

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2715/MUM/2025
Assessment Year: 2009-10
&
ITA No. 2714/MUM/2025
Assessment Year: 2011-12**

M/s Parvesh Construction Pvt. Ltd.
16/1 Gulzar Apartment, D.K.Cross
Road, Ranibaug, Byculla,
Mumbai – 400 027

DCIT 8(2)(1), Mumbai
Aaykar Bhavan, M.K.Road,
Mumbai- 400 020
Vs.

**PAN NO. AACCP 8801 D
Appellant**

Respondent

Assessee by : Mr. Nishit Gandhi
Revenue by : Mr. R A Dhyani, CIT-DR

Date of Hearing : 18/06/2025
Date of pronouncement : 30/06/2025

ORDER

PER BENCH

These appeals by the assessee are directed against two separate orders, both dated 12.03.2025, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment years 2009-



10 and 2011-12 respectively. As common issues-in-dispute are involved in these appeals, therefore same were heard together and disposed off by way of this consolidated order for sake of convenience.

2. Firstly, we take up the appeal for A.Y. 2009-2010. The grounds raised by the assessee are reproduced as under:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the reassessment proceedings initiated by the Ld. A.O. u/s 147 of the I. T. Act, 1961 and issuing the notice u/s 148 of the I. T. Act, 1961 since the same is grossly incorrect, invalid and bad in law.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the notice issued by the Ld. A.O. u/s 148 of the I. T. Act, 1961 merely on the basis of information received by his office from ROC which is nothing more than borrowed satisfaction as there was no independent finding of the Ld. A.O. before issuing the notice u/s 148 of the I. T. Act, 1961.

3. On the facts and circumstances of the case and in law, the Ld. A.O. while recording the reasons has stated that shares of Rs. 100 were issued at share premium of Rs. 9,900 and that this investment does not appear to be backed by fundamentals of the assessee company as per its balance sheet as on 31 March 2009. Thus, the Ld. A.O. referred to income escaping assessment u/s 56(2)(viib) of the I. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such Alleged transaction

4. On the facts and circumstances of the case and in law, the Ld. A.O. had initiated the reassessment proceedings by alleging that the appellant company had received share premium from M/s Mangal Sago Pvt. Ltd. whereas no addition in respect of the alleged transaction was made by the Ld. A.O. while passing the reassessment order and the Ld. A.O. has independently assessed



other income which was not part of reasons recorded. The said action of the Ld. A.O. is grossly incorrect, invalid and bad in law.

5. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of share premium of Rs. 30,69,00,000/- u/s 68 of the I. T. Act, 1961 without understanding the fact that no addition in respect of share premium received from M/s Mangal Sago Pvt Ltd. was made which was part of reasons recorded on basis of which reassessment proceedings were initiated by the Ld. A.O. The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). The said action of the Ld. A.O. is grossly incorrect, invalid and bad in law.

6. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of advances received of Rs. 11,71,40,000/- u/s 68 of the I. T. Act, 1961 without understanding the fact that no addition in respect of share premium received from M/s Mangal Sago Pvt Ltd. was made which was part of reasons recorded on basis of which reassessment proceedings were initiated by the Ld. A.O. The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (I) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). The said action of the Ld. A.O. is grossly incorrect, invalid and bad in law.

7. On the facts and circumstances of the case and in law, the Ld. A.O. had erred by making disallowance u/s 14A r.w.r 8D of the I. T. Act, 1961 amounting to Rs. 4,768/- whereas the appellant had not earned any exempt income during the year under consideration and without understanding the fact that no addition in respect of share premium received from M/s Mangal Sago Pvt Ltd. was made which was part of reasons recorded on basis of which reassessment proceedings were initiated by the Ld. A.O. The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). The said action of the Ld. A.O. is grossly incorrect, invalid and bad in law.

8. On the facts and circumstances of the case and in law, the Ld. A.O. had erred by disallowing the F & O loss amounting to Rs. 1,43,42,244/- by alleging that F & O loss is speculation loss without understanding the fact that no addition in respect of share premium received from M/s Mangal Sago Pvt Ltd. was made which was part of reasons recorded on basis of which reassessment proceedings were



initiated by the Ld. A.O. The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). The said action of the Ld. A.O. is grossly incorrect, invalid and bad in law.

9. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not allowing an opportunity of cross examination with the concerned persons with whom the appellant had done transactions related to share premium and loans and advances. In this regard, the appellant relies on following decisions:

i. Kishanchand Chellaram vs CIT 1980 125 ITR 713 (SC).

ii. H. R. Mehta vs. ACIT, Mumbai (Bombay High Court) [2016] 72 taxmann.com 110 (Bombay).

10. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.”

3. The brief facts, as gathered from the record, are that the assessee, a company engaged in the business of construction and real estate development, filed its return of income for the relevant assessment year on 30.09.2009, declaring total income of ₹82,550/-. The said return was processed under Section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

3.1 Subsequently, on the basis of information received from the Office of the Registrar of Companies (ROC) vide letter dated 06.02.2015, it came to the notice of the Assessing Officer that during the relevant financial year, the assessee had issued 12,830 equity shares of face value ₹100 each to “M/s. Mangal Soga Private Limited” at a substantial premium of ₹9,900/- per share. Based on this information, the Assessing Officer recorded reasons to believe



that income had escaped assessment, and accordingly issued notice under Section 148 of the Act for reopening the assessment.

3.2 In response thereto, the assessee, vide letter dated 16.04.2015, submitted that the return of income originally filed on 30.09.2009 be treated as having been filed in response to the notice under Section 148 of the Act. Thereafter, the Assessing Officer issued requisite statutory notices under the Act and, upon completion of the reassessment proceedings in accordance with law, passed an order on 30.03.2016 making additions under Section 68 of the Act in respect of the share capital and share premium received during the year. In addition to the said addition, further additions/disallowances were made towards loans and advances, loss under futures and options (F&O), and under Section 14A of the Act.

3.3 Aggrieved by the reassessment order, the assessee preferred an appeal before the Id. CIT(A). The appeal, however, did not find favour with the Ld. CIT(A), who upheld the additions made by the Assessing Officer. The challenge raised by the assessee to the very validity of the reassessment proceedings was also rejected.

3.4 The assessee, being dissatisfied with the findings of the Id. CIT(A), preferred the present appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), raising grounds which, *inter alia*, assail the legality of the reassessment proceedings as well as the additions made there under.



4. We now proceed to consider the legal grounds raised by the assessee, particularly Ground Nos. 3 and 4, which challenge the validity of the reassessment proceedings on a jurisdictional issue.

4.1 The Learned counsel for the assessee contended that the reassessment is vitiated in law on the ground that no addition has been made in respect of the issue which formed the very basis for the Assessing Officer to initiate proceedings under Section 147 of the Act. It was submitted that the reasons recorded for reopening the assessment specifically referred to the receipt of share premium from M/s. Mangal Soga Private Limited, which the Assessing Officer alleged was not supported by commercial or financial justification, thereby giving rise to a belief that income chargeable to tax had escaped assessment. However, it was pointed out that no share premium was in fact received from M/s. Mangal Soga Private Limited during the year under consideration, and consequently, no addition has been made on that count in the reassessment order.

4.2 On this foundation, learned counsel relied on the decision of the Hon'ble Bombay High Court in *CIT v. Jet Airways (India) Ltd.* [(2011) 331 ITR 236 (Bom)], wherein it was held that once the reason to believe which led to the reopening of assessment fails—i.e., where no addition is ultimately made in respect of such reason—it is not open to the Assessing Officer to sustain reassessment on entirely unrelated or independent issues. It was thus contended that the



jurisdictional condition for invoking reassessment being absent, the entire proceedings stood vitiated in law and deserved to be quashed.

