THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Shri T R Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member

ITA No. 339/Ahd/2022
Assessment Year 2009-10

The ACIT, Central Circle-1(2), Ahmedabad **(Appellant)**	Vs	NK Proteins Pvt. Ltd., 7th Floor Popular House, Ashram Road, Usamanpura, Ahmedabad-380013 PAN: AAACN9377N **(Respondent)**

C.O. No. 29/Ahd/2022
in
(ITA No. 339/Ahd/2022)

NK Proteins Pvt. Ltd., 7th Floor Popular House, Ashram Road, Usamanpura, Ahmedabad-380013 PAN: AAACN9377N **(Appellant)**	Vs	The ACIT, Central Circle-1(2), Ahmedabad **(Respondent)**

Assessee by: Shri Vartik Chokshi, A.R.
Revenue by: Shri Sudhendu Das, CIT-D.R.

Date of hearing : 21-08-2024
Date of pronouncement : 12-11-2024

आदेश/ORDER

PER : TR SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against appellate order dated 14-06-2022 passed by Commissioner of Income Tax

(Appeals)-11, Ahmedabad arising out of the re-assessment order passed u/s.143(3) read with section 147 and 142(2A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') relating to the assessment year 2009-10.

2. Brief facts of the case, the assessee is a company engaged in the manufacturing of edible, non-edible oil products and by-products thereof. The assessee filed its original return of income which was taken for scrutiny assessment and regular assessment order under section 143(3) of the Act was passed on 29-12-2011 assessing the total income at Rs.22,55,48,604/-. Thereafter, a notice u/s. 148 was issued on 09-03-2015 for the reasons

[a] disallowance u/s. 14A r.w.r. 8D was wrongly worked out at Rs.1,13,521/- instead of Rs.2,18,174/- and

[b] the amount received from National Stock Exchange Ltd [NSEL] amounting to Rs.244.98 crores is in the nature of income brought in the account of debtors in the guise of so-called paper trade and which needs to be taxed in the hands of the assessee company.

2.1. In response, the assessee requested to treat the original return in response to the notice issued u/s. 148 of the Act and asked for the reasons recorded for reopening of assessment. But the Ld AO completed the reassessment by making disallowance u/s. 43(5) r.w.s. 73 and sec.40A(2)(b) of Rs.13,89,08,810/- and excess disallowance u/s.14A of Rs. 1,04,652/- and demanded tax thereon.

3. Aggrieved against the re-assessment order, the assessee filed appeal before ld. CIT(A) and raised additional ground on reopening of assessment as follows:-

* The Appellant submits that the reasons recorded by AO contain main allegation regarding payment from NSEL in HDFC NSEL client account and from this account M/s. MKIL received Rs 244 98,04,635 and such figure was considered as income brought into the account of debtors in the guise of so-called paper trade.

- The Appellant has stated that during the asst year 2009-10, it has not carried out any transaction on NSEL platform which is also verified by Special Auditor in his report hence there cannot be any money received from NSEL for such transactions.

- It was further stated that AO had recorded the reasons for reopening which is nothing but the figure of addition, already made in A.Y 2011-12 in the asst. order dated 21-11-2014.

- The Assessee has further contended that these facts were brought to the notice of AO and he has not made any addition for this transaction, which is apparent from Assessment Order.

- So far as second issue of disallowance under Section 14A as mentioned in the reasons recorded is concerned, Assessee submitted that this disallowance was made by AO in original Assessment Order which was already deleted by Hon'ble ITAT in its order dated 27-07-2016 in ITA No. 1986/Ahd/2012 and 2133/Ahd/2012 and such order was already placed at paper book page No 108 to 147. Considering this decision, which is rendered by Hon'ble ITAT in current year itself disallowance under Section 14A does not survive.

- Considering these facts Assessee claimed that once addition made by the AO is deleted by the Hon'ble ITAT, disallowance u/s.14A would not survive and AO has already not made other additions based upon reasons recorded. Hence reassessment order passed by AO deserves to be annulled as no effective addition(s) is/are made or survive which are based upon reasons recorded.

- The Assessee relied upon various judicial pronouncements in the Written Submission which includes decision of Hon'ble Gujarat High Court in the case of CIT vs. Mohmed Junded Dadani [2013] 30 taxmann.com 1 and the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways Ind Ltd. (2010) 195 Taxman 117.

- The Assessee also relied upon decision of Hon'ble Ahmedabad ITAT passed in its own case, in I.T.A. No. 489/Ahd/2018) dated 25-01-2021 for AY 2011-12 wherein additions were not made based upon reasons recorded and Hon'ble ITAT has held that once additions are not made based upon reasons recorded, reassessment order deserves to be quashed."

3.1. The Ld. CIT(A) considered this additional grounds first as it goes to the root of the jurisdictional issue thereby decided the issue in favour of the assessee and held the re-assessment proceedings is bad in law by observing as follows:-

> "4.8 So far as merits of additional claim are concerned, it is observed that AO had issued reassessment notice on two grounds. The main ground for reassessment notice was with reference to transactions with NSEL for Rs.244.98 crores. The Appellant has claimed that no transaction with NSEL was carried out in current year, which is also accepted by the Special Auditor in his report under Section 142A of the Act. The figure of Rs.244.98 crores was nothing but addition made in Appellant's own case for A.Y.2011-12 in Assessment Order passed on 21/11/2014. This contention of Appellant was accepted by AO while passing the Assessment Order and no addition was made. So far as second issue being disallowance under Section 14A for Rs. 2,18,174/- is concerned, it is observed that addition under Section 14A for Rs.1,13,521/- was also made in original Assessment Order dated 29/12/2011. While computing disallowance under Section 14A read with Rule 8D, AO had considered gross average asset as denominator whereas in the reasons recorded for present case. AO was of the view that net average asset needs to be taken. It is pertinent to note that entire issue of disallowance under Section 14A as was raised in

original Assessment Order was deleted by Hon'ble Ahmedabad ITAT in Appellate Order dated 27/07/2016. The relevant operative part of the said decision is reproduced hereunder-

> "29. We have heard the rival contentions and perused the material on record Assessee is aggrieved with the disallowance u/s 14A of the Act of Rs. 1,13,521/-confirmed by ld CIT(A). We further observe that ld AR specifically mentioned that there is no exempt income earned by the assessee during the year. We also observe that in the judgment of Hon Jurisdictional High Court in the case of CIT vs. Cortech Energy P Ltd. (supra) has confirmed the order of the Tribunal deleting disallowance u/s 14A of the Act as the assessee has not claimed any exempt income. Similar is the situation in the case of assessee and we respectfully following the judgment of Hon. Jurisdictional High Court are of the view that no disallowance is called for u/s 14A as assessee has not claimed any exempt income in the year under appeal. We hold that ld. CIT(A) was not correct in upholding the disallowance and allow the ground of assessee"

Considering the above referred decision in Appellant's own case for current year only ground of reassessment for alleged escapement for disallowance under Section 14A does not survive or addition made in reassessment order consequently does survive. Thus, the effective addition in Appellant's case based upon reassessment order is disallowance under Section 43(5) read with Section 73 for Rs 13,18,08,810/- which is not based upon reasons recorded. Thus, additions effectively made in Assessment Order are not based upon reasons recorded and the legal pleas taken by Appellant are discussed elaborately by various courts and the courts have taken a view that when on the ground on which reassessment was based, addition is not made by AO in reassessment order, he cannot make additions on other grounds which do not form part of reasons recorded by him. Reliance is placed on following decisions –

.....

4.9 In view of above discussions and factual matrix of the case and respectfully following the decisions of Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. Mohmed Junded

Dadani [2013] 30 taxmann.com 1(Gujarat)/ [2013] 214 taxman 38 (Gujarat)/355 ITR 172 (Guj), Hon'ble Jurisdictional Tribunal in Appellant's own case and other decisions as mentioned above and also as relied upon by the Appellant on similar issue to the Appellant's case, I find that claim of Appellant is correct.

4.10. In addition to above and on perusal of reasons recorded by AO which is reproduced herein above, it is apparent that major issue for alleged escapement of income relates to payment from NSEL for Rs.244.98 crores. In the present year the Appellant has not carried out any transactions with NSEL and even figure of alleged escapement of income pertains to addition made by AO for AY 2011-12. This issue is elaborately discussed in preceding paras which makes it clear that reasons recorded by AO are based upon factually incorrect details or same are non-existing. Reliance is placed on following decisions wherein jurisdictional High Court as well as Tribunal have consistently held that reassessment on non-existent and factually incorrect reasons is not permissible and such proceedings deserves to be quashed.

4.11. So far as second issue of alleged escapement relating to computation of disallowance under Section 14A is concerned, it is observed that original assessment under Section 143(3) of the Act was already passed on 29-12-2011 wherein after detailed discussion AO has made disallowance under Section 14A at Rs 1,13,521/-. The discussion was made at para 8 of the order. The reassessment notice is issued only for re-computation of disallowance under Section 14A made in Assessment Order. It is an undisputed fact that the reassessment notice was issued on 9th March, 2015 which means that such notice is issued beyond four years from end of relevant Assessment Year. On perusal of reasons recorded, it is seen that AO has not mentioned whether there was failure on part of assessee to disclose truly and fully all material facts necessary for making assessment as required by Provisions of Section 147. No new material/tangible material has been brought on record by AO which justify such reassessment notice and on the contrary, re-computation is made based upon facts already on the record of AO. Thus, issuance of notice for alleged escapement of income by making re-computation of disallowance u/s 14A on same issue is certainly change of opinion on part of subsequent AO. Further, it important to note that before passing of the Assessment Order,

Hon'ble Ahmedabad ITAT had already deleted disallowance under Section 14A made in original Assessment Order. The Hon'ble Jurisdictional High court of Gujarat in the case of Sandesh Procon Llp in SCA No 19990/2019 dated 5th February, 2021 on similar facts held as under:

> "10 It is the case of the Revenue that, the assessee was required to disallow an amount of Rs.5,13,06,096/- under Section 14A of the Act and during the original assessment, disallowance was made only upto Rs.34,08,859/- restricting the extent of exempted income. Therefore, as per the case of the revenue, the income Rs.4,78,99,237/- has escaped assessment for which the assessee failed to disclose fully and truly all material facts necessary for the assessment for the year under consideration. It is also undisputed fact that, the case of the assessee selected for further scrutiny and notice under Section 143(2) of the Act was issued and thereafter, notice under Section 142(1) of the Act along with questionnaire was served and pursuant to these notices, the assessee had furnished required details along with copy of return, audited accounts, balance sheet, profit and loss account etc. The issue of disallowance was considered by the respondent authority at length and disallowance of interest was restricted upto Rs.34,06,859/-. The observations with regard to disallowance made in the original assessment order reads thus .....
>
> 11. We have perused the reasons for reopening, wherein, the Assessing Officer observed that, during the course of original assessment, disallowance was made only Rs.34,06,859/ restricting to the extent of exempted income, as a result, income of Rs.4,78,99,237/ has escaped assessment on the ground that there was an omission on the part of the assessee to disclose fully and truly all the material facts. It was further observed by the Assessing Officer that.....
>
> 12. A bare perusal of the reasons and original the assessment order made under Section 143(3) of the Act, the facts emerge that, the respondent authority had determined the issue of disallowance after considering the material available and now

again without any tangible material available with the Assessing Officer based on the same materials, which were relied at the time of original assessment proceedings, has reason to believe that there is escapement of income. Therefore, in this circumstances, we are of the view that, the material available with the Assessing Officer, at the relevant point of time, while making original assessment under Section 143 (3) of the Act and at the time of reopening of the assessment, the materials available with the Assessing Officer were the same and there return declaring certain taxable income Assessing Officer completed assessment under section 143(3) wherein certain addition was made to Assessee's valuation of stock in relation to unutilized CENVAT credit After expiry of four years from end of relevant assessment year, Assessing Officer reopened assessment on ground that unutilized CENVAT credit should have been included in closing stock which would alter Assessee's profit for year under consideration - It was noted from records that Assessing Officer was conscious of methodology adopted by assessee and he had raised multiple queries Further, it was only after such scrutiny that Assessing Officer had passed order of assessment wherein he had made limited disallowance in relation to unutilized CENVAT credit - Whether, on facts, there was no failure on part of assessee to disclose truly and fully all material facts necessary for assessment and, therefore, reassessment proceedings initiated merely on basis of change of opinion deserved to be set aside - Held, yes [Paras 8 and 10] [In favour of assessee]"

4.13 Considering the above decisions, reassessment notice relating to alleged escapement of income relating to disallowance under Section 14A is mere change of opinion on part of the subsequent Assessing Officer. In view of detailed discussions made herein above, reassessment notice issued by AO is nothing but an invalid notice. Therefore, additional ground of appeal filed by Appellant is allowed and reassessment order is quashed."

4. Aggrieved against the appellate order, Revenue is in appeal before us raising following Grounds of appeal:-

> "1. On the facts and in the circumstances of the case and in law, the ld CIT(A) has erred in quashing the assessment order holding that the reasons recorded by the AO are based upon factually incorrect details or same are non-existing, without considering the discrepancies pointed out in the report u/s 142(2A) submitted by the Special Auditor.
>
> 2. On the facts and in the circumstances of the case and in law, the ld CIT(A) has erred in deleting the disallowance of Rs. 13,89,08,810/- made u/s 43(5) read with section 73 and 40A(2)(b) of the Act.
>
> 3. On the facts and in the circumstances of the case and in law, the ld CIT(A) has erred in quashing the assessment order holding that reassessment notice relating to alleged escapement of income relating to disallowance u/s.14A is mere change of opinion on part of the subsequent Assessing Officer, without considering the difference in computing the disallowance u/s 14A r.w.r 8D.
>
> 4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.
>
> 5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

4.1. The Grounds of Cross Objection filed by the assessee are as under:-

> "1. In law and on the facts and in the circumstances of the appellant's case, the Ld. Assessing Officer has erred in directing the special audit under Section 142-2A without satisfying about the complexity of this account and that the nature of accounts have remained the same since years.
>
> 2. In law and on the facts and in the circumstances of the appellant's case, the learned Assessing Officer has erred in disallowing the loss of Rs 13,89,08,810/- by treating the same as speculative in nature, as loss was incurred during normal course of business, which is genuine business loss.

3. In law and on the facts and in the circumstances of the appellant's case, the learned Assessing Officer has erred in making disallowance u/s 14A of Rs. 1,04,652/- when no exempt income is earned.

4. The appellant craves to add to, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

5. Ld CIT DR Shri Sudhendu Das appearing for the Revenue could not dispute the above facts and also could not place on record any contrary decision passed by the Ld CIT[A], however he pleaded to sustain the addition made by the Assessing Officer and allow the department appeal.

6. Per contra Ld Counsel Mr. Vartik Chokshi appearing for the assessee submitted that the first issue of reopening of assessment itself is bad in law since the issue of disallowance u/s.14A r.w.r. 8D was originally considered in the regular assessment stage, therefore cannot be reopen after four years for reworking of the same, when there is no failure on the part of assessee in disclosing the income. Further the Hon'ble ITAT already deleted the disallowance u/s.14A, since there was no dividend income earned by the assessee during this Asst. year. Similarly the second issue of reopening of assessment is also bad in law since the assessee has not carried out any transactions with NSEL during this Asst. year and even figure of alleged escapement of income amounting to Rs.244.98 crores pertains to addition made by Ld AO relating to the Asst Year 2011-12. When the reasons recorded are not resulted in escapement of income, Ld AO cannot travel beyond these reasons

and make new additions/disallowances and relied upon series of case laws. Thus Ld Counsel pleaded that the appellate order passed by the Ld CIT[A] does not require any interference and the Revenue appeal is liable to be dismissed and the Cross Objection filed by the assessee is to be allowed.

7. We have heard rival submissions at length and also considered the materials placed on record. It is undisputed fact that the assessee filed its Original Return of Income which was taken for scrutiny assessment and regular assessment order u/s.143(3) of the Act was passed on 29-12-2011 assessing the total income at Rs.22,55,48,604/-. It is four years thereafter but within six years reopened the assessment by issuing a notice u/s. 148 on 09-03-2015 recording two reasons namely [a] disallowance u/s. 14A r.w.r. 8D was wrongly worked out at Rs.1,13,521 instead of Rs.2,18,174 and [b] the amount received from NSEL amounting to Rs.244.98 crores is in the nature of income brought in the account of debtors in the guise of so called paper trade and which needs to be taxed in the hands of the assessee company.

7.1. On first reason for reopening being disallowance u/s.14A for Rs.2,18,174/- is concerned, it is observed that addition u/s.14A for Rs.1,13,521/- was made in original Assessment Order dated 29-12-2011. On appeal before this Tribunal vide Appellate Order dated 27-07-2016 in ITA No.1986 & 2133/Ahd/2012, Co-ordinate Bench of this Tribunal deleted the addition on account of disallowance u/s.14A, since the assessee has not received any dividend income during this Asst. year following jurisdictional High Court

judgement. Further we notice that there is no failure on the part of the assessee in disclosing the above income in the Return of Income, therefore the reopening of assessment beyond four years is invalid in the eye of law as held by the Jurisdictional High Court in the case of CIT -Vs- Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat) wherein it is held as follows:

> **"... 30.** We may also approach the question from a slightly different angle. It is not in dispute that once an assessment is reopened by a valid exercise of jurisdiction under Section 147 of the Act, it is open for the Assessing Officer to assess or reassess any income which had escaped assessment which comes to his light during the course of his assessment proceedings which was not mentioned in the reason for issuing notice under Section 148 of the Act. In a notice for reassessment which has been issued beyond a period of four years from the end of relevant assessment year, the condition that income chargeable to tax has escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts for the purpose of assessment must also be established unless of course some other ground viz. non-filing of the return at all etc. is available to the Assessing Officer. **If such non-disclosure of material facts is established with respect to the reason recorded for issuing notice for reopening the assessment, it would be open for the Assessing Officer to thereafter even assess other income which might have escaped assessment but which may not necessarily satisfy the requirement of non-disclosure of true and full material facts.** If in such a situation, the stand of the revenue is accepted, a very incongruent situation would come about if ultimately the Assessing Officer were to drop the ground on which notice for reopening had been issued but to chase some other grounds not so mentioned for issuance of the notice. In such a situation, even if a case where notice for reopening has been issued beyond a period of four years, the assessment would continue even though on all the grounds on which the additions are being made, there was no failure on the part of the assessee to disclose true and full material facts. In such a situation an important requirement of failure on part of the

> assessee to disclose truly and fully all material facts would be totally circumvented.
>
> **31.** As already noted, except for the Punjab and Haryana High Court in case of *Majinder Singh Kang* (*supra*) all courts have uniformly taken a view that Explanation 3 to Section 147 of the Act does not change the situation insofar as the present controversy is concerned. Leading decision of Bombay High Court in case of *Jet Airways (I) Ltd.* (*supra*) has been followed by different High Courts. In case of *Jet Airways (I) Ltd.* (*supra*) the High Court, in its elaborate decision considering the statutory provisions, different judicial pronouncements and the explanatory memorandum for introduction of Explanation 3 to Section 147 of the Act ruled in favour of the assessee."

8. On second reason for reopening the assessment, the assessee claimed that it had no transaction carried out with NSEL in the present asst year, which is also accepted by the Special Auditor in his report u/s.142A of the Act. Whereas the figure of Rs.244.98 crores was nothing but addition made in Assessee's own case for the Asst. Year 2011-12 in the regular Assessment Order passed on 21-11-2014. On appeal before this Tribunal vide Appellate Order dated 16-11-2022 in ITA Nos.328 & 329/Ahd/2017 deleted the above addition also. **Therefore the income escaped as mentioned in the 'reason recorded' by the Ld AO is not relating to the present Asst. year 2009-10 the same is invalid in the eyes of law and the reassessment is liable to be quashed**.

9. Now next question that arise for our consideration is whether the AO can proceed with assessing any other escaped income, when NO addition is made on account of the reasons recorded by the AO for reassessment. This issue is also no more res-integra by judgements of various High Courts more particularly jurisdictional

High Court in the case of Mohmed Juned Dadani [cited supra] wherein it was held that when the ground on which reopening of assessment and no addition was made by the Ld AO, he could not make additions on some other grounds which did not form part of reasons recorded by him by observing as follows:

> **"... 23.** Section 147 of the Act, even without the aid of Explanation 3 thus enabled the Assessing Officer while framing an assessment under Section 147 of the Act, to assess or reassess such income for which he had recorded his reasons to believe had escaped assessment and also any other income which escaped assessment which came to his notice subsequently in the course of the assessment proceedings.
>
> **24.** Sans explanation (3), Section 147 of the Act, however, by no stretch of imagination, can be construed as to provide that if the reason on which the assessment is reopened fails, the Assessing Officer still can proceed to assess some other income which according to him had escaped assessment and which came to his light during the course of the assessment. **For assuming jurisdiction to frame an assessment under Section 147 of the Act what is essential is a valid reopening of a previously closed assessment. If the very foundation of the reopening is knocked out, any further proceeding in respect to such assessment naturally would not survive.**
>
> **25.** A question may therefore, arise whether introduction of Explanation (3) would change this position and for that purpose we need to ascertain what is true purport of Explanation 3 and the purpose for which the same was introduced. Let us have a closer look to such Explanation which provides that for the purpose of assessment or reassessment under the said section, the Assessing Officer may assess or reassess the income in respect of any issue which escaped assessment and which comes to his notice subsequently in the course of reassessment proceedings. The explanation further provides that this would be so notwithstanding that the reasons for such issue have not been included in the reasons recorded under Section 148(2).
>
> **26.** If the contention of the assessee that even after introduction of Explanation 3 to Section 147 of the Act, the situation has not

undergone any material change is accepted, the question that immediately would come to one's mind is, what then was the purpose of introducing such an explanation. An argument may arise that if before and after introduction of Explanation 3, the nature of jurisdiction exercised by the Assessing Officer was not to undergo any change, would Explanation 3 not be rendered redundant. Would such a situation not run counter to a well known legal principle that the Legislature cannot be seen to have enacted a redundant legislation and that every effort should be made to give such interpretation which ensures that a provision in a statute is not rendering otiose. Such question may have led to some interesting discussion. However, the entire issue has been put beyond any pale of controversy by virtue of the explanatory memorandum for introducing such explanation. Such explanatory memorandum reads as under:

> "Clarificatory amendment in respect of reassessment Proceeding under section 147
>
> The existing provisions of section 147 provides, inter alia, 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 after recording reasons for reopening the assessment. Further, he may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.
>
> Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.
>
> With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

> This amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to assessment year 1989-1990 and subsequent years."

27. From the above, it can be seen that the explanation was meant to be clarificatory in nature and to put the issue beyond any legal controversy. When the Legislature found that in face of the provisions contained in Section 147 of the Act post 01.04.1989 some of the courts had taken a view that the Assessing Officer is restricted to the reassessment proceedings only on issues in respect of which the reasons were recorded for reopening the assessment, such explanation was introduced in the statute. **Thus, the explanation was meant to be merely clarificatory in nature and was introduced with the purpose of putting at rest the legal controversy regarding the true interpretation of Section 147 of the Act which had arisen on account of certain judicial pronouncements.** We have noticed that prior to enactment of Explanation 3 to Section 147, Punjab and Haryana High Court in case of *Commissioner of Income Tax* v*. Atlas Cycle Industries* reported in 180 ITR 319 (*supra*) had taken a restricted view of the power of the Assessing Officer to make any addition on the grounds not mentioned in the reasons recorded for reopening the assessment. We may also notice that Kerela High Court in case of *Travencore Cements Ltd.* v*. Asstt. CIT* [2008] 305 ITR 170/[2009] 179 Taxman 117 had taken somewhat similar stand.

28. Explanation 3 to Section 147 of the Act thus does not in any manner, even purport to expand the powers of the Assessing Officer under Section 147 of the Act. In any case, an explanation cannot expand the scope and sweep of the main body of the statutory provision. In case of *S.Sundaram Pillai* v*. V.R. Pattabiraman* AIR 1985 (SC) 582 the Supreme Court observed that, **an explanation added to a statutory provision is not a substantive provision but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision**. It was observed as under:

> "52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-
>
> (*a*) to explain the meaning and intendment of the Act itself.
>
> (*b*) where there is any obscruity or vagueness in the main

enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.

(*c*) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(*d*) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment.

(*e*) It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

29. Above decision has been referred to and relied upon in several subsequent decisions. Above proposition being well settled, it is not necessary to refer to all such decisions. ”

9.1. Respectfully following the above judicial precedents we do not find any infirmity in the order passed by Ld CIT[A] quashing the reassessment order as without jurisdiction. Therefore the new [not forming part of ‘reasons recorded’] addition made u/s. 43(5) r.w.s. 73 and section 40A(2)(b) of Rs.13,89,08,810/- is liable to deleted. Thus the grounds raised by the Revenue on merits of the case does not require adjudication, since the very reassessment itself is held invalid in the eyes of law.

10. In the result **the appeal filed by the Revenue is hereby dismissed.**

11. Since **the Cross Objection filed by the assessee only supports the order passed by Ld CIT[A], the same is allowed.**

12. In the combined result, the **appeal filed by the Revenue is dismissed** and the **Cross Appeal filed by the Assessee is hereby allowed.**

Order pronounced in the open court on 12-11-2024

Sd/-	**Sd/-**
(NARENDRA PRASAD SINHA)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad :
Dated 12/11/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद