

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

<b>ITA No.</b>	<b>A.Y.</b>	<b>Appellant</b>	<b>Respondent</b>
717/Mum/2024	2014-15	SSSP Consultant and Techno Services Private Limited, A-1, Manish Kaveri Building, JP Road, Manish Nagar, Andheri West, Mumbai PAN: AAACS5714L	ACIT, Room No. 1924, Air India Building, Nariman Point, Mumbai
719/Mum/2024	2015-16		

For Assessee :	Shri Naresh Jain, Shri Shobhit Mishra & Shri Anand Kanse
For Revenue :	Ms. Monika H. Pande
Date of Hearing :	27-01-2025
Date of Pronouncement :	12-02-2025

**ORDER**

**PER B.R. BASKARAN, A.M :**

Both the appeals filed by the assessee relate to the Assessment Years (AYs.) 2014-15 & 2015-16 and they are directed against the order(s) passed by the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai [‘Ld.CIT(A)’]. In both the years, the assessee *inter alia*, is challenging the validity of reopening of assessment.

2. We heard the parties on the legal issue of validity of reopening of assessment.

3. The facts relating to the case are stated in brief. The assessee was earlier known as “Srijan Holdings Ltd.”. The Revenue carried out a survey operation u/s. 133A of the Income Tax Act, 1961 (‘the Act’) in the case of Shri Pushpendra Bansal Group on 05-09-2019. The assessee was also covered by the survey operation. Subsequent thereto, the AO reopened the assessment of both the years under consideration. The reasons recorded by the AO for reopening of the assessment of both the years are extracted below:

**“AY.2014-15**

*Brief details of the assessee: Shri Pushpendra Bansal and Smt. Sangita Bansal are Directors/promoters in M/s Lords Inn Hotels & Developers Limited and in some other companies (Lords Group). The Group is engaged into business of running hotels. Their main hotels are in Surat, Vadodara and Dahej etc. These hotels are owned by them and they also run many other hotels on lease basis.*

*Brief details of the information: It was alleged that Shri Pushpendra Bansal (PAN- ABIPB2394M) and Smt Sangita Bansal (AGIPB1414D) have made huge expenses of 100 Cr on their daughter's marriage, introduced their unaccounted money in garb of unsecured loans and booked bogus expenses in some of their entities. Based on the information, survey action under section 133A of Income Tax Act, 1961(the Act) was conducted on 05.09.2019. The premises of M/s. SSSP Consultant and Techno Service Ltd. is also covered u/s. 133A of IT Act, 1961. Thereafter the case is assigned to this charge and Survey report is forwarded to this office.*

*Basis of forming reasons to believe and details of escapement of income. The undersigned have gone through the documents impounded during the survey proceedings, Survey report and Return of Income filed by assessee. On perusal of the same and on verification of the books of accounts, extracted from the tally software, impounded at the assessee main business premise of M/s Lords Inn Hotels & Developers Limited, it is noticed that unsecured loans have been taken by M/s. SSSP Consultant and Techno Service Ltd. The loan taken by is mainly from Suratbased parties. The quantum of loan is identified and the list of names of lenders has been compiled. It is seen that there has been no change in most of the name of lenders over a period of more than 6 years. There has been no payment of interest for these years.*

*Unsecured loan in case of M/s. SSSP Consultant and Techno Service Ltd. for F.Y-2013-14.*

<u>Sr. No.</u>	<u>Name of person</u>	<u>Loan amount (INR)</u>
1.	Anjali Enterprise	72,77,250
2.	J.B Developers (AFBPC8238E)	1,35,00,000
3.	J.B Finance Co. (AFBPC8238E)	55,00,000
	Total	2,62,77,250

*In this case, PAN and any other details of Anjali Enterprises was not provided by assessee, hence identity, genuineness of transactions and credit worthiness of the lender Anjali Enterprises is not established.*

*Further, Shri Manbir Singh Chhabra (prop. of J B Developers and JB Finance) did not submit any supporting evidence for the loan given except confirmation but did not produce his balance sheets and banks accounts. The return of income of Shri Manbir Singh Chhabra for FY 2013-14 (AY 2014-15) and FY 2014-15 (AY 2015-16) are Rs. 10,57,520/- and Rs. 8,15,678/- respectively which is very less as compared to the loan provided. Thus the genuineness and credit worthiness of the lender is not established.*