4.3 In opposition, learned Departmental Representative placed reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of *Majinder Singh Kang v. CIT* [(2012) 344 ITR 358 (P&H)], wherein it was held that even if no addition is made on the issue originally recorded for reopening, additions made on other issues during the course of reassessment would not render the entire reassessment void, provided such issues independently warrant scrutiny.

5. We have heard the rival submissions advanced by the parties and have perused the material available on record. Before addressing the legal issue raised, we consider it apposite to summarise the findings recorded by the Ld. CIT(A). The ld CIT(A) proceeded to uphold the validity of the reassessment proceedings initiated under Section 147 of Act relying on judicial precedents from various Hon'ble High Courts, including the decisions in *Cairn India Ltd. v. DDIT* [(2021) 129 taxmann.com 325 (Mad)], *CIT v. Best Wood Industries* [(2011) 11 taxmann.com 278 (Ker.-FB)], and *N. Govindaraju v. ITO* [TS-5339-HC-2015(Karnataka)-O], to conclude that the Assessing Officer is empowered, by virtue of Explanation 3 to Section 147, to make additions on any issue that comes to his notice during the reassessment proceedings, regardless of whether such issue formed the original basis for the reopening of the



assessment. It was emphasized that Explanation 3, inserted by the Finance (No.2) Act, 2009 with retrospective effect from 1 April 1989, clarifies the legislative intent that reassessment is not confined only to the reasons recorded at the time of reopening. The Ld. CIT(A) also referred to the judgment of the Hon'ble Punjab and Haryana High Court in *Majinder Singh Kang v. CIT (supra)*, to assert that reassessment does not become invalid merely because no addition is made on the issue which triggered the reopening. The Explanation, according to the Ld. CIT(A), supplements rather than restricts the scope of Section 147 of the Act. It has further been observed that, in the instant case, the reassessment was not based on an entirely unrelated issue. The very foundation of the reopening was the allegation that the assessee had issued shares at an unjustifiably high premium to entities lacking financial credibility. The Assessing Officer, upon due verification, proceeded to make an addition of ₹30.69 crores under Section 68 of the Act in respect of the share premium. Hence, the issue which formed the basis of the “reasons to believe” was indeed sustained and formed part of the reassessment. In addition, the Assessing Officer has also made other additions, such as disallowance under Section 14A and losses claimed on account of futures and options trading. The Ld. CIT(A), having examined the legal position and the factual backdrop, came to the conclusion that the reassessment was validly initiated with the prior approval mandated under Section 151 of the Act, and that due process—such as furnishing of reasons and disposal of



objections by a speaking order—had been scrupulously followed. Accordingly, the Ld. CIT(A) has dismissed the assessee’s challenge to the legality of the reassessment and upheld the additions made in the reassessment order, holding the same to be in conformity with the statutory mandate and the prevailing jurisprudence.

5.1 We have noted that the Ld. CIT(A) placed reliance upon the ruling of the Hon’ble Punjab and Haryana High Court in *Majinder Singh Kang v. CIT(supra)* to support the view that the Assessing Officer may proceed to make additions on other issues, even where no addition is ultimately made on the original ground which formed the basis of the reassessment. However, this aspect of the law stands clarified and authoritatively settled by the *jurisdictional High Court* in the case of *CIT v. Jet Airways (I) Ltd. (supra)*. In that judgment, the Hon’ble Bombay High Court undertook a detailed exposition of Section 147 post the insertion of Explanation 3 by the Finance (No. 2) Act, 2009 (retrospectively from 1.4.1989). The Hon’ble High Court construed the phrase “*such income and also any other income*” appearing in the section, holding that these words must be interpreted conjunctively and cumulatively, not disjunctively. The expression “such income” denotes the income for which the Assessing Officer has formed a reason to believe that it has escaped assessment. The phrase "and also" does not permit a disjointed or alternate approach, but rather mandates that the original ground must form the foundation of the reassessment. The



Hon'ble High Court thus held that *unless the Assessing Officer makes an addition in respect of the very income for which he had initially recorded "reasons to believe" and issued notice under Section 148, he cannot proceed to make additions on other issues which may subsequently come to his notice during the reassessment proceedings. If the original issue does not survive, then the jurisdiction to make other additions does not endure, and in such circumstances, the AO would be required to initiate fresh reassessment proceedings by issuing a new notice under Section 148.* The Hon'ble High Court further clarified that *while Explanation 3 to Section 147 was inserted to overcome the restrictive view adopted by certain High Courts [such as Vipan Khanna (supra) and Travancore Cements Ltd.(supra)], the Explanation cannot override the substantive requirement that reassessment must be founded upon an actual escapement of the income originally identified in the recorded reasons. The AO's jurisdiction is conditioned upon such income being actually brought to tax. In the absence thereof, the entire reassessment collapses.*

5.2 In our opinion the decision of Hon'ble High Court in the case of *Jet Airways (I) ltd (supra)* represents a binding declaration of law by the jurisdictional High Court that *the Assessing Officer must first assess the income forming the basis of the recorded reasons for reopening, and only thereafter can other escaped income be*



assessed. Failing this, the reassessment is rendered without jurisdiction and void ab-initio.

5.3. Further, Hon'ble Delhi High Court in the case of **Principal Commissioner of Income-tax Vs. Sunlight Tour and Travels (P.) Ltd. reported in [2024] 169 Taxmann.com 673(Delhi)** has also held that Explanation to sec. 147 cannot be interpreted to mean that Assessing officer could assess other income of the assessee even in cases where no addition is made on the account of reasons for which re-assessment was initiated. The relevant finding of the Hon'ble High Court is reproduced asunder:

"18. It is also relevant to note that various courts had taken a view that the reassessment proceedings were confined under Section 147 of the Act only to the issues (reasons to believe) on the basis of which the assessments were reopened. Thus, there was no scope for making any addition other than those which were circumscribed by the reasons to believe as recorded by the AO prior to the issuing a notice under Section 148 of the Act. However, this controversy was set at rest by introduction of Explanation 3 by virtue of the Finance Act, 2009 with retrospective effect from 01.04.1989. Explanation 3 to Section 147 as applicable at the material time reads as under:

"Explanation 3. - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under subsection (2) of section 148."

19. It is apparent from the above that the said explanation merely clarified that the AO would assess or reassess the income in respect of the issue which had escaped assessment and such other issue, which came to the notice subsequently. However, the



said explanation does not control the import of the plain language Section 147 of the Act. Explanation 3 to Section 147 of the Act, merely clarifies that the jurisdiction of the Ld.AO was not confined to assessing or reassessing of the income of an Assessee only in respect of the issue, which formed a part of the reasons recorded for reopening the assessment. The said explanation cannot be interpreted to mean that the AO could assess other incomes of the Assessee even in cases where no addition is made on account of the reasons for which reassessment was initiated.

20. The Bombay High Court in Jet Airways (1) Limited (supra) had examined the import of Explanation 3 that was introduced to Section 147 of the Act by virtue of Finance (No.2) Act of 2009. It would also be relevant to refer to the following extracts of the said decision:

"22. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment of reassessment on grounds other than those on the basis of which a notice was issued under section 148. Setting out the reasons, for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance (No. 2) Act of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped



assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

5.4 Upon perusal of the reasons recorded for reopening, we find that the Assessing Officer had specifically noted the receipt of share premium from M/s. Mangal Soga Pvt. Ltd., which, according to him, was not supported by the financial fundamentals of the assessee-company. The formation of belief by the Assessing Officer that such share premium was in the nature of income that had escaped assessment formed the very foundation for invoking the jurisdiction under Section 147 of the Act. The relevant reasons recorded are reproduced as under:

"The return of income for A.Y. 2009-10 was filed on 30.09.2009 declaring total income of Rs.82,550/- and the same was accepted u/s.143(1) of the I.T. Act.

An information has been received from ROC vide letter No.ROC/IPC/111285/2013/158 dated 06.02.2015 through the Office of the DCIT(HQ), Coordination, Mumbai. The said letter was received in this Office on 17.03.2015. The ROC has forwarded the copy of technical scrutiny of document filed by the assessee company alleged to have received bribe in the award of contract of construction of Maharashtra Sadan, New Delhi in the form of issue of share premium from M/s. Mangal Sago P. Ltd.

As per this information, the assessee has issued 12830 shares of face value Rs.100/- each, to Mangal Sago P. Ltd. at a premium of Rs.9,900/- per share. As a result, the assessee company has received Rs.12.83 crore for issuing 12830 shares to M/s. Mangal Sago P. Ltd. It has further been alleged that this investment does not appear to be backed by fundamentals of the assessee company as per its balance sheet as on 31st March 2009. Further, the premium received also does not appear to be justifiable.



Taking into account the above information, I have reason to believe that the income related to the issue discussed above, which is chargeable to tax has escaped assessment for A.Y. 2009-10 by reason on part of the assessee to disclose fully and truly all material facts."

5.5 Whereas, we find that in the assessment order the assessing officer has made addition for share premium against following parties:

Sr. No.	Name of the subscriber	Face Value	Share Premium	Total	Returned Income for A.Y. 09-10
1	Ganga Builders Ltd.	25000	2475000	25,00,000	5850
2	Gyaneshwar Trading & Finance Co. Ltd.	50000	4950000	50,00,000	46163
3	Hingora Finvest P. Ltd.	2610000	258390000	26,10,00,000	Not given
4	Ispat Sheets Ltd.	50000	4950000	50,00,000	(-) 149280
5	Macro Soft Technology P. Ltd.	50000	4950000	50,00,000	7965
6	Nicco Securities P. Ltd.	50000	4950000	50,00,000	33352
7	Novelty Traders Ltd.	50000	4950000	50,00,000	21230
8	Olympus Vision P. Ltd.	50000	4950000	50,00,000	26943
9	Pentium Hi-Tech P. Ltd.	75000	7425000	75,00,000	17037
10	Shree Datta Industries (India) Ltd.	500000	No Premium	5,00,000	Not given
11	Sidh	50000	4950000	50,00,000	47569



	<i>Housing Development C. Ltd.</i>				
12	<i>Syncore Interactive</i>	400000	No Premium	4,00,000	Not given

5.6 Having considered the rival submissions and the material placed on record, and upon a careful examination of the reasons recorded by the Assessing Officer, it is evident that the foundation for reopening the assessment under Section 147 of the Act was the alleged receipt of share premium from M/s. Mangal Soga Pvt. Ltd., which, according to the Assessing Officer, was not commensurate with the financial fundamentals of the assessee-company and therefore represented income that had escaped assessment. However, upon conclusion of the reassessment proceedings, no addition has in fact been made by the Assessing Officer on this very issue which formed the sole basis for reopening the assessment. In such a situation, in view of the binding precedent laid down by the Hon'ble Jurisdictional High Court in the case of **Jet Airways (I) Ltd.** (supra), it is well settled that in the absence of any addition on the ground which formed the foundation for reopening, no further or other addition can be made in reassessment proceedings. Consequently, we are of the considered opinion that the reassessment proceedings stand vitiated in law. The relevant grounds raised by the assessee in this regard are therefore allowed.



6. As we have quashed the reassessment on the aforesaid legal ground, the remaining grounds raised on merits of the other additions have become purely academic and need not be adjudicated upon.

7. Now, we take up the appeal of the assessee for the Assessment year 2011-12. The grounds raised in appeal are reproduced as under:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the reassessment proceedings initiated by the Ld. A.O. u/s 147 of the 1. T. Act, 1961 and issuing the notice u/s 148 of the 1. T. Act, 1961 since the same is grossly incorrect, invalid and bad in law.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the notice issued by the Ld. A.O. u/s 148 of the 1. T. Act, 1961 merely on the basis of information received by his office from DCIT, CC Kolkata, which is nothing more than borrowed satisfaction as there was no independent finding of the Ld. A.O. before issuing the notice u/s 148 of the 1. T. Act, 1961.

3. On the facts and circumstances of the case and in law, the Ld. A.O. has erred relying on the information received by his office from DCIT, CC - Kolkata, without verifying the fact that, the transaction is related to AY 2011-12 and the statement recorded on 24/03/2014 of Shri. Anil Kumar Khemka u/s 131 of the I. T. Act, 1961 cannot be relied upon since he was not the director of the company M/s Sun View Retail on that date. He became the director of the said company on 06/03/2015. The Ld. A.O. without independently verifying the facts of the case issued the notice u/s 148 which is grossly incorrect, invalid and bad in law.

4. On the facts and circumstances of the case and in law, the Ld. A.O. has erred at the time of recording the reasons that the appellant has received the amount of Rs. 5,00,00,000/- from Mr. Anil Kumar Khemka for initiating the reassessment proceedings whereas the appellant has not received any such amount of Rs.



5,00,00,000/- from Mr. Anil Kumar Khemka. Thus, the reasons recorded by the L.d. A.O. for issuing notice u/s 148 of the I.T. Act, 1961 is itself incorrect, invalid and bad in law.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the Ld. A.O. in reasons recorded had stated that, Mr. Anil Kumar Khemka had provided share premium/ loan of Rs. 5,00,00,000/- to the appellant but no addition was made in reassessment order on account of any such transaction with Mr. Anil Kumar Khemka. The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by dismissing the ground that the Ld. A.O. in reasons recorded had stated that, share premium received over and above the intrinsic value of the share has escaped assessment. Thus, the Ld. A.O. referred to income escaping assessment u/s 56(2)(viib) of the I. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

7. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not providing the incriminating material/ evidence/ information received including the statement of Mr. Anil Kumar Khemka on whose statement reliance was placed even when asked for vide letter dated 13.09.2015 & 03.03.2016 even when asked for vide letter dated 13.09.2015 & 03.03.2016 since the reasons were recorded and reassessment order was passed on statement incriminating material and statement of Mr. Anil Kumar Khemka. Thus, in view of the above the reassessment



order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

8. On the facts and circumstances of the case and in law, the approval given to the Ld. A.O. u/s 151(2) for issuing the notice u/s 148 of the 1. T. Act, 1961 is in a mechanical manner and the reassessment order passed thereby is grossly incorrect, invalid and bad in law.

9. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of share capital & share premium received by the appellant during the year under consideration amounting to Rs. 39,93,00,000/- u/s 68 of the I. T. Act, 1961 without understanding the fact and circumstances of the case that in the reasons recorded Ld. A.O. had referred to income escaping assessment u/s 56(2)(viib) of the I. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

10. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of unsecured loans received by the appellant during the year under consideration amounting to Rs. 1,25,25,000/- u/s 68 of the I.T. Act, 1961 without understanding the fact and circumstances of the case: that in the reasons recorded Ld. A.O. had referred to income escaping assessment u/s 56(2)(viib) of the 1. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

11. On the facts and circumstances of the case and in law, the Ld. A.O. had made addition in respect of advances received by the appellant amounting to Rs. 9,85,00,000/- u/s 68 of the 1. T. Act,



1961 without understanding the fact and circumstances of the case that in the reasons recorded Ld. A.O. had referred to income escaping assessment u/s 56(2)(viib) of the I. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

12. On the facts and circumstances of the case and in law, the Ld. A.O. had erred by making disallowance u/s 14A r.w.r 8D of the I. T. Act, 1961 amounting to Rs. 4,71,831/- whereas the appellant had not earned any exempt income during the year under consideration and without understanding the fact and circumstances of the case that in the reasons recorded Ld. A.O. had referred to income escaping assessment u/s 56(2)(viib) of the I. T. Act, 1961; whereas no addition was made in the reassessment order u/s 56(2)(viib). The said issue is covered by the decision of Hon'ble Bombay High Court in case of CIT vs. Jet Airways (1) Limited, ITA no. 1714 of 2009 and the decision of Yashoda Shivappa Nagangoudar vs. ITO, [2022] 138 taxmann.com 296 (Bombay). Thus, the reassessment order passed by the Ld. A.O. is grossly incorrect, invalid and bad in law as there is no addition in respect such alleged transaction.

13. On the facts and circumstances of the case and in law, the Ld. A.O. has erred by not allowing an opportunity of cross examination with Shri. Anil Kumar Khemka on whose statement was relied upon for initiating the reassessment proceedings. In this regard, the appellant relies on following decisions:

i. Kishanchand Chellaram vs CIT 1980 125 ITR 713 (SC).

ii. H. R. Mehta vs. ACIT, Mumbai (Bombay High Court) [2016] 72 taxmann.com 110 (Bombay).

14. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.”



8. We have heard rival submission of the parties and perused the relevant material on record. The Learned Commissioner of Income Tax (Appeals), while adjudicating the validity of the reassessment proceedings, examined the legal issue as to whether additions on grounds other than those forming the basis of the recorded reasons for reopening can sustain independently, particularly when no addition is ultimately made on the original ground. In support thereof, the ld. CIT(A) relied upon various judicial pronouncements, notably including *Cairn India Ltd. (supra)*, *Best Wood Industries (supra)*, and *N. Govindaraju v. ITO (supra)*, to conclude that Explanation 3 to Section 147 of the Income Tax Act, inserted by Finance (No. 2) Act, 2009 with retrospective effect from 1 April 1989, empowered the Assessing Officer to assess or reassess income in respect of issues that came to light during the course of reassessment proceedings, even if such issues were not part of the reasons initially recorded. The ld CIT(A) drew a distinction between a “Proviso” and an “Explanation” by citing the decision of the Hon’ble Supreme Court in *Sundaram Pillai v. Pattabiraman* [(1985) 1 SCC 591], to emphasize that an Explanation cannot curtail the scope of the main provision but is to be read as clarificatory and supplementary. Further, reliance was placed on *Majinder Singh Kang v. CIT* (supra) and *CIT v. Mehak Finvest Pvt. Ltd.* [(2014) 367 ITR 769 (P&H)], wherein it was held that reassessment can be upheld even if no addition is made on the original ground, so long as additions are made on other issues that came to the Assessing



Officer's notice during the proceedings. The ld. CIT(A) distinguished the decisions of the Hon'ble Bombay High Court in *Jet Airways (I) Ltd.(supra)* and *Novartis India Ltd.(supra)*, on the factual premise that in the instant case, the addition of ₹30.69 crores under Section 68, being unexplained share premium, was directly related to the issue that formed the basis of the recorded reasons for reopening under Section 148 of the Act. It was found that the reopening was based on information regarding the receipt of share premium from investors whose financials did not justify such large investments, and the said issue was not only part of the reasons recorded but also formed the subject of addition made during reassessment. Therefore, the ratio of *Jet Airways (I) Ltd.(supra)* was held to be inapplicable. The CIT(A) also noted that the procedural requirements laid down by the Hon'ble Supreme Court — particularly in *GKN Driveshafts (India) Ltd. v. ITO (supra)*— were duly complied with, as reasons were recorded with prior sanction under Section 151 of the Act, were furnished to the assessee, and the objections were disposed of by a speaking order. Thus, the Learned CIT(A) concluded that the reassessment proceedings were validly initiated, the additions were made on grounds forming part of the reasons recorded, and the further additions under Section 14A and disallowance of loss on derivatives were sustainable under Explanation 3 to Section 147 of the Act.



9. But in view of the binding precedent laid down by the Hon'ble Jurisdictional High Court in the case of **Jet Airways (I) Ltd. (supra)**, the reliance placed by the Learned Commissioner of Income Tax (Appeals) on the decision of the Hon'ble Punjab and Haryana High Court in *Majinder Singh Kang v. CIT (supra)* is of no persuasive value in the present context, inasmuch as the law declared by the Hon'ble Jurisdictional High Court must prevail and bind the authorities within its territorial jurisdiction for the relevant assessment year under consideration.

9.1 In the instant case, the Assessing Officer recorded reasons to believe that the assessee had received accommodation entries to the tune of ₹5,00,00,000/- from one Shri Anil Kumar Khemka. The reopening was therefore premised *inter-alia* upon this specific allegation. However, it is an undisputed position that no addition whatsoever has been made by the Assessing Officer in the reassessment proceedings in respect of Shri Anil Kumar Khemka. The relevant reasons recorded by the Assessing Officer are reproduced below for completeness of record:

“The return of income for A.Y. 2009-10 was filed on 30.09.2009 declaring total income of Rs.82,550/- and the same was accepted u/s.143(1) of the I.T. Act.

An information has been received from ROC vide letter No.ROC/IPC/111285/2013/158 dated 06.02.2015 through the Office of the DCIT(HQ), Coordination, Mumbai. The said letter was received in this Office on 17.03.2015. The ROC has forwarded the



copy of technical scrutiny of document filed by the assessee company alleged to have received bribe in the award of contract of construction of Maharashtra Sadan, New Delhi in the form of issue of share premium from M/s. Mangal Sago P. Ltd.

As per this information, the assessee has issued 12830 shares of face value Rs.100/- each, to Mangal Sago P. Ltd. at a premium of Rs.9,900/- per share. As a result, the assessee company has received Rs.12.83 crore for issuing 12830 shares to M/s. Mangal Sago P. Ltd. It has further been alleged that this investment does not appear to be backed by fundamentals of the assessee company as per its balance sheet as on 31st March 2009. Further, the premium received also does not appear to be justifiable.

Taking into account the above information, I have reason to believe that the income related to the issue discussed above, which is chargeable to tax has escaped assessment for A.Y. 2009-10 by reason on part of the assessee to disclose fully and truly all material facts."

9.2. Perusal of the assessment order reveals that the additions ultimately made by the Assessing Officer pertain only to share premium received from other parties, and not in respect of the accommodation entry allegedly received from Shri Anil Kumar Khemka. Further, although the reasons recorded refer to the receipt of share premium over and above the intrinsic value of the shares, no addition has been made by invoking the provisions of Section 56(2)(x) of the Act. Instead, the addition has solely been made under Section 68 of the Act.

9.3 Thus, it is manifest that no addition has been made on the very issue which constituted the basis for the formation of the 'reason to believe' and the consequent issuance of notice under Section 148 of the Act. It is now settled law, in view of the decision



of the Hon'ble Bombay High Court in **Jet Airways (I) Ltd. (supra)**, that where no addition is made on the issue which forms the foundation of the reopening, the Assessing Officer is precluded from making additions on any other issue independently. Accordingly, following the same ratio and our finding in respect of the earlier assessment year 2009-10, the impugned additions made by the Assessing Officer on grounds other than the original reason recorded for reopening are held to be unsustainable in law. The legal infirmity in reassessment thus vitiates the entire proceedings. The issue is, therefore, decided in favour of the assessee.

10. As we have held that no addition can be made unless the addition on the basis of the reasons recorded is also made, the remaining grounds raised by the assessee challenging the merits of such additions are rendered academic and are dismissed as infructuous. We have not given any finding on the merit of the issue on the addition in both the assessment years.

11. In the result, both the appeal of the assessee is allowed.

Order pronounced in the open Court on 30/06/2025.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 30/06/2025
Disha Raut, Stenographer



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai