IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.2983/Mum/2025
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Circle 1(3)(1), Mumbai Room No.535, 5th Floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020	**vs**	**TMF Holdings Limited** 14, 4th Floor, SIR H C Dinshaw Building, 16, Horniman Circle, Fort, Mumbai-400 001 **PAN: AACCT4644A**
APPELLANT		**RESPONDENT**

C.O. No.132/Mum/2025
(Arising out of ITA No.2983/Mum/2025)
(Assessment Year: 2017-18)

TMF Holdings Limited 14, 4th Floor, SIR H C Dinshaw Building, 16, Horniman Circle, Fort, Mumbai-400 001 **PAN: AACCT4644A**	**vs**	**Deputy Commissioner of Income Tax, Circle 1(3)(1), Mumbai** Room No.535, 5th Floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020
CROSS OBJECTOR		**RESPONDENT**

Assessee by	:	Shri Rajan Vora a/w Shri Nikhil Tiwari & Shri Lekh Mehta
Respondent by	:	Shri Ritesh Mishra, CIT DR
Date of hearing	:	08/07/2025
Date of pronouncement	:	18/07/2025

O R D E R

Per Anikesh Banerjee (JM):

instant appeal of the revenue and cross objection by the assesse were filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter called, 'Ld. CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 26/02/2025. The impugned order emanated from the order of the National Faceless Assessment Centre, Delhi, passed under section 147 read with section 144B of the Act, date of order 31/03/2022.

ITA No.2983/Mum/2025

2. The revenue has raised the following grounds of appeal:-

"i). Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in quashing the impugned notice dated 30.03.2021 issued u/s.148 of the Income Tax Act, 1961 on account of change of opinion ignoring the provisions of Explanation 1 to Section 147 of the Act.

ii). Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in quashing the impugned notice dated 30.03.2021 ignoring the decision of the Hon'ble Apex Court in the case of Raymond Woollen Mills Ltd (1999)236 ITR 34 (SC) and ACIT v Rajesh Jhaveri Stock Brokers P. Ltd 291 ITR 500(SC).

iii). The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case are that assesse is a non-deposit taking non-banking financial company (NBFC) registered with Reserve Bank of India, primarily engaged in financing of Tata Motors' vehicles and is a captive financing arm of Tata

Motors Ltd (TML) and wholly owned subsidiary of Tata Motors Ltd. During the impugned assessment year, the assesse filed the return on 01/11/2017 and declaring loss amount to Rs.186 crores under normal provisions of the Act and the book loss was amount to Rs.112 crores under section 115JB of the Act. The assesse revised its return on 29/03/2019. The assessee's case was selected for scrutiny and finally the assessment was framed under section 143(3) of the Act on 18/12/2019. The assessee's case was reopened under section 147 of the Act by issuance of notice under section 148 dated 30/03/2021 on following grounds:-

(i) Disallowance of claim of right liability payment under section 37(1) of the Act of Rs.400 crores;

(ii) Tax liability of long term capital gains of Rs.25.35 crores arising on slump sale.

Finally, addition was confirmed amount to Rs.400 crore for disallowance under section 37(1) of the Act related to crystallised claim of right liability payment. The aggrieved assesse challenged the impugned assessment order before the Ld.CIT(A), both on legal and on merit. The Ld.CIT(A) adjudicated the legal ground and allowed the appeal of the assesse, but the ground on merit was not adjudicated by the Ld.CIT(A). Being aggrieved, the revenue filed an appeal by challenging the legal ground and the assesse filed Cross Objection by challenging the merit of the case.

4. The Ld.DR argued and filed a written submission, which is kept on record. The relevant part of the written submission is reproduced below:-

*"**Rebuttal to Technical Grounds - Validity of Reassessment***

3. It may kindly be noted that provision of explanation 1 to see 147 of the Act have been ignored the same is quoted below:

"147. If the Assessing Officer [has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may. subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 1- Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

4. It is respectfully submitted that even if the assessee has submitted books of accounts or other documents to the AO in the original assessment, it does not automatically mean that everything is disclosed fully and truly unless it is explicitly brought to the attention of the AO.

Reliance is placed on the following judgment with respect to above:

Phoolchand Bajrang Lal v. ITTO (1993) 203 1TR 456 (SC)

The Hon'ble Supreme Court held that even if information was available in the records, if the assessee did not fully and truly disclose all material facts, reassessment is valid.

Relevance to Explanation 1:

Just producing documents is not enough. Disclosure must be active and full have to infer or investigate to find the material facts.

Consolidated Photo and Finvest Ltd. v. ACIT (2006) 281 ITR 394 (Del.)

This judgment squarely supports the Revenue's power to reopen assessments under Section 147 when the assessment order is silent on a material issue, even if the underlying documents were part of the original record.

It reaffirms that the bar on reopening due to change of opinion applies only when a conscious decision was taken earlier. Mere filing of documents is not sufficient disclosure the assessee must fully and truly disclose all relevant facts specifically.

5. As regards to ground no.2, it is submitted that Ld. CIT(A) ignored decision Hon'ble Apex Court in ***Raymons Wollen Mills Ltd. (1999) 236 ITR 34 (SC)*** *wherein it is held that:*

At the stage of initiating reassessment proceedings, the court's role is limited to examining whether there is prima facie material on which the Assessing Officer could form a belief that income had escaped assessment. The sufficiency or correctness of the material is not to be evaluated at this stage.

The Court emphasized that it does not need to determine whether there was actual suppression of material facts by the assessee. Instead, it only assesses whether there was some material basis for the Assessing Officer to reopen the case. The decision establishes that for reassessment under Section 147, the Assessing Officer's "reason to believe" must be based on relevant and material grounds, but the courts will not delve into the adequacy or accuracy of those reasons at the initiation stage. This is a matter of subjective satisfaction of the Assessing Officer, subject to the condition that the belief is honest and based on reasonable grounds.

ACIT V/s. Rajesh Jhaveri Stocks Brokers P. Ltd 291 ITR 500 (SC)

It is respectfully submitted that the Rajesh Jhaveri case builds on the principles laid down in Raymond Woollen Mills. Both cases emphasize that the court's role at the stage of a Section 148

notice is limited to verifying whether there is prima facie material for the AO's belief that income has escaped assessment, not to evaluate the sufficiency or correctness of the material.

In Raymond Woollen Mills, the Court upheld the reassessment based on the undervaluation of closing stock, finding that the recorded reasons constituted valid prima facie material. Similarly. in Rajesh Jhaveri, the incorrect claim of bad debts was deemed sufficient to trigger reassessment. Both judgments reinforce that the AO's belief must be honest and based on reasonable grounds. but the final determination of escapement is a matter for the reassessment proceedings, not judicial review at the notice stage.

Hence Ld. CIT(A) erred in ignoring these two landmark decisions."

5. Alternatively, the Ld. AR filed a paper book containing documents pertaining to the factual aspects of the case and also submitted a written submission. The Ld. AR contended that the issue under consideration was duly examined during the scrutiny assessment conducted under section 143(3) of the Act. It was further submitted that a notice under section 142(1) along with a detailed questionnaire was issued in relation to the said issue. A copy of the said notice is available in the Assessee's Paper Book (APB) at pages 212 to 217.

In compliance with the said notice, the assessee furnished a reply vide letter dated 05.12.2019, which is placed on record at APB pages 204 to 316.

The relevant portion of the reply, as placed at APB page 210, is reproduced hereunder:

"11. Point No 12-On perusal of the records, it is seen that the assessee has claimed large "any other amount allowable as deduction" in Schedule BP of the return of income. Please also justify is allowability along with documentary evidences.

The break of amounts reported under "any other amount allowable as deduction" in schedule BP of the Return of Income along with justification is as under:

Nature of Expense	***Amount in Rs***	***Jusification***

Claim Right	*4,0000,00,000*	***Refer Annexure J***
Discount charges on Zero Coupon Debentures	*1,92,52,19,184*	***Refer Annexure K***
DMA Commission	*(6,46,44,0-75)*	***Refer Annexure L***
DSA Commission	*(2,14,53,490)*	***Refer Annexure M***
Total	***5,83,91,21,619***	

The arguments advanced by the Ld. AR pertain solely to the issue of jurisdiction exercised by the Ld. AO in issuing the notice under section 148 of the Act. The Ld. AR contended that, in the absence of any tangible material, the reopening of assessment based merely on a change of opinion is impermissible and, therefore, the proceedings initiated under section 147 are without jurisdiction and bad in law.

In support of the legal contention, the Ld. AR also filed a written submission, duly rebutting the contentions raised by the Ld. DR. The said written note is extracted hereinbelow:-

"We refer to the captioned appeal listed for hearing on 8 July 2025. During the course of the previous hearing on 3 July 2025, your Honours had requested the learned Departmental Representative to prepare and submit his written submissions which have been filed on 7 July 2025

In this regard and in continuation to the Respondent's brief synopsis, please find below our reply to the learned departmental representative's written submissions

<u>Distinguishing reliance placed on the decision in case of Phooichand Bajrang Lal (1993) 203 ITR 456 (SC)] and Consolidated Photo and Finvest Ltd. (2006) 281 ITR 394 (Delhi HC)]</u>

1 With regards to the above, it is humbly submitted that the learned CIT(A) in his order under section 250 of the Act dated 26 February 2025 (refer page nos. 12 to

62 of the Respondent's cross objections) has relied upon the provisions of section 147 of the Act and the meaning of "reason to believe' to hold that the impugned proceedings under section 147 of the Act are bad in law.

2 According to the learned CIT(A), for the proceedings to be valid, there should have been new set of material or facts having live linkage to escapement of income. On same material which was already submitted to the assessing officer in case of the assessment proceedings, the assessing officer cannot take a different view in the course of the proceedings under section 147 of the Act. Reference in this regard is placed on the following decisions:

- ***Kelvinator of India Ltd. [320 ITR 561 (SC)] [refer page nos. 411 to 413 of legal paperbook]***

- ***Castrol India Ltd. [(2024) 299 Taxman 71 dated 05 March 2024 (Bombay HC)] [refer page nos. 447 to 453 of legal paperbook]***

3 The learned Departmental Representative has relied on the proviso and explanation 1 to section 147 of the Act as well as the decision in case of Phoolchand Bajrang Lal ((1993) 203 ITR 456 (SC)] and Consolidated Photo and Finvest Ltd [(2006) 281 ITR 394 (Delhi HC)] in this regard

4 It is humbly submitted that the decision in case of Phoolchand Bajrang Lal ((1993) 203 ITR 456 (SC)] and Consolidated Photo and Finvest Ltd. ((2006) 281 ITR 394 (Delhi HC)] are in relation to Explanation 1 to section 147 of the Act and what can be referred to as full and true disclosure

5. However, it is humbly submitted that the proviso and explanation 1 to section 147 of the Act are additional layers of protection given to the Assessee that if the proceedings are initiated beyond four years from the end of the relevant assessment year, then in addition to there being no change of opinion/ availability of tangible material, the assessing officer must also satisfy that there was no full and true disclosure of material facts by the assessee

It is to be noted that the learned CIT(A) has not given relief to the Respondent on the proviso or explanation 1 to section 147 of the Act. He has decided the appeal as being in violation of section 147 of the Act due to change of opinion and non-

availability of tangible material relying on the decision in case of ***Kelvinator of India Ltd. [320 ITR 561 (SC)] [refer page nos. 411 to 413 of legal paperbook] and Shri Sai Baba Sansthan Trust (Shirdi) [(2024) 169 taxman.com 671 dated 20 December 2024 (Bombay HC)] [refer page nos, no. 430 to 446 of legal paperbook].***

7. *The Respondent did not have to rely on the proviso and explanation 1 to section 147 of the Act since the basic condition of change of opinion has not been satisfied by the learned assessing officer in the present case*

8. *Even otherwise, the decision in case of Phoolchand Bajrang Lal (1993) 203 ITR 456 (SC)] was in respect of expenses alleged to be bogus by the Department. However, in the present case that is not the case*

9. *Further, it is humbly submitted that the applicability of the decision in case of Phoolchand Bajrang Lai (1993) 203 ITR 456 (SC)] has been examined in case of New Delhi Television Ltd. (424 ITR 607 (SC)] [refer page nos. 520 to 535 of the legal paperbook] which while distinguishing the decision of the Hon'ble HC has held as under:*

> *27. The High Court held that there was no "true and fair disclosure" in view of the law laid down by this Court in Phool Chand Bajrang Lal's case (supra), and the judgment of the Delhi High Court in Honda Siel Power Products Ltd v. Dy. CIT [2011] 110 taxmann.com 2/197 Taxman 415/2012) 340 ITR 53 (Delhi) We have already referred to the judgment in Phool Chand's case (supra) wherein it was held that where the transaction of a particular assessment year is found to be a bogus transaction, the disclosures made could not be said to be all "true" and "full" Relying upon the said judgment the High Court held that merely because the transaction of convertible bonds was disclosed at the time of original assessment does not mean that there is true and full disclosure of facts.*
>
> *28. We are unable to agree with this reasoning given by the High Court. The assessee as mentioned above made a disclosure about having agreed to stand guarantee for the transaction by NNPLC and it had also disclosed the factum of the issuance of convertible bonds and their redemption. The income, if any, arose because of the redemption at a discounted price. This was an event which took place subsequent to the assessment year in question though it may be income for*

the assessment year. As we have observed above, all relevant facts were duly within the knowledge of the assessing officer. The assessing officer knew who were the entities who had subiscribed to other convertible bonds and in other proceedings relating to the subsidiaries the same assessing officer had knowledge of addresses and the consideration paid by each of the bondholders as is apparent from assessment orders dated 3-8-2012 passed in the cases of M/s NDTV Labs Ltd. and Mis NDTV Lifestyle Ltd. Therefore, in our opinion there was full and true disclosure of all material facts necessary for its assessment by the assesse

……..

33 …….. We are of the view that the assessee had disclosed all primary facts before the assessing officer and it was not required to give any further assistance to the assessing officer by disclosure of other facts it was for the assessing officer at this stage to decide what inference should be drawn from the facts of the case in the present case the assessing officer on the basis of the facts disclosed to him did not doubt the genuiness of the transaction set up by the assessee This the assessing officer could have done even at that stage on the basis of the facts which he already knew. The other facts relied upon by the revenue are the proceedings before the DRP and facts subsequent to the assessment order, and we have already dealt with the same while deciding Issue No. 1. However, that cannot lead to the conclusion that there is non-disclosure of true and material facts by the assessee"

10. *In view of the above, it can be appreciated that the learned departmental representative's reliance on the decision in case of Phoolchand Bajrang Lal (1993) 203 ITR 394 (Delhi HC) is misplaced.*

<u>Prayer</u>

11. ***In view of the above, it is humbly submitted that reliance of the learned assessing officer as supported by the learned departmental representative on proviso and Explanation 1 to section 147 of the Act is completely not justified and therefore it is prayed that the impugned order under section 250 of the Act quashing the impugned proceedings under section 147 of the Act on account of change of opinion be upheld.***

Distinguishing reliance placed on the decision in case of Raymond Wollen Mils Ltd. [236 ITR 34 (SC)] and Rajesh Jhaveri Stock Brokers P. Ltd [291 ITR 500 (SC))

12 *In this regard, it is humbly submitted that the Department has erred in replying on the decisions in case of Raymond Wollen Mills Ltd. [236 ITR 34 (SC)) and Rajesh Jhaveri Stock Brokers P. Ltd. [291 ITR 500 (SC)] without appreciating that the same are not applicable to the facts of the present case.*

13. *In the aforementioned decisions it has been held that the assessing officer must have "reason to believe basis prima facie material that the income chargeable to tax has escaped assessment and such reason to believe would be prima facie and not a requirement that additions would invariably made in the assessment*

14. *In case of Rajesh Jhaveri Stock Brokers P. Ltd. [291 ITR 500 (SC)], the return was processed under section 143(1) of the Act by accepting the returned loss. Audit objections were raised regarding non-fulfilment of conditions of section 36(1)(vii) read with section 36(2) of the Act basis which the proceedings under section 147 of the Act were initiated [on the other hand, in the present case, proceedings under section 143(3) of the Act were conducted during the course of which queries on the impugned transaction were raised and reply to satisfaction of the learned assessing officer were submitted]*

15. *In case of Raymond Wollen Mills Ltd. [236 ITR 34 (SC)), proceedings under section 147 of the Act were initiated on the allegation that while valuing its closing stock, the elements of fiscal duty and the other direct manufacturing costs were not included by the assessee. This information was obtained by the Department in a subsequent year's assessment proceeding*

16 *However, in the present case, it can be appreciated that the learned assessing officer has not brought on record any prima facie material basis which a reason to believe that income is escaping assessment could be formed. He is only coming to different conclusion based on same set of facts*

17. *It is humbly submitted that during the course of original scrutiny proceedings under section 143(3) of the Act for the captioned AY, the then learned assessing officer had enquired into the transaction vide notice under section 142(1) of the Act dated 17 October 2019* ***(refer page nos. 212 to 217 of factual paperbook)*** *where at Sr.*

No. 12 of the notice, the Id. AO had asked assessee to submit details and justify the allowability of claim made by assessee under "any other amount allowable as deduction". The Respondent filed its detailed reply vide submission dated 5 December 2019 ***(refer page nos. 204 to 316 of factual paperbook)*** *which was also supported by the following documents.*

a Note on justification for allowability of expenditure pertaining to Claim Right Liability of Rs. 400 crores (refer page nos. 218 to 222 of factual paperbook)

b. Break up of amounts credited in P&L A/c over the years (refer page nos. 222 to 293 of factual paperbook)

c. Contract wise break ups (refer page no. 294 of factual paperbook)

d. Relevant extract of the financials for AY 2015-16, the year in which provision for the said amount was made (refer page nos. 296 to 299 of factual paperbook)

e. Computation of Income for AY 2015-16 wherein the said provision of Rs. 400 crores was voluntarily disallowed by assessee ***(refer page nos. 300 to 303 of factual paper book)*** *f. Assessment order for AY 2015-16* ***(refer page nos. 304 to 314 of factual paper book)***

*g. Proof of payment of Rs. 400 crores (during the year) (****refer page no. 315 of factual paper book)***

18. On perusal of which the then learned assessing officer vide his order under section 143(3) of the Act dated 18 December 2019 has accepted the Respondent's claim ***(refer page nos. 186 to 203 of factual paper book)***

19 Accordingly, the learned departmental representative's reliance is misplaced since no new material has come to light after the completion of the original assessment proceedings and there is change of opinion of the officer Act dated 18 December 2019 has accepted the Respondent's claim (refer page nos. 186 to 203 of factual paper book)

19 Accordingly, the learned departmental representative's reliance is misplaced since no new material has come to light after the completion of the original assessment proceedings and there is change of opinion of the officer.

20. Reliance in this regard is placed on the following decisions wherein the Department's reliance on the decision in case of Raymond Wollen Mills Ltd. (236 ITR 34 (SC)] and Rajesh Jhaveri Stock Brokers P. Ltd. [291 ITR 500 (SC)) has been distinguished and the proceedings being quashed on account of change of opinion

- ***State Bank of India [418 ITR 485 (Bombay HC)]: [refer page nos. 593 to 600 of legal paperbook] - Department's SLP dismissed in 447 ITR 368 [refer page nos. 601 to 602 of legal paperbook].***

- ***Asianet Star Communications (P.) Ltd. [422 ITR 47 (Madras HC)] [refer page nos. 603 to 620 of legal paperbook]***

- ***Castrol India Ltd. [(2024) 299 Taxman 71 dated 05 March 2024 (Bombay HC)] [refer page nos. 447 to 453 of legal paperbook]***

21. In view of the above, it can be appreciated that the learned departmental representative's reliance on the decision in case of Raymond Wollen Mills Ltd. [236 ITR 34 (SC)) and Rajesh Jhaveri Stock Brokers P. Ltd. (291 ITR 500 (SC)] is misplaced.

Prayer:

22 In view of the above, it is humbly prayed that the impugned order under section 250 of the Act quashing the impugned proceedings under section 147 of the Act on account of change of opinion be upheld.

Submission in reply to the learned departmental representative's observations on merits of the case.

23. At the outset, it is submitted that the Respondent has elaborately discussed the merits of the case in its brief synopsis submitted separately ***(at paragraph nos. 48 to 77 of the factsheet).***

24. With regards to the learned departmental representative's observations that the amount paid to Tata Motors Limited represents "application of income", it is humbly submitted that the present case is that of refund of excess income from Tata Motors Limited refunded to it. Had it been the case of application of income, the same would have been disclosed after the figure of profit after tax (ie below the line item). Accordingly, the present case is not that of application of income.

25 With regards to the learned departmental representative's observations on merits of the case, it is humbly submitted that the learned departmental representative is not justified in holding that the Respondent has not claimed a genuine expense without appreciating that the Respondent has received from Tata Motors Limited, Rs 1,039.42 crores ***(refer page no. 222 of the factual paperbook)*** *over a period of time in relation to amounts not recovered from customers to whom vehicles were sold on credit.*

26. It is only when the Respondent was not able to establish all efforts to recover the amounts recoverable for vehicles sold, there was detailed negotiations as to whether the Respondent needs to refund excess amount collected by it from Tata Motors Limited and whether it was entitled to such excess amount.

27. It is humbly submitted that the Department cannot treat the receipts as genuine whilst treating the refund of excess income as non-genuine. Merely because the transaction is with a related party doesn't make the transaction as not genuine.

28. In case if the learned assessing officer was not satisfied with the reasonableness of the expenses. he could've invoked provisions of section 40A(2) of the Act which has not been done here. Therefore, holding that the refund of income is not genuine at this stage is unjust and illogical.

29. Further, it is not the case of the Respondent that it has made the claim of Rs. 400 crores basis a provision in the books of accounts. In fact, the provision has been made in AY 2015-16 and was suo-moto disallowed by the Respondent while computing it total income. The same has only been claimed in the year when the expense was actually paid to Tata Motors Limited.

30. It is humbly reiterated that all relevant documents and explanations were submitted during the course of proceedings under section 143(3) and 147 of the Act and therefore,

there is no basis for the learned departmental representative to argue that this is an application of income

Prayer

31. In view of the above, it is humbly prayed that even on merits, the Respondent has rightly claimed deduction of Rs. 400 crores paid to Tata Motors Limited.

In view of the above, we humbly request your goodself to consider the submission of the Respondent and accordingly adjudicated the issue in appeal."

6. Considering the legal issue, the Ld.CIT(A) made a detailed discussion in the impugned appellate order and the relevant part of the order of Ld.CIT(A) is extracted below:-

"8.4. The Grounds 2 to 5 related to challenge to the validity of Reopening proceedings are:

Ground no 2. The Ld AO erred in re-opening the assessment proceedings for the captioned AY under section 147 of the Act without appreciating that the present reopening proceedings are invalid and bad in law

Ground no.3. The Ld AO erred in re-opening the assessment proceedings for the captioned AY, without having any new tangible material and thereby in the absence of the same, the present reopening proceedings is bad in law,

Ground no.4. The Ld AO erred in re-opening the assessment proceedings for the captioned AY basis a mere change of opinion and basis the same material which was submitted and examined during the original assessment proceedings and therefore the present reopening proceedings is bad in law:

Ground no 5. The Ld AO erred in issuing notice under section 143(2) r.w.s. 147 of the Act prior to the order disposing objections to re-opening and also not providing the Appellant with four weeks time after disposing the objections to re-opening, thereby not following the guidelines and law laid down by Courts;

8.4.1. The submissions filed by the appellant in support of such grounds are already extracted in the preceding paras. The appellant had also objected to the reopening u's. 148 before the AD vide letter dated 09-02-2022 and the same was disposed by the AD vide letter dated 18-02-2022. I

have considered the submission made by the appellant and documents furnished in support of the same for the above challenge raised by the appellant. The crux of the challenge is that assessment was earlier completed us. 143(3) and while reopening the assessment u/s. 148, the reasons recorded show that there is no mention of any new tangible material/fact which would form the basis for the reopening of the assessment. No new fact/material/Information has come to the notice of the AO which was not disclosed by the appellant in its retum of income and subsequently during the course of the original assessment proceedings. Since the challenge is against reopening u/s 148 based on the reasons recorded, the same are extracted as under (refer page 24 to 26 of the paper book filed by the appellant).

"ANNEXURE.

1. In the above mentioned case, the assessee e-filed its return of income of A.Y.2017 18 on 01.11.2017 declaring loss of Rs. (-) 1,86,55,22,834/- under regular provision of Act and Book Loss of Rs. (-) 112,34,96,476/- under section 115JB of the act. Thereafter the assessee filed Revised Return of income on 29.03.2019 declaring loss of Rs. (-) 1,85,40,01,426/- under regular provision of Act and Book Loss of Rs. (-) 112,34,96,476/- under section 115JB of the act. The case was selected for scrutiny. Subsequently, the assessing officer passed an assessment order u/s 143(3) of the Act on 18.12.2019 declaring total loss (-) 77,97,14,560/- under regular provision of Act and Book Loss of Rs. (-) 61,98,38,376/- under section 115JB of the act.

2 ***On perusal of records****, it is seen that The assessee company is a Non-deposit taking Non-banking Financial Company registered with RBI. The assessee during the relevant previous year was primarily engaged in financing of Tata Motors Vehicles and as captive financing arm of TML (Tata Motors Limited). The entire shareholding of the company is held by TML. Thus assessee is a wholly owned subsidiary of Tata Motors Ltd.*

2.1. a) ***It is seen from the Revised Statement of Computation of Income*** *that the assessee inter-alia claimed Crystalised Claim Right liability payment of Rs. 400,00,00,000 which was allowed in the scrutiny assessment. Vide Note 24 and Annexure J, the assessee justified the claim of this payment by stating the following facts.*

a) That in order to promote sale of manufactured product, the TML often requires that Tata Motors Finance Limited (TMFL, the assessee company) to extend financing facility to customers of TML through various financing schemes.

b) TMFL agreed the offer financing facilities to customers of TML for the sale of the TML agreed to provide certain forms of financial support to TMFL in respect of loans disbursed by TMFL as part of its Manufacturer Guranteed Line of Business (MGB).

c) TML launched a scheme primarily for TMFL to finance the products purchases by first time users (FTU) on the basis that all losses incurred by TMFL in this regard will be reimbursed to it by TM (Loss Cover Schemes). Poor economic condition and trailing collection performance led to high delinquency of FTU and correspondingly resulted in high amount of losses being claimed by TMFL from TML. The losses so claimed was credited to the profit and loss account under the head other expenses.

d) TML expressed concem on the standard of collection efficiency of TMFL in respect of portfolio of loans comprised in the MGB being very high. Pursuant to the discussion between the parties TMFL agreed to pay an amount of Rs.

400 crore towards claim right to TML (Rs. 109.10 crores towards interest loss; and Rs. 290.90 crore towards Delinquency support)

e) That the assessee made provision of Rs. 400 crore in FY relevant to AY 2015-16 and added back the same in computation of income. The assessee stated that since the sum has been actually paid during the relevant previous year, the same has rightly been claimed as deduction under computation

2.2. In view of the above, following facts needs to be consideration:
i) That the assessee is an NBFC. The very nature of the business of the assessee is such where there is high probability of loans becoming bad and doubtful of recovery. This is why the RB has issued guidance to categorise the loan as NPA and the Income Tax has also provided a deduction for bad and doubtful debts u/s 36(1)(vii) and 36(1)(visa).
ii) The Assessee had entered into the contract with the TML where it was almost certain to incur losses and that is why the TML was to provide for the Gap Funding for such losses.
iii) Now the assessee submitted that it could not recover the loan and interest on such loans amounting to Rs. 481,45,80,526. Therefore, it compensated the holding company with Rs. 400,00,00,000 and this should be allowed as business expenses it further stated that it had already made a provision for this sum in AY 2015-16
iv) By just making provision for an expense, does not, per se, makes an expense allowable under the provisions of the Act. Further, the assessee being an NBFC, is covered under the provisions of section 36(1)(vii) and 36(1)(viia). It could have provided for the bad and doubtful debts and even could have written it off. However, instead of doing so, it had paid a compensation of Rs. 400 crores to holding company which cannot be equated with writing

off bad-debt and allowed as deduction. Therefore, in essence, the payment made by the assessee to its holding company (100% shareholder) may be treated Application of Income rather than the legitimate business expense.
v) It is further observed that in order to convert itself into Core Investment Company (CIC), the assessee has realigned its businesses by transferring the whole business (On Slump sale Basis) to two of its subsidiaries- M/s Sheba Properties Ltd. and Tata Motors Finance Solutions Limited. The assets and liabilities of entire business has been passed on to the subsidiaries, without writing off the debts which the assessee claimed to have gone bad and for which it paid the compensation to its holding company

3. It is further observed that in order to convert itself into Core Investment Company (CIC), the assessee has realigned its businesses by transferring the whole business (On Slump sale Basis) to two of its subsidiaries- M/s Sheba Properties Ltd. and M/s Tata Motors Finance Solutions Limited. It received a consideration of Rs. 2752 crore from M/s Sheba Properties Ltd on which it computed capital gains of Rs. 1162.26 crore (Net of transfer expenses of Rs. 30 crore). It also received 269 crore from M/s Tata Motors Finance Solutions Limited and computed capital gains of Rs. 16.33 crore. The assessee has credited both these capital gains of Rs. 1178.59 crore as exceptional item in the Profit and Loss Account

3.1. It is observed from the records available with this office of the assessee company for A.Y. 2017-18 that it deducted Rs. 1162.26 crore from Net profit stating profit on slump sale considered separately. However, the assessee offered only Rs. 1136.91 crore under the head Profit on slump sale. It is further to note that the assessee has already claimed the cost of transfer of

> *Rs. 30 crore and had offered only net consideration for computation of capital gains.*
>
> *3.2. Considering the above, it appears that Long Term Capital Gains of Rs. 25.35 Crore on account of slump sale has escaped assessment.*
>
> *4. Hence, it is clear that there is failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of First provision to section 147(1) of the Act.*
>
> *5. In view of the above, I have reason to believe that income chargeable to tax to the tune of Rs. 425.35 Crore has escaped within the meaning of section 147 of the Act for the A. Y.2017."*

8.4.2. It is the contention of the appellant that the reasons of reopening recorded by AO and supplied to the appellant begin and mention that "on perusal of records.....", which clearly indicates that the appellant had made all relevant disclosures and the reopening done by AO was initiated based on the material already available on record. It is further stated in the reasons that reopening is made based on the note furnished alongwith computation of income which was already available before the Ld AO during the course of assessment proceedings as well. There is no mention of any new tangible material or fact which formed the basis for reopening the assessment. To support the above claim, the appellant has also quoted from para 2.1. of the reason recorded as under

> *"2.1. It is seen from the revised statement of computation of income that the assessee has inter-alia claimed crystalised claim right liability payment of Rs 400 crore which was allowed in the scrutiny assessment. Vide Note 24 and Annexure-J. the assessee justified the claim of this payment by stating the following facts……"*

The appellant has also relied upon the several judicial pronouncements to support its submissions that it is a well settled judicial principal that the true test of income chargeable to tax escaping assessment is whether there exists fresh tangible material on whose basis an appropriate

conclusion can be reached and in the absence of such fresh material, the reassessment proceedings would be invalid.

8.4.3. The appellant had further contended that the reopening is based on the mere change in opinion, which is not permissible and hence reopening is invalid. The appellant has also raised the contention that during the course of original assessment proceedings the AO had raised the same queries vide notice u/s. 142(1) of the Act dated 17-10-2019 where at s.no.12 of the notice, the AO had asked appellant to submit details and justify the allowability of the claim made by appellant under "any other amount allowable as deduction". The appellant has submitted a copy of the above notice to support its claim about the query raised earlier. In response the appellant had submitted justification of allowability of expenditure pertaining to claim right liability of Rs.400 crores vide submission dated 05-12-2019 The appellant has enclosed the supporting documents at page no.65 to 172 of the paper book submitted (as detailed in para 20 of its written submissions). The appellant had submitted a Note on justification for allowability of expenditure pertaining to claim right liability of Rs.400 crores alongwith the supporting the documents. The issue was also discussed during the hearing with the AO and the assessment u/s.143(3) was completed vide order dated 18-12-2019 without any disallowance on the said issue. It is therefore, now the claim of the appellant that all the facts/ information/documents for already provided to the AO during the original assessment proceedings and the issue was duly analysed and discussed during the course of assessment and after perusing the submissions of the appellant as mentioned above the assessment order u/s 143(3) was passed in which no addition was made. Therefore, the re-assessment is initiated on account of "change of opinion which is bad in law. The appellant has relied upon various judicial pronouncements including the decision of Hon'ble Supreme Court in the case of CIT vs Kelvinator India Ltd (320 ITR 561).

8.4.4. I have considered the detailed written submissions filed by the appellant on the above grounds raised by the appellant against the re-opening of assessment u/s. 148, and the supporting evidences filed by the appellant in the paper book on record as submitted during the appellate proceedings. The gist of the objections raised by the appellant, as summarized above,

apart from the other objections in the written submissions have also been considered. It is clear that the above issue was examined during the original assessment proceedings, as apparent from the query raised in the notice u/s.142(1) and the detailed written submissions filed by the appellant in response to same. Even the reasons recorded show that AO has referred to the records and the revised computation of income filed by the appellant and the Note 24 and Annexure-J filed by the appellant for the claimed crystallized claim right liability payment of Rs.400 crores which was accordingly allowed in the scrutiny assessment u/s. 143(3) The reasons recorded also do not refer to any fresh tangible material on basis of which the reassessment proceedings was initiated. The AO while disposing the objections vide letter dated 18-02-2022, has stated in para 3.2. that

> *3.2. In the instant case, the reassessment is being made for the A. Yr.2017-18 and the proceedings u/s. 147 have been initiated during the F. Yr. 2020-21 ie.. notice u/s 148 of the Act was issued on 30-03-2021. As such the proceedings u/s.147 are within the 4 years from the end of A.Yr.2017-18. Hence the requirement of new tangible material is not required. Here, in regard to basic necessity of section 147 i.e., reason to believe, the reasons recorded by the AO amply demonstrate that there were adequate reasons to believe that income has escaped assessment. The reasons recorded by the AO in this case, are self-explanatory and the reasoning has been made in un-ambiguous and clear language. The reasons recorded by the AO is based on the evidence available on record...*

8.4.5. From the above discussion, it is clear that there is substance in the contention raised by the appellant that the reasons as furnished to the appellant, as extracted in the preceding para, are not based on any fresh/new tangible material but based on the record and documents already filed by the appellant in its ITR or in the original assessment proceedings or in response to the

queries raised by the AO in the original assessment proceedings, which was examined and based on which the AO had made no addition in the original assessment order and thus is not based on any fresh/new tangible material but being only based on the change of opinion.

8.4.6. The jurisdictional High Court of Bombay in the recent case of Shri Sai Baba Sansthan Trust (Shirdi) vs Union of India in (2024) 169 Taxman 671 vide order dated 20-12-2024 *has dealt with the similar issue of reopening u/s. 148 within 4 years of the completion of the original assessment u/s. 143(3) and has held that,*

> *"Para.48... once tangible material during the course of assessment proceedings was available with the Assessing Officer and the same was considered in passing the assessment order under Section 143(3) of the IT Act, the Assessing Officer, in the absence of any fresh material, could not have proceeded to reopen the petitioner's assessment on similar materials. Such exercise would tantamount to a review of the assessment order on a mere change of opinion. This is certainly not permissible. If such interpretation of the provisions as canvassed on behalf of the respondents is accepted, an assessment order would become vulnerable to be arbitrarily reopened, merely on the ground that the Assessing Officer on the very material intends to take a different view/opinion on the assessment order passed by him. This would lead to a regime of total uncertainty. In our opinion, this is neither the object nor the intention of the provisions of Section 147. The provision is a special power, so as to check, discern and recall concluded assessments, hence, such power cannot be exercised when it is not a case, where the assessee had not withheld any information and/or the Assessing Officer did not have any fresh tangible material. A second bite at the cherry is not what is contemplated under Section 147, on the basis of materials already available with the Assessing Officer, as the provision would become applicable in the present facts. Also, Section 147 certainly does not*

postulate a review jurisdiction so that the assessment can be reviewed, on the Assessing Officer intending to form a different and/or a new opinion"

8.4.7. In view of the above and considering the reasons recorded, the assessment order, the written submissions filed by the appellant alongwith the documentary evidences filed in support of the above grounds and various judicial pronouncements relied upon by the appellant and respectfully following the decision of Jurisdictional High Court of Bombay, as discussed above, I hold the reopening under section 148 being done without any fresh tangible material and merely based on the change of opinion, as elaborately discussed above, as bad in law and invalid. As a result, the above Grounds of appeal challenging the reopening u/s.148 are allowed."

7. We have heard the rival submissions and perused the material available on record. Upon considering the contentions advanced by both parties, we find that the original assessment in the present case was completed under section 143(3) of the Act. The subsequent reopening has been initiated on an issue which was already examined and verified by the then Ld. AO during the original scrutiny proceedings. Importantly, there is no reference to any fresh tangible material that would justify the reopening under section 147. The primary contention of the learned Ld. AR is that the reassessment has been initiated merely on a change of opinion, which is impermissible under the law and renders the proceedings invalid and without jurisdiction. During the original assessment proceedings under section 143(3), the Ld. AO had specifically raised a query vide notice under section 142(1) dated 17.10.2019. At serial no. 12 of the said notice, the Ld. AO had sought details and justification in respect of the claim made under "any other amount allowable as deduction". In response, the assessee, vide submission dated 05.12.2019, furnished a detailed justification for the allowability of the expenditure towards

"Claim Right Liability" amounting to Rs.400 crores. This was supported by the following documents:

a) A detailed note on the allowability of the said expenditure;

b) Year-wise breakup of amounts credited to the Profit & Loss Account;

c) Contract-wise breakup of liability;

d) Extracts from financial statements for AY 2015–16, being the year in which the said provision was created;

e) Computation of income for AY 2015–16, wherein the said provision was voluntarily disallowed by the assessee;

f) Assessment order for AY 2015–16; and

g) Proof of actual payment of ₹400 crores during the relevant year.

7.1. It is also noted that the issue was discussed in detail during the personal hearing with the Ld. AO, who, upon consideration of the assessee's submissions and documents, accepted the claim and framed the assessment under section 143(3) vide order dated 18.12.2019.

Significantly, the Ld. AO, in the recorded reasons for reopening, has admitted that the basis for such reopening was the very same note and revised computation of income furnished by the assessee during the original proceedings. Reference is invited to paragraph 2.1 of the reasons recorded:

"2.1 It is seen from the Revised Statement of Computation of Income that the assessee has, inter alia, claimed Crystallised Claim Right Liability payment of Rs.400,00,00,000, which was allowed

in the scrutiny assessment. Vide Note 24 and Annexure J, the assessee justified the claim of this payment by stating the following facts:"

It is evident from the above that the Ld. AO had already examined the issue in question. The assessee had submitted detailed explanations and supporting documentation during the original assessment, which were duly considered and accepted. Thus, the formation of a different view on the same material amounts to a mere change of opinion, which cannot be a valid ground for reopening under section 147.

7.2. Reliance is rightly placed by the assessee on the following judicial precedents:

i. **CIT vs. Kelvinator of India Ltd. [320 ITR 561 (SC)]**

4. On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act (with effect from 1-4-1989), they are given a go-by and only one condition has remained, viz.. that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post 1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check

abuse of power by the Assessing Officer Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987 Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe" Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer……"

ii. **Marico Ltd. [(2020) 425 ITR 177 (Bombay HC) dated 21 August 2019**

"3. Briefly, the facts leading to this Petition arise as under:-

(v) Thereafter, on 27 March 2019, the impugned notice was issued seeking to reopen the Assessment Year 2014-15 The impugned reopening notice has been issued within a period of four years from the end of Assessment Year 2014-15

……..

12. Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 September 2017, during the assessment proceedings and the Petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017. justifying its stand. The non-rejection of the explanation in the Assessment Order would amount to the Assessing Officer accepting the view of the assessee, thus taking a view/forming an opinion Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts Accordingly, the impugned notice dated 27 March 2019 is quashed and set aside"

Departments SLP has been dismissed by the Hon'ble Supreme Court in 272 Taxman 179 (SC)

iii. **Shri Sai Baba Sansthan Trust (Shirdi) [(2024) 169 taxman.com 671 dated 20 December 2024 (Bombay HC)]**

"48. From the afore said discussion, it is quite clear to us that once tangible material during the course of assessment proceedings was available with the Assessing Officer and the same was considered in passing the assessment order under Section 143(3) of the IT Act, the Assessing Officer, in the absence of any fresh material, could not have proceeded to reopen the petitioner's assessment on similar materials. Such exercise would tantamount to a review of the assessment order on a mere change of opinion. This is certainly not permissible. If such interpretation of the provisions as canvassed on behalf of the respondents is accepted, an assessment order would become vulnerable to be arbitrarily reopened, merely on the ground that the Assessing Officer on the very material intends to take a different view/opinion on the assessment order passed by him. This would lead to a regime of total uncertainty. In our opinion, this is neither the object nor the intention of the provisions of Section 147. The provision is a special power, so as to check, discern and recall concluded assessments, hence, such power cannot be exercised when it is not a case, where the assessee had not withheld any information and/or the Assessing Officer did not have any fresh tangible material. A second bite at the cherry is not what is contemplated under Section 147, on the basis of materials already available with the Assessing Officer, as the provision would become applicable in the present facts. Also, Section 147 certainly does not postulate a review jurisdiction so that the assessment can be reviewed, on the Assessing Officer intending to form a different and/or a new opinion"

iv. **Union Bank of India (ITA No. 1678/Mum/2024 dated 23 April 2025 (Mumbai ITAT)]**

"11. We have heard the rival submissions and perused the documents available on record. Upon examination, we find that the reasons recorded by the Ld. AO for reopening the assessment were done in a mechanical manner and only after the lapse of four years from the end of the relevant assessment year. It is a settled principle of law that reassessment

cannot be initiated merely on account of a change of opinion. Furthermore, the Ld. AO has failed to establish, based on the recorded reasons, that the assessee had not made a full and true disclosure of all material facts necessary for the assessment. During the scrutiny assessment proceedings conducted under Section 143(3) of the Act, the issue in question was raised, and the assessee duly explained the same in response to a notice issued under Section 142(1) of the Act. Despite this, the Ld. AO has sought to reassess the same issue, thereby reopening the assessment proceedings on identical grounds, which constitutes a clear case of "change of opinion."

11. Upon review of the records, it is evident that in response to the notice under Section 142(1) of the Act, the issue concerning the exclusion of foreign income earned in Dubai and Antwerp was specifically raised in Point No. 19 of the said notice. The assessee furnished complete details and explanations in support of its claim The Ld. AO had duly considered and applied his mind while determining whether the foreign branch income was to be excluded Only after such due application of mind, the Ld. AO allowed the said claim in the original assessment.

12. The reopening of the assessment proceedings under Section 147 of the Act on the pretext that the assessee failed to disclose fully and true material facts regarding the exclusion of foreign income despite detailed explanations and submissions made during the original scrutiny assessment – amounts to an impermissible "change of opinon". It is a well-settled position in law that reassessment proceedings cannot be initiated merely because the Assessing Officer intends to take a different view on the same set of facts that were already examined during the original assessment."

8. Furthermore, the reliance placed by the revenue on Raymond Woollen Mills Ltd. (supra) and Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra) are misplaced, as the facts of the present case are clearly distinguishable. Unlike ratio of judgment laid down by the assessee, is fully applicable in favour of the assessee. It is well settled that the existence of fresh tangible material is a jurisdictional precondition for

validly invoking section 147. This principle is reinforced by the judgment of the Hon'ble Supreme Court in **Coca-Cola Export Corporation [(1990) 231 ITR 200 (SC)]**, which held that reassessment must be based on new information and not merely a reappraisal of existing material. We upheld the impugned appellate order. Accordingly, we hold that the reopening of the assessment is vitiated by the absence of any new tangible material and is based solely on a change of opinion, rendering it invalid and bad in law.

9. In light of the above discussion, we find that the legal ground raised by the revenue fails. Consequently, the revenue's appeal in **ITA No. 2983/Mum/2025** is dismissed. Since the Cross Objection filed by the assessee pertains to the merits of the case and becomes infructuous in view of the dismissal of the revenue's appeal on jurisdictional grounds, the Cross Objection is also dismissed accordingly.

10. In the result, the appeal of the revenue bearing **ITA No.2983/Mum/2025** and Cross Objection filed by the assesse bearing **C.O. No.132/Mum/2025** are dismissed.

Order pronounced in the open court on 18th day of July, 2025.

Sd/-	sd/-
(SMT.RENU JAUHRI)	(ANIKESH BANERJEE)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 18/07/2025
Pavanan

Copy of the Order forwarded to:

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

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**