*In view of the above, it is observed that assessee has failed to establish identity, genuineness of transaction and credit worthiness of the above mentioned assessee. Therefore, the case needs to be reopened u/s. 148 of the I.T. Act, 1961.*

*Therefore, I have reasons to believe that income to the extent of Rs. 2,62,77,250/- chargeable to tax has escaped assessment within the meaning of Section 147 of the IT Act."*

**“AY.2015-16**

*Brief details of the assessee: Shri Pushpendra Bansal and Smt. Sangita Bansal are Directors/promoters in M/s Lords Inn Hotels & Developers Limited and in some other companies (Lords Group). The Group is engaged into business of running hotels. Their main hotels are in Surat, Vadodara and Dahej etc. These hotels are owned by them and they also run many other hotels on lease basis.*

*Brief details of the information: It was alleged that Shri Pushpendra Bansal (PAN- ABIPB2394M) and Smt Sangita Bansal (AGIPB1414D) have made huge expenses of 100 Cr on their daughter's marriage, introduced their unaccounted money in garb of unsecured loans and booked bogus expenses in some of their entities. Based on the information, survey action under section 133A of Income Tax Act, 1961 (the Act) was conducted on 05.09.2019. The premises of M/s. SSSP Consultant and Techno Service Ltd. is also covered u/s. 133A of*

*IT Act, 1961. Thereafter the case is assigned to this charge and Survey report is forwarded to this office.*

*Basis of forming reasons to believe and details of escapement of income. The undersigned have gone through the documents impounded during the survey proceedings, Survey report and Return of Income filed by assessee. On perusal of the same and on verification of the books of accounts, extracted from the tally software, impounded at the assessee main business premise of M/s Lords Inn Hotels & Developers Limited, it is noticed that unsecured loans have been taken by M/s.SSSP Consultant and Techno Service Ltd. The loan taken by is mainly from Surat based parties. The quantum of loan is identified and the list of names of lenders has been compiled. It is seen that there has been no change in most of the name of lenders over a period of more than 6 years. There has been no payment of interest for these years.*

*Unsecured loan in case of M/s. SSSP Consultant and Techno Service Ltd. for F.Y-2014-15*

<u>Sr. No.</u>	<u>Name of person</u>	<u>Loan amount (INR)</u>
1.	J.B Developers (AFBPC8238E)	3,25,00,000/-
2.	J.B. Finance Co (AFBPC8238E)	3,40,00,000/-
	Total	6,65,00,000/-

*In this case, Shri Manbir Singh Chhabra (prop. of J B Developers and J B Finance) did not submit any supporting evidence for the loan given except confirmation but did not produce his balance sheets and banks accounts. The return of income of Shri Manbir Singh Chhabra for FY 2013-14 (AY 2014-15) and FY 2014-15 (AY 2015-16) are Rs. 10,57,520/- and Rs. 8,15,678/- respectively. Thus the genuineness and credit worthiness of the lender is not established.*

*In view of the above, it is observed that assessee has failed to establish identity, genuineness of transaction and credit worthiness of the above mentioned assessee. Therefore, the case needs to be reopened u/s. 148 of the I.T. Act, 1961.*

*Therefore, I have reasons to believe that income to the extent of Rs.6,65,00,000/- chargeable to tax has escaped assessment within the meaning of Section 147 of the IT Act."*

Before the Ld.CIT(A), the assessee challenged the validity of reopening of the assessments of both the years, but could not succeed.

4. The Ld.AR submitted that the AO has simply extracted the details furnished by the survey officials in the reasons for reopening of assessment, which shows that the AO did not apply his mind independently in order to arrive at the belief that there was escapement of income in both the years. He contended that, in the absence of independent application of mind, the impugned reopening of assessments of both the years under consideration are bad in law. Explaining further, the Ld.AR submitted that the AO has referred to the loans taken from three parties in AY. 2014-15 and two parties in AY. 2015-16 and further observed these loans are outstanding for more than six years and no interest was paid to them in all the years. However, the fact would remain that these loans have been repaid by the assessee either in the same year or in the subsequent year. Hence the main reason for reopening of assessment is against the facts available on record. It also shows that the assessing officer did not have any tangible material to support his observations and further he did not apply his mind on the information supplied by the survey officials by examining the record. Hence, the AO could not have entertained the belief that there was escapement of income. In this regard, the Ld.AR placed reliance on the following case law:-

- a. Ankita A. Choksey vs. ITO, [2019] 411 ITR 207 (Bom);
- b. Paranjape Schemes (Construction) Limited vs. DCIT,  
2024 (3) TMI 736 – Bombay High Court

4.1. The Ld.AR further submitted that the AO has taken the view that the above said loans may be accommodation entries. The Ld A.R submitted that the assessee has repaid the loans either in the same year or in the subsequent years. In this regard, the Ld.AR invited our attention to the ledger account copies placed in the Paper Book. He

submitted that, in the following cases, it has been held by Hon'ble High Courts that the genuineness of the loans cannot be doubted with, when the assessee has repaid the loan.

- a. The Principal Commissioner of Income Tax vs. Merrygold Gems Pvt. Ltd., 2024 (6) TMI 1371 – Gujarat High Court;
- b. The Principal Commissioner of Income Tax vs. Skylark Build 2018 (10) TMI 1513 – Bombay High Court;
- c. Commissioner of Income Tax vs. Ayachi Chandrashekhar Narsangji, 2013 (12) TMI 372 – Gujarat High Court

The Ld A.R submitted the AO has proceeded to reopen the assessment on the belief that the above said loans are mere accommodation entries only, but he did not have any tangible material to arrive at such a conclusion.

4.2. Accordingly, the Ld.AR contended that the basic ingredients required for reopening of assessment, i.e., formation of belief that there was escapement of income on the basis of correct facts and tangible materials are not available in the instant cases. Further, the AO has entertained belief on borrowed satisfaction and without application of mind, which is not permissible. Accordingly, the ld A.R submitted that the reopening of assessments of both the years under consideration are bad in law.

5. The Ld.DR, on the contrary, placed reliance on the order passed by the Ld.CIT(A) on this legal issue.

6. We heard the parties and perused the record. The primary condition to be satisfied by the AO before reopening of assessment is that he should have reason to believe that any income chargeable to tax has escaped the assessment for any assessment year. Further, the

reason to believe must be based on correct facts and tangible material, which has got live link with the reasons. It has been held so by Hon'ble jurisdictional Bombay High Court in the case of Ankita A Choksey vs. ITO (2019) (411 ITR 207) (Bom) and the relevant observations made by Hon'ble Bombay High Court are extracted below:-

*6. It is a settled position in law that the Assessing Officer acquires jurisdiction to issue a reopening notice only when he has reason to believe that income chargeable to tax has escaped Assessment. This basic condition precedent is applicable whether the return of income was processed under Section 143(1) of the Act by intimation or assessed by scrutiny under Section 143(3) of the Act. [See Asst. Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers (P) Ltd., (SC) 291 ITR 500 and PCIT v/s. M/s. Shodimen Investments (Bombay) 2018 (93) Taxman.Com 153]. Further, the reasons to believe that income chargeable to tax has escaped Assessment must be on correct facts. If the facts, as recorded in the reasons are not correct and the assessee points out the same in its objections, then the order on objection must deal with it and prima facie, establish that the facts stated by it in its reasons as recorded are correct. In the absence of the order of objections dealing with the assertion of the Assessee that the correct facts are not as recorded in the reason, it would be safe to draw an adverse inference against the Revenue.*

*7 Thus, we are of the view that even in cases where the return of income has been accepted by processing under Section 143(1) of the Act, reopening of an assessment can only be done when the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. The mere fact that the return has been processed under Section 143(1) of the Act, does not give the Assessing Officer a carte blanche to issue a reopening notice. The condition precedent of reason to believe that income chargeable to tax has escaped assessment on correct facts, must be satisfied by the Assessing Officer so as to have jurisdiction to issue the reopening notice. In the present case, the Assessing Officer has proceeded on fundamentally wrong facts to come to the reasonable belief conclusion that income chargeable to tax has escaped assessment. Further, even when the same is pointed out by the Petitioner, the Assessing Officer in its order disposing off the objection does not deal with factual position asserted by the Petitioner. Thus, it would be safe to conclude that the Revenue does not dispute the facts stated by the Petitioner. On the facts as found, there could be no reason for the Assessing Officer to believe that income chargeable to tax has escaped assessment.*

*8 Therefore, in the above view, as the impugned notice is without jurisdiction, it is quashed and set aside.”*

7. On a careful perusal of the reasons recorded by the AO in both the years, we notice that the triggering point for the AO to reopen the assessments of both the years is the opinion reached by the survey team during the course of survey operation conducted in the hands of the assessee and also in the hands of Shri Pushpendra Bansal & Smt Sangita Bansal on 05-09-2019. The reason for conducting of survey operations were stated as the huge marriage expenses incurred by the above said persons on the marriage of their daughter and for that purpose, it is alleged that they have introduced their unaccounted money in the form of unsecured loans.

7.1. From the perusal of the reasons for reopening, we notice that there is no connection between the information received by the AO from survey team and the reasons to believe that there was escapement of income in the hands of the assessee. We arrive at such a conclusion for the following reasons:-

(a) It can be noticed that the information relating to a marriage supplied by the Survey team is pertaining to Shri Pushpendra Bansal & Smt Sangita Bansal and it may not relate to the assessee herein, since assessee herein is a private limited company. The marriage of daughter of above said persons is nothing to do with the assessee.

(b) Further, the information pertains to the year 2019. It is not discernible as to how this information could lead to the belief of escapement of income in the hands of the assessee, which is limited company during the two years under consideration. It is also not established that how the impugned loans taken during the years under consideration were connected with the alleged claim made by the survey team. No material was brought on record to

show that the funds received by way of loans have been used for personal purposes of the directors of the assessee company.

(c) Now coming to the facts of the case, the AO has recorded that the loans taken from the parties in these two years remained outstanding for more than 6 years. However, but the facts prevailing in the instant case would show that the above-mentioned loans have been repaid either in the same year or in the succeeding year. Hence, the facts noted by the AO in the reasons for reopening of assessment is an incorrect fact in both the years.

(d) We noticed earlier that the AO has mentioned in the reasons for reopening that these loans are outstanding for more than six years and we have seen it is against the facts available on record. Hence, this fact proves that the above said observations made by the AO might be that of survey team and AO has simply copied the same in the reasons for reopening. In that case, there is merit in the contentions of the assessee that there was no independent application of mind by the AO. Consequently, there is merit in the contentions of the assessee that the reopening has been done on the basis of borrowed satisfaction, which is not permitted.

(e) No tangible material was brought on record to support the reasons that the loans were accommodation entries and they were outstanding for more than 6 years.

(f) We also notice that the AO has opined that the assessee has not proved the identity, creditworthiness of the lender and also the genuineness of the transaction. It is not discernible as to how the AO could come to such a conclusion at the time of recording for reasons for reopening itself, when the assessee was not asked to prove the loans taken from these parties.

7.2. Hence, we are of the view that the reasons recorded by the AO is very vague in nature and there is merit in the submissions of the Ld.AR that it could be a case of borrowed satisfaction. Further, it is the submission of the assessee that the loans have been repaid either in the same year or in the subsequent year, hence, the very observation that these loans are outstanding for more than six years is also false. Further, the AO has not brought any tangible material to support his reasons. Under these set of facts, we are of the view that the AO could not have entertained the belief that there was escapement of income on account of taking loan by way of accommodation entries.

8. In view of the foregoing discussions, we are of the view that the reopening of assessment is bad in law in both the years under consideration. Accordingly, we quash the orders passed by the tax authorities in both the years.

9. Since we have decided the legal issue in favour of the assessee, the adjudication of grounds urged on merits is not required.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 12-02-2025

Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai,

Date: 12-02-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai