

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
**BEFORE SMT. KAVITHA RAJGOPAL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 691/Mum/2024 (A.Y.2010-11)

DCIT

R. No. 535, Aayakar Bhavan,
New Marine Lines,
Church gate,
Mumbai – 400 020

..... Appellant

Vs.

SVC Cooperative Bank Ltd.

SVC Tower, Nehru Road,
Santacruz (East),
Mumbai- 400 055
PAN No. AAAAT0177C

..... Respondent

Appellant by	:	Ms. Rajeshwari Menon, Ld. DR
Respondent by	:	Shri Rajeev Walay, Ld. AR
Date of hearing	:	07/08/2024
Date of pronouncement	:	09/09/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by revenue is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 23.11.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2010-11. The revenue has raised the following grounds of appeal:-

1. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in quashing the entire assessment order passed u/s 147 of the Act, without adjudicating the issue involved in the case on merits.*

2. The brief facts of the case are that the assessee is a scheduled Cooperative Bank established under the Banking Regulation Act, 1949, which filed its return of income for A.Y. 2010-2011 on 01.10.2010 declaring total taxable income at Rupees 67,04,75,230/-, the Assessee claimed deduction under sections 36(1)(vii), 36(1) (viia) 36(1)(viii) of the Act amounting to Rs. 17,73,17,565.37/-, 7,41,17,936.33/- and Rs. 6,62,97,923.86/- respectively. Further, the Assessee claimed a deduction of Rs. 96,222/- towards advances made by its rural branches at 10% u/s 36(1) (viia) of the Act.

3. The Assessee's case was selected for scrutiny assessment wherein the total income of the Assessee was assessed at Rs. 84, 12, 54,980/- vide order dated 24.12.2012 u/s. 143(3) of the Act. Thereafter, proceedings u/s. 147 of the Act were initiated after escapement of income was noticed by the AO, the PCIT-I, Mumbai's prior sanction as mandated u/s. 151(1) of the Act was obtained on 30.03.2017 and pursuant notice u/s 148 of the Act was issued on 30.03.2017. In reply to said notice u/s 148 of the Act the Assessee's representatives vide their letter dated 26.04.2017 stated that the Assessee had filed its return for A.Y. 2010-2011 on 27.01.2017 and requested the AO to consider the same as the return filed in response to the notice u/s 148 of the Act. Further, notices u/s. 143(2) of the Act and 142(1) of the Act dated 17.08.2017 and 10.10.2019 respectively were issued to the assessee. The AO stated that the reason for reopening the case was that the deduction of Rs. 6,62,97,923/- u/s 36(1)(viii) of the Act was the result of the Assessee using an incorrect method of computation, as per the AO the

deductions allowable was Rs. 4,41,64,734/- and thereby an excessive allowance of deduction u/s. 36(1)(viii) of the Act amounting to Rs. 2,21,33,189 which lead to the escapement income of the Assessee for the A.Y. 2010-11.T

4. The AO held that the said escapement of income occurred because the Assessee failed to fully and truly disclose material facts necessary for assessment, the AO thus held that the Assessee's case fell within the purview of Section 147 of the Act and made an addition of Rs. 2,21,33,189/- to the Assessee's income

5. The Assessee being aggrieved by the AO's order dated 28.12.2017 under section 143(3) r.w.s 147 of the Act preferred an appeal the Ld. CIT (A) and subsequently the appeal was migrated to the National Faceless Appeal Centre, Delhi (NFAC). Before the Ld. CIT (A) the Assessee submitted that the AO had erred in re-opening the assessment by issuing notice u/s 148 of the Act. The Assessee submitted before the Ld. CIT(A) that the re-opening of the assessment u/s. 148 of the Act took place after the expiry of four years and that there was no failure on part of the Assessee in disclosing the material facts necessary for assessment fully and truly. The Ld. CIT (A) vide his order under section 250 of the act dated 23.11.2022 observed that the assessee's original assessment was completed on 30.03.2017 u/s. 143(3) of the Act. The reassessment proceedings were initiated on 30.03.2017 by the AO which is more than 4 years from the end of the relevant A.Y. 2010-11.

6. The Ld. CIT (A) thus held that since the original assessment was completed u/s 143(3) of the Act, a notice u/s. 148 of the Act could not be issued in this case unless and until there was a failure on part of the Assessee to fully and truly

disclose the material facts necessary for the correct computation of deduction u/s. 36(1) (viia) and 36(1) (viii) of the Act. The Ld. CIT(A) further observed that that the working of the calculation u/s. 36(1)(viia) and 36(1)(viii) of the Act was already produced before the AO by the Assessee during the original assessment proceedings u/s 143(3) of the Act and was duly accepted by the AO, however subsequently after raising of audit objection questioning the method of calculation adopted by the Assessee, the A.O reopened the Assessment by issuing notice u/s 148 of the Act. The Ld. CIT (A) observed that this amounted to mere 'change of opinion and that all the details material for computing the deduction was already available on record and there was no apparent failure on the part of the Assessee in disclosing the any material fact.

7. The Ld. CIT (A) thus, held that the AO had initiated reassessment proceedings without brining on record any new fact or anything in support of his finding that the Assessee had not disclosed fully and truly all the relevant information before passing the impugned Assessment order. The Ld. CIT(A) deemed the issue regarding correctness of the method employed by the assessee a debatable issue, a matter of interpretation and not a not a matter of any failure to disclose the relevant material facts.

8. Further, the Ld. CIT(A) stated that the aforementioned view is strengthened by the fact that even the in the impugned reassessment proceedings the AO accepted the correctness of the method adopted by the Assessee for calculating deduction u/s. 36(1) (viia) of the Act and no addition was made thereon vide assessment order dated 28.12.2017 despite deduction u/s. 36(1)(viia) of the Act being one of the reasons recorded for issue of notice u/s 148 of the Act. The Ld.

CIT (A) thus, placed reliance on this Hon'ble Tribunal's judgment in **SVC Co-Operative Bank Ltd. v. DCIT, ITA No. 3418/Mum/2018** dated 16.07.2020, and this was the Assessee's own case on for the A.Y 2009-10 wherein an identical issue and ground were adjudicated. The Hon'ble tribunal had quashed the reopening of assessment u/s 148 of the Act. The Ld. CIT (A) thus allowed the appeal of the Assessee

9. We have carefully gone through the order passed under section 143(3) of the Act read with section 147 of the Act, the order of the Ld. CIT Appeal passed u/s 250 of the Act, and submissions of the Appellant alongwith grounds taken before us. The Appellant before us has raised the question of law that whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in quashing the entire assessment order u/s. 147 of the Act, without adjudicating the issues involved in the case on merits.

10. We observe that the Assessee bank filed its return of income for A.Y. 2010-2011 on 01.10.2010 declaring total taxable income at Rupees 67,04,75,230/-, further the Assessee claimed deduction under sections 36 (1) (vii), 36(1) (viia) 36 (1) (viii) of the Act amounting to Rs. 17,73,17,565.37/-, 7,41,17,936.33/- and Rs. 6,62,97,923.86/- respectively. The Assessee's case was selected for scrutiny assessment and vide order dated 24.12.2012 u/s. 143(3) of the Act the total income of the Assessee was assessed at Rs. 84,12,54,980/- Thereafter, proceedings u/s. 147 of the Act were initiated and pursuant notice u/s 148 of the Act was issued on 30.03.2017. In reply to said notice u/s 148 of the Act the Assessee's representatives vide their letter dated 26.04.2017 stated that the Assessee had filed its return for A.Y. 2010-2011 and requested the AO to consider

the same as the return filed in response to the notice u/s 148 of the Act. Further, notices u/s. 143(2) of the Act and 142(1) of the Act dated 17.08.2017 and 10.10.2019 respectively were issued to the assessee.

11. The AO held that Assessee in its return of income had used an incorrect method of computation which resulted in an excessive allowance of deduction u/s. 36(1)(viii) of the Act amounting to Rs. 2,21,33,189 which lead to the escapement income of the Assessee for the A.Y. 2010-11 and that the said escapement of income occurred because the Assessee failed to fully and truly disclose material facts necessary for assessment, the AO thus, made an addition of Rs. 2,21,33,189/- to the Assessee's income and held that the Assessee's case fell within the purview of Section 147 of the Act and. The AO's order was quashed by the Ld. CIT (A) as more than 4 years had elapsed before the reassessment proceedings and that the AO had failed to bring on record any new fact or any material in support of his finding that the Assessee had not disclosed fully and truly all the relevant information before passing the impugned Assessment order.

12. The Hon'ble Supreme Court has discussed in detail the purview of reopening of assessment orders in detail in the case of **Mangalam Publications v. CIT, (2024) 461 ITR 159** wherein it was held that:-

"28. This brings us to the pivotal section i.e., section 147 of the Act. Prior to the Direct Tax Laws (Amendment) Act, 1987, section 147 read as under:

"147. Income escaping assessment.—If (a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that 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 or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)."

28.1. *This provision was amended by the Direct Tax Laws (Amendment) Act, 1987 with effect from April 1, 1989. Post such amendment, section 147 read as under:*

"147. Income escaping assessment.—If the Assessing Officer, for reasons to be recorded by him in writing, is of the opinion 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 to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute 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)."

28.4. *Thus, section 147 as it stood at the relevant point of time provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under section 147.*

29. *Section 148 says that before making an assessment, reassessment etc. under section 147, the Assessing Officer is required to issue and serve a notice on the assessee calling upon the assessee to file a return of his income in the prescribed form, etc., setting forth such particulars as may be called upon.*

30. *Such a notice is subject to the time limit prescribed under section 149. Under sub-section (1) (b), no notice under section 148 shall be issued in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year if seven years but not more than 10 years have elapsed from the end of the relevant*

assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 50,000/- or more for that year.

31. *at this stage, we deem it necessary to expound on the meaning of disclosure. As per the P. Ramanatha Aiyar, Advanced Law Lexicon, volume 2, edition 6, "to disclose" is to expose to view or knowledge, anything which before was secret, hidden or concealed. The word "disclosure" means to disclose, reveal, unravel or bring to notice, vide CIT v. Bimal Kumar Damani [(2003) 261 ITR 87 (Cal)]. The word "true" qualifies a fact or averment as correct, exact, actual, genuine or honest. The word "full" means complete. True disclosure of concealed income must relate to the assessee concerned. Full disclosure, in the context of financial documents, means that all material or significant information should be disclosed. Therefore, the meaning of "full and true disclosure" is the voluntary filing of a return of income that the assessee earnestly believes to be true. Production of books of account or other material evidence that could ordinarily be discovered by the Assessing Officer does not amount to a true and full disclosure.*

32. *Let us now discuss some of the judgments cited at the Bar. First and foremost is the decision of a Constitution Bench of this court in Calcutta Discount Co. Ltd. [Calcutta Discount Co. Ltd. v. ITO, (1961) 41 ITR 191 (SC).] That was a case under section 34 of the Indian Income-tax Act, 1922 which is in pari materia to section 147 of the Act. The Constitution Bench explained the purport of section 34 of the Indian Income-tax Act, 1922 and highlighted two conditions which would have to be satisfied before issuing a notice to reopen an assessment beyond four years but within eight years (as was the then limitation). The first condition was that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to Income-tax had been under-assessed. The second condition was that he must have also reason to believe that such under-assessment had occurred by reason of either (i) omission or failure on the part of the assessee to make a return of his income under section 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. It was emphasized that both these were conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years from the end of the year in question. The words used in the expression "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" would postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment though what facts are material and necessary for*

assessment would differ from case to case. On the above basis, this court came to the conclusion that while the duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this. This position has been reiterated in subsequent decisions by this court including in *ITO v. Lakhmani Mewal Das* [(1976) 103 ITR 437 (SC); (1976) 3 SCC 757.] . The expression “reason to believe” has also been explained to mean reasons deducible from the materials on record and which have a live link to the formation of the belief that income chargeable to tax has escaped assessment. Such reasons must be based on material and specific information obtained subsequently and not on the basis of surmises, conjectures or gossip. The reasons formed must be *bona fide*.

34. This court in the case of *Sri Krishna Pvt. Ltd.* [*Sri Krishna Pvt. Ltd. v. ITO*, (1996) 221 ITR 538 (SC); (1996) 9 SCC 534.] emphasized that what is required of an assessee in the course of assessment proceedings is a full and true disclosure of all material facts necessary for making assessment for that year. It was emphasized that it is the obligation of the assessee to disclose the material facts or what are called primary facts. It is not a mere disclosure but a disclosure which is full and true. Referring to the decision in *Phool Chand Bajrang Lal* [*Phool Chand Bajrang Lal v. ITO*, (1993) 203 ITR 456 (SC); (1993) 4 SCC 77.], it has been highlighted that a false disclosure is not a true disclosure and would not satisfy the requirement of making a full and true disclosure. The obligation of the assessee to disclose the primary facts necessary for his assessment fully and truly can neither be ignored nor watered down. All the requirements stipulated by section 147 must be given due and equal weight.

35. *Kelvinator of India Ltd.* [*CIT v. Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC); (2010) 2 SCC 723.] is a case where this court examined the question as to whether the concept of “change of opinion” stands obliterated with effect from April 1, 1989, i.e., after substitution of section 147 of the Act by the Direct Tax Laws (Amendment) Act, 1987. This court considered the changes made in section 147 and found that prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under two conditions, i.e., (a) the Income-tax Officer had reason to believe that by reason of omission or failure on the part of the assessee to make a return under section 139 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or (b) notwithstanding that there was no such omission or failure on the part of the assessee, the Income-tax Officer had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year. Fulfilment of the above two

conditions, alone conferred jurisdiction on the Assessing Officer to make a reassessment. But with effect from April 1, 1989, the above two conditions have been given a go-by in section 147 and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, that would be enough to confer jurisdiction on the Assessing Officer to reopen the assessment. Therefore, post-April 1, 1989, power to reopen assessment is much wider. However, this court cautioned that one needs to give a schematic interpretation to the words “reason to believe”, otherwise section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of “mere change of opinion”, which cannot be per se reason to reopen....

36. *Elaborating further on the expression “change of opinion”, this court in Techspan India Pvt. Ltd. [Techspan India Pvt. Ltd., (2018) 404 ITR 10 (SC).] observed that to check whether it is a case of change of opinion or not one would have to see its meaning in literal as well as legal terms. The expression “change of opinion” would imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by the Assessing Officer resulting from what he thinks on a particular question. Therefore, before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change of opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the Assessing Officer any opinion on the questions that are raised in the proposed reassessment proceedings.”*

13. The Hon’ble Supreme Court also laid down the conditions that must be met before reopening an assessment beyond four years (as per the law at that time) u/s. 148 of the Act before issuing a notice these conditions are as follows:

- i. That where the Assessing Officer has reason to believe that income has escaped assessment, that would be enough to confer jurisdiction on the Assessing Officer
- ii. Assessing Officer cannot reopen assessments on the basis of mere change of opinion.

14. Further, the expression 'reason to believe' used in the first condition has been explained to mean reasons deducible from the materials on record and which have a live link to the formation of the belief that income chargeable to tax has escaped assessment. Such reasons must be based on material and specific information obtained subsequently and not on the basis of surmises, conjectures or gossip. The reasons formed must be bona fide.

15. The Hon'ble Supreme Court *on the expression "change of opinion"*, observed in **Techspan India Pvt. Ltd., (2018) 404 ITR 10 (SC)**. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the Assessing Officer any opinion on the questions that are raised in the proposed reassessment proceedings. Thus in the present case the AO in his order was non-speaking in nature and thus in the present case the reopening of the assessment was done by the AO merely on the basis of mere change of opinion.

16. In light of the facts of the case and with reference to the above judgement it is clear that the Assessee had made a full and true disclosure. The Hon'ble Supreme Court has defined full and true disclosure as the voluntary filing of a return of income that the assessee earnestly believes to be true. In the present case it is observed that the Assessee voluntarily filed its return of income on on 01.10.2010 further the Hon'ble Supreme Court has stated that the duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this.

17. Thus, applying the conditions laid by the Hon'ble Supreme Court to the facts of the present case it is observed that the AO had issued the order for reopening of assessment with reason to believe that the income chargeable to Income-tax had been under-assessed and thus the first condition was fulfilled. The AO however failed to show that the reopening was not merely a change of opinion and further, the AO's order also does not show that the reason for reopening the Assessment was not on the basis of surmises, conjectures or gossip. The said Re-assessment was done without establishing any reason for escapement of assessment based on any material and specific information obtained subsequently. The notice was thus was rightly quashed by the Ld. CIT (A).

18. The same view has been taken by this Hon'ble tribunal in the Assessee's own case titled **SVC Co-Operative Bank Ltd. v. DCIT, ITA No. 3418/Mum/2018** for the A.Y. 2009-10 held as follows:-

"9. Considered the rival submissions and material placed on record. We notice that the reopening proceedings are initiated by the assessing officer after 4 years from the end of assessment year. There is no dispute that original assessment under section 143(3) of the Act was completed based on the information which is already available in assessment records. We also notice from the record submitted by the Ld. AR that the internal auditors has raised objections on the method of calculation adopted by the assessee to claim deduction under section 36(1) of the Act. Based on the above objection, assessing officer has initiated the reopening of assessment, but he has initiated the reopening proceedings without bringing on record anything in support of his finding that assessee has not disclosed fully and truly all the relevant information in order to complete the assessment. We noticed that the assessee has submitted all the relevant information during the original assessment proceedings and the same was verified by the assessing officer in the original assessments and completed the assessment.

19. This Hon'ble Tribunal while adjudicating the above placed reliance on the decision of this tribunal in **Mumbai v. Latin Manharlal Securities P. Ltd, Asst. CIT 4(3), Mumbai, ITA No. 5822/mum/2013 ITA No. 5822/mum/2013** wherein this Hon'ble Tribunal held that:-

"5. Conditions precedent for lifting the ban of 4 years time limit under proviso to section 147 is that, if the assessment has been completed under section 143(3) then reopening of the assessment can be done only when there is failure on the part of the assessee filed a return under section 139 or there is failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Such a failure of the assessee has to be ascribed and demonstrated by the AO in the "reasons recorded" itself." bare perusal of the "reasons recorded" and even from the assessment order. The assessee has duly shown the tax liability under the normal provisions and also as per under section 115JB. The AO while computing the income in the original assessment under section 143(3) has taken note of this fact. So now, the AO cannot hold that such a tax liability computed by the AO is erroneous or there is any failure on the part of the assessee to disclose fully and truly all material facts."

20. In view of the above Judicial Pronouncements, we observe that in the present case the Assessee had duly filed its return on 01.10.2010. The Assessee's case was selected for scrutiny assessment and the assessment order was passed on 24.12.2012. Thus, since the scrutiny assessment was conducted based on the material disclosed by the Assessee it cannot be stated at the time of Reopening of the Assessment that the Assessee had failed to fully and truly disclose the material facts. The AO had initiated the reopening proceedings without bringing on record anything in support of his finding showing that the assessee has not disclosed fully and truly all the relevant information in order to complete the assessment. Thus the Ld. CIT (A) rightly quashed the order of the AO.

21. Therefore, on the basis of the ratio laid by the Supreme Court in the cases of **Mangalam Publications v. CIT, (2024) 461 ITR 159, Techspan India Pvt. Ltd., (2018) 404 ITR 10 (SC)** and this Hon'ble tribunal in the cases of **Asst. CIT 4(3), Mumbai v. Latin Manharlal Securities P. Ltd, Mumbai, ITA No. 5822/mum/2013** and **SVC Co-Operative Bank Ltd. v. DCIT, ITA No. 3418/Mum/2018** the Appeal is **dismissed, and the order of the Ld. CIT(A) is upheld**. Since the Reopening of the Assessment was itself bad in law the correctness of the calculations made are an academic matter and hence need not be adjudicated.

22. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 9th day of September, 2024.

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 09/09/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai