

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3456/MUM/2024
Assessment Year: 2016-17**

Assistant Commissioner of Income Tax - 2(3)(1), Mumbai	Vs.	Tata Capital Limited (Successor to Tata Cleantech Capital Limited) 11th Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400013 (PAN : AAECT0148D)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Anish Thacker, CA
Revenue : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 11.06.2025
Date of Pronouncement : 31.07.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1063107278(1) dated 21.03.2024 passed against the assessment order passed by National Faceless Assessment Centre, Delhi, u/s. 147 r.w.s. 143(3) r.w.s.144B of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.03.2022 for Assessment Year 2016-17.

2. Grounds taken by the Revenue are reproduced as under:

"1. Whether on the facts and circumstance of the case and in law, the Ld.CIT(A) erred in its decision to hold that the reopening u/s 147 of the Act in the case of the assessee is bad in law without appreciating the fact that the material facts relevant for the assessment on the issue under consideration was not filed during the course of original assessment proceedings and the same may be embedded in audited P&L A/c, balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For aforementioned reasons, it was not a case of change of opinion by the AO.

2. Whether on the facts and circumstance of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of deduction u/s. 36(1)(viii) of the Act amounting to Rs. 7,50,00,000/- without appreciating the fact that the assessee was engaged in the business of providing finance and advisory services for renewable energy, energy efficiency and water management projects which are not the clearly defined projects under section 80-1A(4) to be eligible for claim of Infrastructure Facility."

2.1. It was pointed out that Tata Cleantech Capital Limited was merged with Tata Capital Limited. Since, Form 36 was filed by the Revenue in the name of erstwhile company, the same was directed to be revised. Accordingly, revised Form 36 is placed on record.

3. At the outset, it is noted that there is a delay of 45 days in filing this appeal before the Tribunal for which a petition for condonation of delay is placed on record by the Revenue. We have considered the petition for condonation of the said delay. Upon perusal of the same and hearing both sides, we deem it fit to condone the delay on the ground that there was sufficient cause for the said delay. Accordingly, we condone the delay to take up the matter for adjudication.

4. In this appeal, Revenue has challenged the relief granted by Ld. CIT(A) on the issue of legality of the reopening proceeding and reassessment order passed thereafter by holding that there is change of opinion by the Ld. Assessing Officer from what he had adopted in the original proceedings u/s. 143(3) and the assessment so completed under the said section. On the merits of the case, Revenue is contesting

on the allowance of claim made by the assessee u/s. 36(1)(viii) by asserting that assessee was engaged in the business of providing finance and advisory services for renewable energy, energy efficiency and water management projects which are not defined projects u/s. 80IA(4) to be eligible for claim of infrastructure facility.

5. Brief facts of the case are that assessee filed its return of income on 30.09.2016 reporting total income at Rs. 39,75,77,620/-. Regular assessment u/s. 143(3) of the Act was completed by accepting the returned income vide order dated 24.12.2018. Subsequently, Ld. Assessing Officer based on information that assessee had wrongly claimed deduction of Rs. 7,50,00,000/- u/s. 36(1)(viii), reopened the case by issuing notice u/s. 148 on 30.03.2021. Assessee challenged the validity of the reopening before the Ld. Assessing Officer by filing its objection in terms of decision of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Limited vs. ITO (2003) 259 ITR 19 (SC). Assessee submitted that there should be a legitimate 'reason to believe' that income has escaped assessment, based on some new tangible material on record which has come to the notice of Ld. Assessing Officer. Reopening should not be on account of 'mere change of opinion'. It was submitted that provisions of section 147 does not grant power to the Assessing Officer to *suo moto* review his own order, without any new material facts to support for arriving at a different conclusion. Power of 'right to review' is not available to the Assessing Officer u/s. 147. It was strongly asserted that power of reassessment is different from the power of review.

5.1 In support of the above contentions, assessee submitted that during the course of original assessment proceedings, details with respect to eligibility of assessee to claim deduction u/s. 36(1)(viii) were called for. Assessee had duly complied with the required compliance

and furnish computation of deduction along with relevant annexure which were accepted while completing the original assessment. Objection raised by the assessee were disposed off, holding against the assessee and the reassessment was completed by disallowing the claim of deduction u/s. 36(1)(viii).

5.2. Aggrieved, assessee went in appeal before the Ld. CIT(A). Assessee reiterated its stance on the legality of the reassessment which is on account of change of opinion resulting into review of the assessment by the Ld. Assessing Officer which is not permissible within the provisions of section 147. Assessee also made detailed submissions on the merits of the case. Ld. CIT(A) reproduced the submissions made by the assessee in his order and after due consideration, allowed the appeal of the assessee both, on the legal as well as merits of the case, for which the Revenue has come up in appeal before the Tribunal.

6. Before us, Ld. Counsel for the assessee referred to the reasons to believe recorded for initiating reassessment proceedings placed at page 63 and 64 of the paper book. In para 2, Ld. Assessing Officer has taken note of brief details of information collected/received which is on account of perusal of computation of income of the assessee. The content of this para reproduces as under:

“Upon perusal of computation of income, it is seen that the assessee has claimed a deduction of 7,50,00,000/- under section 36(1)(viii). As per Explanation (g) of section 36(1)(vii) of the Income Tax Act, 1961, "infrastructure facility" means - (ii) an undertaking referred to in clause (iv) of sub-section (4) of section 80-IA. The TCCL was engaged in the business of providing finance and advisory services for renewable energy, energy efficiency and water management projects. These were not the clearly defined projects under section 80-IA(4) to be eligible for claim of Infrastructure Facility”

6.1. Based on the above information, ld. Assessing Officer formed this reason to believe about escapement of income on account of claim of deduction of Rs. 7.5 crores u/s. 36(1)(viii) as noted in para 6 which is reproduces below:

“In view of the discussion in preceding paras, I am of considered opinion that the assessee company M/s. Tata Cleantech Capital Limited has claimed a deduction of 7,50,00,000/-. The same is in contravention to provision of Sec 36(1)(viii) as the TCCL was engaged in the business of providing finance and advisory services for renewable energy, energy efficiency and water management projects. These were not the clearly defined projects under section 80-IA(4) to be eligible for claim of Infrastructure Facility. Further, the substantial portion of the loans was already there in the books at the time of getting registration as Infrastructure Finance Company. The same has been done with a sole intention to evade legitimate taxes. Therefore, I have reason to believe that the income of 7,50,00,000/- chargeable to tax under the provisions of the Act has escaped assessment.”

6.2. In this respect, Ld. Counsel for the assessee referred to notice u/s. 142(1) dated 29.11.2018 issued during the original assessment proceedings whereby in para 5 of the annexure to the said notice, Ld. Assessing Officer had specifically asked to furnish details of computation of profit derived from the eligible business in Assessment Year 2016-17. The said para is reproduced below:

“It is seen that you have claimed a deduction of Rs. 7,50,00,000// u/s 36(1)(viii) of the act in A.Y 2016-17. In this connection, you are requested to furnish the documentary evidences with respect to the fact that the assessee company is covered under the definition of "Specified Entity" and the business of the assessee is "Eligible Business" for claiming the above deduction. You are also requested to furnish the details of computation of profit derived from the eligible business in A.Y 2016-17”

6.3. Assessee replied to the said notice vide letter dated 14.12.2018 and made a detailed submission as contained in para 5 of the said letter, contents of the same are reproduce below:

“It is seen that you have claimed a deduction of Rs. 7,50,00,000 u/s 36(1)(viii) of the act in A.Y 2016-17. In this connection, you are requested to furnish the documentary evidences with respect to the fact that the assessee company is covered under the definition of "Specified Entity" and the business of the assessee is "Eligible Business" for claiming the above deduction. You are also requested to furnish the details of computation of profit derived from the eligible business in A.Y 2016-17-

As per section 36(1)(viii), any other financial corporation (refer Explanation 1 (a)) shall be allowed a deduction, of an amount not exceeding 20% of the profits derived from eligible business, while computing its taxable income under the head "Profits & Gains of Business & Profession". Further, the said deduction is subject to the below mentioned conditions:-

a) Deduction u/s 36(1)(viii) shall not exceed the amount transferred during the year to a special reserve created & maintained by the assessee in this regard.

b) As per explanation 1(b) & (h) to section 36(1)(viii), eligible business in context of any other financial corporation including a public company has been defined to include business of providing long term finance (i.e. for 5 years or more) for development of infrastructure facility in India.

"infrastructure facility" means - (ii) an undertaking referred to in clause (iv) of sub-section (4) of section 80-1A; (refer Explanation 1 (g)).

As per clause (iv) of sections 80-1A(4) an undertaking which (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2017.

c) a public company shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956). (refer Explanation 1 (j))

d) Profits from eligible business shall be the profit before making any deduction under this section.

e) Deduction under this section in aggregate shall not exceed twice the amount of paid up share capital & general reserves of the Company.

TCCL is a Systemically Important Non-Deposit Accepting Non-Banking Finance Company("NBFC"), holding a Certificate of Registration from the Reserve Bank of India ("RBI") received on 19th October 2012. The Company has received the Certificate of Registration as a "Infrastructure Finance Company" from RBI dated 15th October 2015. The Company is engaged in the business of providing finance and advisory services for renewable energy, energy efficiency & water management projects. In this regard, we enclose herewith a copy of registration certificate issued by RBI bearing reg. no. 13.0232 as Annexure-3.

During FY 2015-16, TCCL claimed a deduction of Rs. 7.50 Crores u/s 36(1)(viii). In this regard, we hereby submit the following:-

a) The company, during FY 2015-16, transferred an amount of Rs. 7.50 Crores in a special reserve created & maintained by it for the purpose of section 36(1)(viii). (refer Note 3 "Reserves & Surplus" of the audited financial statements)

b) TCCL being a Infrastructure Finance Company is engaged in the business of providing long term finance and advisory services for renewable energy, energy efficiency & water management projects.

c) TCCL is a public company, in which public is not substantially interested, having a paid up equity share capital of Rs. 28,909 lacs. Since the debentures of the Company are listed on National Stock Exchange, it shall be considered to be a public company as defined in the Companies Act, 1956. In this regard, we enclose herewith certificate of incorporation issued by ROC as Annexure - 4.

d) Total deduction under section 36(1)(viii), in aggregate, shall not exceed 200% of the total paid up share capital & general reserves. Deduction claimed u/s 36(1)(viii) upto FY 2015-16 amounts to Rs. 750 lakh which is 2.16% of the total paid up share capital & general reserves (Equity share capital - Rs. 28,909 lakh, Securities premium - Rs. 2,091 lacs, Special Reserve Account u/s 45-IC of Reserve Bank of India Act, 1934- Rs. 741 lakh, Special Reserve Account u/s 36(1)(viii) of Income tax Act, 1961 - Rs. 750 lakh & Surplus in P&L - Rs. 2,209 lakh).

TCCL has claimed a deduction of Rs. 7.5 crore on profits of eligible business of providing long term loans given for development of infrastructure facilities being the power projects of various companies. The working of deduction of Rs 7.50 crore claimed in the income tax return is annexed as Annexure-5.”

6.4. Ld. Assessing Officer after considering the aforesaid submissions, allowed the claim of the assessee and completed the assessment at the returned income. Ld. CIT(A) while considering the merit of the case has elaborately analysed the factual position vis-à-vis provisions contained in section 36(1)(viii). Ld. Assessing Officer had disallowed the claim by treating the assessee not eligible being engaged in providing finance and advisory services for renewable energy, energy efficiency and water management projects which are not defined projects u/s. 80IA(4) as infrastructure facility. Ld. Assessing Officer also noted that substantial portion of loans were already there in the books at the time of getting registration as infrastructure finance company (IFC) for which assessee failed to provide details of project financed by it.

6.5. Ld. CIT(A) had taken a note of the submission by the assessee that it is a specified entity engaged in eligible business as per the provisions of section 36(1)(viii). Registration as IFC with RBI is not a prerequisite condition for claiming deduction since one can carry on business as an IFC even by holding a simple NBFC licence. Assessee is a public

company providing financial services and falls within the 6th limb of explanation and hence is a specified entity in terms of section 36(1)(viii).

6.6. It is an undisputed fact assessee is registered as NBFC vide registration no. N.13.02032 dated 19.10.2012. Ld. CIT(A) had called for details of long-term finance provided by the assessee so as to explain how these loans qualify to fit in the definition of long-term finance provided for development of infrastructure facility. Assessee furnished the required details along with loan agreement on sample basis. It also submitted that the borrowers from the assessee are engaged in the business of generation of power (Hydro, solar & winds) as defined in clause (iv) of subsection (4) of section 80IA. Ld. CIT(A) after verifying the submissions of the assessee arrived at the conclusion that loans provided by the assessee qualify within the meaning of long term finance and are for development of power projects covered within the definition of infrastructure facility. He thus, held that assessee is eligible for claiming the deduction u/s. 36(1)(viii).

7. On the above factual position, nothing contrary is brought on record except for the argument that registration as IFC came later in the year 2015 on 15.10.2015 and that loans were given prior to this date of receiving the said registration certificate even though assessee was holding the status of NBFC w.e.f. 19.10.2012. We find that Ld. Assessing Officer in the course of original assessment has elaborately dealt with the issue. Further, there is no new tangible material which has come to the fore for taking up reassessment proceedings. Ld. AO has noted about the claim of deduction in the reasons to believe by observing '*on perusal of the computation of the income*'. It is a settled position of law that reassessment proceeding cannot be initiated merely on account of change of opinion by the tax authorities as held by Hon'ble' Supreme Court in the case of CIT vs Kelvinator of India Limited

(2010) 320 ITR 561 (SC) wherein it was held that section 147 of the Act does not confer arbitrary power to the Assessing Officer to reopen the assessment merely on account of change of opinion.

7.1. We note that material for allowability of deduction u/s 36(1)(viii) was furnished before the ld. Assessing Officer and was accepted without any shortcoming in the regular assessment proceedings. It was only after examination of the details furnished by the assessee that no addition was made in the assessment order passed u/s 143(3). Reasons for reopening of the case are nothing but change of opinion on the basis of same facts and circumstances which have already been considered by the ld. Assessing Officer during the original assessment proceedings. It is a settled position of law that review under the garb of re-assessment is not permissible. We thus, unhesitatingly hold that reasons for reopening tantamount to change of opinion. In the given set of facts and circumstances and considering settled position of law, reopening u/s 147 is bad in law which vitiates the impugned reassessment order. We do not find any reason to interfere with the findings arrived at by the ld. CIT(A) on this issue. Ground of appeal raised by the Revenue is dismissed.

7.2. Even on the merits of the case, based on detailed discussion made above, assessee has made out its case in the original assessment u/s 143(3) as well as before the ld. CIT(A). Well considered observations of the ld. CIT(A) on the merits of the case are taken note of against which nothing cogent is brought on record to counter the same. We do not find any reason to interfere with the meritorious findings arrived at by the ld. CIT(A) on the impugned issue. Ground of appeal raised by the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 31 July, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 July, 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai