companies on 07-04-2017. The AO, based on the assessment of M/s. Indur Developers and Agencies Pvt. Ltd for A.Y. 2016-17, observed that the assessee has been showing the finance cost under the land development cost which has actually been spent for the development of land. Based on such opinion, Assessing Officer has formed a reasonable belief of escapement of income that interest paid by the appellant on loan advances received from customers towards the sale of flats is not incurred wholly and exclusively for the purpose of the business of the assessee. Therefore, Assessing Officer opined that there is a reason to believe that the income chargeable to tax has escaped the assessment.

21. We have given our thoughtful consideration to the reasons recorded by the AO to reopen the assessment under Section 147 of the Act, and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, there is no live nexus between the reasonable belief of escapement of income on the basis of fresh material which came to the possession of the Assessing Officer during the course of search and the escapement of income. If we go by the reasons recorded for reopening of the assessment, the AO

reopened the assessment on the basis of material belonging to some other assessee and made a sweeping statement that all Kapil group companies are indulged in similar practice of collecting advances from customers for the sale of flats and diverting funds to other group companies for non-business purpose. Therefore, interest paid on customer advance is not wholly and exclusively for the purpose of the business of the assessee. In our considered opinion, the AO is entitled to reopen the assessment, if he has reason to believe that income chargeable to tax has escaped assessment for that assessment year. Further, two conditions must be satisfied for invocation of power under Section 147 of the Act. They are : (1) existence of reason to believe; (2) the escapement of any income chargeable to tax for assessment. The reason to believe by the AO should be based on fresh material which suggests escapement of income, and further, there should be a live nexus between the formation of belief and the material in the possession of the AO. In the present case, if we go by the reasons recorded by the AO, we find that the Assessing Officer formed his opinion of escapement of income of the assessee for AY 2013-14 on the basis of material found in the case of M/s. Indur Developers for the assessment year 2016-17, though there is no material with the AO pertaining to the assessee for AY 2013-14. This legal principle is supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd reported in (2010) 320 ITR 561 (SC) wherein it has been clearly held that the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment and further reasons must have a live link for formation of belief. A similar view has been taken by the Hon'ble Delhi High Court in the case of DCIT Vs. Rolls Royce

Industrial Power India Ltd and Hon'ble Gujarat High Court in the case of Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj.)

22. In the present case, the original assessment has been completed u/s 143(3) of the Income Tax Act, 1961 and the assessment has been reopened u/s 147 of the Act beyond 4 years from the end of relevant assessment year. Once the assessment has been reopened after 4 years, then proviso to Section 147(1) of the Act comes into operation and as per said provision, the assessment cannot be reopened unless there is a finding from the Assessing Officer on failure of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, going by reasons recorded by the Assessing Officer, we find that the Assessing Officer has recorded reasons on the basis of assessment proceedings of M/s. Indur Developers Pvt. Ltd for the A.Y. 2016-17 and made a sweeping statement that all the Kapil Group of companies are indulging in practice of collecting advances from customers and diverting interest bearing funds for non-business purposes being investments with group companies in the form of share capital and loans and advances. Further, the Assessing Officer considered the loans and advances received from the customers from the notes to accounts filed by the assessee along with regular return of income to support his reasons. From the above, it is undoubtedly clear that the Assessing Officer has failed to make out a case on the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Unless the Assessing Officer make any allegations that the assessee has failed to disclose relevant facts for assessment, the assessment

cannot be reopened beyond 4 years when original assessment has been completed u/s 143(3) of the Act. This principle has been supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Foramer France (2003) 264 ITR 566 (SC). Therefore, in our considered opinion, reopening of the assessment under Section 147 of the Act on the basis of the reasons recorded by the Assessing Officer, which is available in the assessment order, is a clear case of non-application of mind by the Assessing Officer, before initiating the proceedings under Section 147 of the Act. Therefore, we are of the considered view that the reopening of the assessment and consequent assessment order passed by the AO under Section 143(3) r.w.s. 147 of the Act dated 28-12-2019 is invalid and liable to be quashed. Thus, we quash the assessment order passed by the AO.

23. The other issues that came up for our consideration from ground nos. 4 to 7 of assessee's appeal are relating to the addition of Rs.1,90,52,483/- towards finance cost being interest paid on customers advance and addition of Rs.3,06,60,700/- on account of estimated interest on redeemable debentures. Since we have quashed the reassessment order, ground nos. 4 to 7 taken by the assessee relating to the issues of addition of finance cost and redeemable debentures become infructuous and thus, the grounds of appeal taken by the assessee have been dismissed as infructuous.

24. In the result, the appeal filed by the assessee is allowed.

M/s. Kapil Infra Avenues Private Limited.

ITA 686/Hyd/2020 for A.Y. 2012-13

25. The brief facts of the case are that the assessee, Kapil Infra Avenues Private Limited, is a Kapil Group of company engaged in the business of real estate development. The assessee filed its return of income for AY 2012-13 on 26.09.2012 admitting a total income of Rs.18,15,760/-. A search and seizure operation under Section 132 of the Income Tax Act, 1961 was conducted on 07-04-2017 on the group of Kapil Consultancy Services Ltd and in which, the assessee was also covered. The assessment has been subsequently re-opened under Section 147 of the Income Tax Act, 1961 for the reasons recorded, as per which income chargeable to tax has escaped the assessment. Accordingly, a notice under Section 148 of the Act, dated 28-03-2019 was issued. In response to the notice under Section 148 of the Act, the appellant sought for reasons recorded for reopening of the assessment. The reasons were communicated to the assessee. Thereafter, assessee raised objections for reopening of the assessment. After considering the objections made by the assessee, AO completed the assessment under Section 143(3) read with Section 147 on 28-12-2019 and determined total income at Rs.1,49,44,704/- by making additions towards disallowance of finance charges and disallowance under Section 14A of the Act.

26. The assessee carried the matter in appeal before the ld.CIT(A). The ld.CIT(A) for the reasons stated in their order dated 18-09-2020, partly allowed the appeal filed by the assessee, where he has partly deleted the addition of Rs.1,05,13,739/- out of Rs.1,29,48,168/- made by the AO towards disallowance of finance charges and also deleted the addition made under Section 14A of the Act.

27. The assessee preferred a further appeal before the Tribunal. The ITAT, Hyderabad Bench vide its common order in ITA No.686/Hyd/2020 dated 21-03-2022, set aside the issue to the file of the AO for fresh examination. The assessee filed an appeal before the Hon'ble High Court of Telangana, and the Hon'ble High Court of Telangana, in its common order dated 02-02-2023, set aside the common order passed by the Tribunal dated 21-03-2022 and directed the Tribunal to dispose of the appeal on the limited grounds urged by the appellant, namely, disallowance of interest expenditure under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the reassessment proceedings.

28. The first issue that came up for our consideration from the assessee's appeal is the validity of re-opening of assessment under Section 147 of the Act.

29. The learned counsel for the assessee, Shri S. Rama Rao, submitted that the assessment in the impugned assessment year was re-opened after 4 years from the end of the relevant assessment year, without there being any fresh material with the AO to allege

that there is an escapement of income on account of failure on the assessee to fully and truly disclose all material facts necessary for the assessment. The learned counsel for the assessee further submitted that the AO re-opened the assessment on the basis of reasons recorded, which are reproduced in the assessment order itself. The AO copied the reasons recorded in the case of M/s. Indur Developers and Agencies Pvt. Ltd., for the assessment year 2016-17 and made a sweeping observation that the Kapil group of companies were resorting to uniform practice for sale of flats from the buyers and diverting funds for non-business purpose to advance loans to other group companies, without being there any specific observation with regard to the appellant and escapement of income for that assessment year. Therefore, he submitted that the re-opening of assessment is invalid and needs to be quashed.

30. The ld.DR, Ms. Reema Yadav, on the other hand, supporting the order of the ld.CIT(A) submitted that the assessment has been reopened on the basis of fresh tangible material which came to the possession of the Assessing Officer, during the search proceedings, in the cases of the Kapil Group of Companies, where the modus operandi of the assessee was unearthed, which reveals that the assessee is collecting advances from customers and paying interest, whereas diverting funds for non-business purpose. Based on specific information, the AO reopened the assessment, and thus, there is no merit in the argument of the counsel for the assessee that the reopening of the assessment is invalid.

31. We have heard both parties, perused the material on record, and gone through the orders of the authorities below. We have also carefully considered the reasons recorded by the AO for re-opening of the assessment. The sole basis for the AO to form a reasonable belief of escapement of income is on the basis of search conducted in the Kapil Group of Companies on 07-04-2017. The AO, based on the assessment of M/s. Indur Developers and Agencies Pvt. Ltd for A.Y. 2016-17, observed that the assessee has been showing the finance cost under the land development cost which has actually been spent for the development of land. Based on such opinion, Assessing Officer has formed a reasonable belief of escapement of income that interest paid by the appellant on loan advances received from customers towards the sale of flats is not incurred wholly and exclusively for the purpose of the business of the assessee. Therefore, Assessing Officer opined that there is a reason to believe that the income chargeable to tax has escaped the assessment.

32. We have given our thoughtful consideration to the reasons recorded by the AO to reopen the assessment under Section 147 of the Act, and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, there is no live nexus between the reasonable belief of escapement of income on the basis of fresh material which came to the possession of the Assessing Officer during the course of search and the escapement of income. If we go by the reasons recorded for reopening of the assessment, the AO reopened the assessment on the basis of material belonging to some other assessee and made a sweeping statement that all Kapil group companies are indulged in similar practice of collecting advances

from customers for the sale of flats and diverting funds to other group companies for non-business purpose. Therefore, interest paid on customer advance is not wholly and exclusively for the purpose of the business of the assessee. In our considered opinion, the AO is entitled to reopen the assessment, if he has reason to believe that income chargeable to tax has escaped assessment for that assessment year. Further, two conditions must be satisfied for invocation of power under Section 147 of the Act. They are : (1) existence of reason to believe; (2) the escapement of any income chargeable to tax for assessment. The reason to believe by the AO should be based on fresh material which suggests escapement of income, and further, there should be a live nexus between the formation of belief and the material in the possession of the AO. In the present case, if we go by the reasons recorded by the AO, we find that the Assessing Officer formed his opinion of escapement of income of the assessee for AY 2013-14 on the basis of material found in the case of M/s. Indur Developers for the assessment year 2016-17, though there is no material with the AO pertaining to the assessee for AY 2013-14. This legal principle is supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd reported in (2010) 320 ITR 561 (SC) wherein it has been clearly held that the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment and further reasons must have a live link for formation of belief. A similar view has been taken by the Hon'ble Delhi High Court in the case of DCIT Vs. Rolls Royce Industrial Power India Ltd and Hon'ble Gujarat High Court in the case of Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj.)

33. In the present case, the original assessment has been completed u/s 143(3) of the Income Tax Act, 1961 and the assessment has been reopened u/s 147 of the Act beyond 4 years from the end of relevant assessment year. Once the assessment has been reopened after 4 years, then proviso to Section 147(1) of the Act comes into operation and as per said provision, the assessment cannot be reopened unless there is a finding from the Assessing Officer on failure of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, going by reasons recorded by the Assessing Officer, we find that the Assessing Officer has recorded reasons on the basis of assessment proceedings of M/s. Indur Developers Pvt. Ltd for the A.Y. 2016-17 and made a sweeping statement that all the Kapil Group of companies are indulging in practice of collecting advances from customers and diverting interest bearing funds for non-business purposes being investments with group companies in the form of share capital and loans and advances. Further, the Assessing Officer considered the loans and advances received from the customers from the notes to accounts filed by the assessee along with regular return of income to support his reasons. From the above, it is undoubtedly clear that the Assessing Officer has failed to make out a case on the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Unless the Assessing Officer make any allegations that the assessee has failed to disclose relevant facts for assessment, the assessment cannot be reopened beyond 4 years when original assessment has been completed u/s 143(3) of the Act. This principle has been supported by the decision of Hon'ble Supreme Court in the case of

CIT Vs. Foramer France (2003) 264 ITR 566 (SC). Therefore, in our considered opinion, reopening of the assessment under Section 147 of the Act on the basis of the reasons recorded by the Assessing Officer, which is available in the assessment order, is a clear case of non-application of mind by the Assessing Officer, before initiating the proceedings under Section 147 of the Act. Therefore, we are of the considered view that the reopening of the assessment and consequent assessment order passed by the AO under Section 143(3) r.w.s. 147 of the Act dated 28-12-2019 is invalid and liable to be quashed. Thus, we quash the assessment order passed by the AO.

34. The second issue that came up for our consideration from ground nos.3 and 4 of assessee's appeal is relating to the addition on account of finance cost of Rs.24,34,429/-. Since we have quashed the reassessment order, ground nos.3 and 4 taken by the assessee relating to the issue of addition of finance cost becomes infructuous and thus, the ground of appeal taken by the assessee has been dismissed as infructuous.

35. In the result, the appeal filed by the assessee is allowed.

36. To sum up, all the appeals of assesseees are allowed.

Order pronounced in the Open Court on 4th September, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER
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Hyderabad, dated 4th September, 2024.

TYNM/sps

Copy to:

S.No	Addresses
1	Kapil Property Developers Limited, H.No.1-7-1382/2, Advocates Colony, Hanumakonda – 506002.
2	Kapil Foods and Structures Private Limited, 2-5760, House Opp: Dist. Collectprate, Subedari, Warangal -506001.
3	Kapil Infra Avenues Private Limited, No.40-15-3/1, Chandrapuram Near Benz Circle, Labbipet, Vijayawada – 520010
4	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
5	PCIT, (Central), Hyderabad / Pr.CIT-Central (Circle), Hyderabad.
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order