

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H (SMC)" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.4011/MUM/2025
(Assessment Year:2013-2014)**

M/s. Biobuild Developers

301, Crescent Tower, Opp. Infinity Mall,
New Link Road, Andheri (West)
Mumbai - 400053, Maharashtra.
[PAN:AAHFB4024A]

..... **Appellant**

Vs

**Income Tax Officer Ward 24(1)(3),
Mumbai**

Piramal Chambers, Lalbaug, Parel,
Mumbai - 400012. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Sameer Dalal
For the Respondent/Department : Shri Pravin Salunkhe

Date

Conclusion of hearing : 30.07.2025
Pronouncement of order : 25.08.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 20/05/2025, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 26/12/2019, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2013-2014.
2. The Assessee has raised following grounds of appeal :
 - "1. *Jurisdictional Overreach : Addition Not Based on Reason for*

Reopening:

The learned CIT(A) has erred in law and facts in confirming the addition of INR.33,82,946/- on account of notional interest income, even though no addition was made on the basis of the original reason recorded for reopening u/s.148. In view of binding judicial precedents [e.g. CIT V. Jet Airways (331 ITR 236), Ranbaxy Laboratories Ltd. V. CIT (336 ITR 136)] such reassessment is invalid.

2. *Estimation without Evidence – Addition on Presumption :*
The CIT(A) has erred in confirming the addition made on presumption without any corroborative material, books of account entries, or supporting documentation. No actual interest income accrued or has claimed by the assessee, and therefore, the addition is arbitrary and bad in law.
3. *Violation of Principles of Natural Justice:*
The authorities below failed to appreciate the method of accounting regularly followed by the appellant, i.e. Project Completion Method, and the commercial rationale for the placement of surplus funds. The addition was made without considering the real nature of transactions and without granting a fair opportunity of rebuttal.”

3. The relevant facts in brief are that the Assessee is a resident individual. For the Assessment Year 2013-2014 did not file return of income. The Assessing Officer received the information that the Assessee has sold three immovable properties for a consideration of INR.40,00,000/-, INR.35,24,500/- and INR.27,00,000/- during the relevant previous year. However, from the aforesaid transactions were not declared and/or offered to tax. The Assessing Officer recorded following reasons for reopening the assessment:

"Reason for reopening M/s.Boibuild Developers PAN:AAHFB4024A AY 2013-14

The assessee is a firm. As per details available in ITD/ITBA system, the assessee has not filed return of income for A.Y.2013-14.

2. *Name of the above mentioned assessee was appearing in the Non-filers monitoring system of ITBA. On verification of details available in NMS, P1 category and*

Individual Transaction Statement, it is seen that the assessee has sold three immovable properties of Rs.40,00,000/-, 35,24,500/- and Rs.27,00,000/- respectively. But the assessee has not filed the return of income. Hence, sale of immovable properties have made escaped assessment.

3. *Therefore, I have reason to believe that income to the extent of Rs.1,02,24,500/- chargeable to tax has escaped assessment for the year under consideration in the hands of the assessee. Accordingly, the proceeding u/s.147 of the Income Tax Act, 1961 are duly attracted in order to frame proper assessment to bring to tax appropriate income, hence this case is fit for issue of notice u/s.148 of the I.T.Act, 1961.*
 4. *In this case no return of income was filed for the year under consideration. Accordingly, in this case no assessment was made and the only requirement to initiate proceedings u/s.147 is reason to believe, which have been recorded as above.*
 5. *It is pertinent to mention here that in this case the assessee has chosen not to file return of income for the year under consideration although the total income of the assessee had exceeded the maximum amount which is not chargeable to tax as discussed above and the assessee was assessable under the Act. In view of the above, the provisions of clause (a) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.*
 6. *In this case more than four years have lapsed from the end of the assessment year under consideration, hence kind approval of the Pr. Commissioner of Income-Tax-24, Mumbai is solicited u/s.151(1) to issue notice u/s.148 of the IT Act, 1961."*
4. After recording the above reasons, the Assessing Officer initiated reassessment proceedings in the case of the Assessee for the Assessment Year 2013-2014. The Assessee participated in the reassessment proceedings which cumulated into passing of the Assessment Order, dated 26/12/2019 under Section 143(3) read

with Section 147 of the Act. By way of the aforesaid Assessment Order the Assessing Officer made an addition of INR.33,82,946/- in the hands of the Assessee holding the same to be interest income liable to tax in the hands of the Assessee.

5. Being aggrieved, the Assessee challenged the above Assessment Order in appeal before Learned CIT(A) raising the following grounds:

- "1. *The A.O. has erred in making addition u/s.148 on the assumption basis without having any jurisdiction over making such addition as same was not reason recorded at the time of re-opening. It is respectfully submitted that word of statue are reason to believe and not reason to suspect. A.O. made addition on the basis of suspect without any evidence on record. In case of Praful Ramanlal Patel Vs. ITO – 56 DTR 02 in Hon'ble Gujarat High Court, it is stated that assuming jurisdiction by the A.O. not valid. Further, in case of Renbaxy Laboratories Vs. CIT – ITA No.148/2008 in Delhi High Court, it is stated that no addition can be made on the other ground if primary ground is satisfied. Hence, addition made on the basis of assumption should be deleted.*
2. *The learned A.O. has erred in estimating the Interest on Debit balance of partners capital account. It is respectfully submitted that it is privilege to take money out of firm account and since no expenses whatsoever debited to Profit and Loss Account, such addition is not justified."*

6. Vide Order, dated 20/05/2025, the CIT(A) dismissed the appeal preferred by the Assessee. The CIT(A) rejected the Ground No.1 raised by the Assessee giving the following reasoning:

- "5. *Determination:*

*I have gone through the materialistic facts of the case and contention of the appellant. During the course of appellate proceedings, the appellant has furnished the statement of facts and form no.35 along with his submission which has been taken on record. **Ground of Appeal No.1** is that A.O. has erred in making such addition as same was not reason recorded at the time of re-opening.*

- 5.2 *In this case information has been received through NMS, P1*

category that the assessee is a non-filer of his return of income for AY 2013-14 and as per ITS, it is seen that the assessee has sold three immovable properties for a consideration of Rs.40,00,000/-, Rs.35,24,500/- & Rs.27,00,000/- during the year under consideration and the gain received from these transactions have h not been declared.

- 5.3 *On verification of e-filing portal and ITD system, no e-filing records or paper return are available in respect of the assessee despite the fact that as per AIR data incorporated in the "Individual Transaction Statement", the assessee has sold three immovable properties for a consideration of Rs.40,00.000/-, Rs.35,24,500/- & Rs.27,00,000/-. As the assessee has not filed its return of income for the year under consideration, the gains received from these transactions remained unexplained which has resulted in escapement of income chargeable to tax within the meaning of section 147 of the Act to that extent which could have been assessed had the return of income been filed by it.*
- 5.4 *As per section 148 of Income Tax Act: A Complete Guide. Section 148 empowers the Income Tax Department to reopen assessments if there's reason to suspect inaccurate income reporting. A notice under Section 148A signals that the Assessing Officer (AO) will reexamine the return. Reliance is placed on the decision of Karnataka High Court in Tapuriah Jain & Associates wherein the Court held that AO can assess income on issues that come to his notice during reassessment proceedings, regardless of whether the original decision for reopening survives. The Hon'ble ITAT Bangalore in the case of Shri MJ Shivani (.....) held that if fresh tangible material is found during the assessment, the AO justified in making additions on issues not mentioned in the original reasons for reopening. This judicial position derives force from **Explanation 3** to section 147(inserted by Finance Act, 2009).*
- 5.5. *From the Assessment Order it is evident that after obtaining prior approval from the Pr. Commissioner of Income-tax-24, Mumbai, notice u/s.148 of the I.T.Act, 1961 dated 28.03.2019 was issued and duly served upon the assessee by the A.O. In response to the said notice, the assessee has filed return of income on 11.10.2019 declaring total income at Rs. Nil. In view of the above-mention discussion, this ground of appeal is dismissed."*

7. Being aggrieved, the Assessee has carried issue before the Tribunal.

8. The Learned Authorized Representative, at the outset, submitted that no addition was made in respect of the issue on the basis of which reassessment proceedings were initiated. The Assessing Officer, therefore, did not have jurisdiction to make addition on other issues. Reliance in this regard was placed upon the following judgments:
 - Commissioner of Income Tax Vs. Jet Airways (I) Ltd. [2011] 311 ITR 236 (Bom)
 - Ranbaxy Laboratories Ltd. Vs. Commissioner of Income Tax [2011] 366 ITR 136 (Delhi)
9. Per contra Learned Departmental Representative supported the Order passed by the Learned CIT(A) and placed strong reliance upon paragraph 5.3 to 5.5 of the impugned order. Learned Departmental Representative also placed reliance upon Explanation 2 to Section 147 of the Act to contend that since in the present case no return of income was filed by the Assessee, income chargeable to tax would be deemed to have escaped assessment. Therefore, even if the Assessing Officer does not specify any income/issue in the reasons recorded for reopening assessment, then also addition could be made in respect of such income/issue while framing assessment under Section 143(3) read with Section 147 of the Act. Thus, in the present case, the fact that the Assessing Officer had not made addition in respect of income/issue stated in the reasons recorded for reopening assessment, would not come in the way of the Assessing Officer making addition.
10. We have considered the rival submissions and have perused the material on record.
11. It is admitted position that in the present case reassessment proceedings were initiated against the Assessee on the basis of belief formed by the Assessing Officer that the Assessee had sold

immovable properties during the relevant previous year and had failed to offer to tax the income/gains arising therefrom. However, while framing assessment, the Assessing Officer did not make any addition in respect of income/gains arising from sale of immovable property. The Assessing Officer made an addition of INR.33,89,946/- holding the same to be the interest income not offered to tax by the Assessee. The contention raised by the Assessee is that since the Assessing Officer has not made addition in respect of income/gains arising from sale of immovable property (i.e. the income that the Assessing Officer believed to have escaped assessment), the additions made by Assessing Officer in respect of any other income could not be sustained. We find that the aforesaid contention raised by the Assessee is based upon the judgement of Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd. (Supra) which was relied upon by the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. (Supra). The relevant extract of the said judgment of the Hon'ble Delhi High Court read as under:

"6. *Heard learned counsel for the parties. For considering the rival submissions it would be useful to reproduce the relevant parts of sections 147 and 148. Same are as follows:-*

*"147. Income escaping assessment. 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): [Emphasis supplied]*

Explanation 2: For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

- (a) Where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
- (b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (c) Where an assessment has been made, but-
- (i) Income chargeable to tax has been under assessed; or
 - (ii) Such income has been assessed at too low a rate; or
 - (iii) Such income has been made the subject of excessive relief under this Act; or
 - (iv) Excessive loss or depreciation allowance or any other allowance under this Act has been computed

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 sub-section (2) of section 148.

148. Issue of notice where income escaped assessment.

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such

other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."

7. *It is noted in section 147 that the words 'has reason to believe and sub-section (2) of section 148 came to be inserted by way of amendments in the Act with effect from 1-4-1989. Explanation 3 to section 147 was also inserted by the Finance Act, 2009 with effect from 1-4-1989. It is seen that conditions precedent for exercise of jurisdiction under section 147 is formation of a reason to believe by the Assessing Officer that income chargeable to tax has escaped assessment.*
8. *The crux of section 147 of the Act is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Explanation 3 makes it clear that the Assessing Officer may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention In the reasons recorded and the notice issued under section 148. Since there was confusion prevailing with regard to the powers of the Assessing Officer to assess or reassess on the issues for which no reasons were recorded, this explanation came to be inserted as clarificatory. The reasons for insertion of this clarificatory explanation in clause (57) of memorandum explaining the provisions of Finance Bill (No. 2) of 2009 are following:-*

"Some Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issued in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above Interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to

his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment will take effect retrospectively from 1-4-1989 and will accordingly apply in relation to assessment year 1989-90 and subsequent years."

9. *By virtue of explanation 3 to sect 9. By virtue of explanation 3 to section 147 interpretive confusion came to be clarified and thus the decisions rendered by the Punjab & Haryana High Court in the case of Vipin Khanna v. CIT [2002] 255 ITR 220/122 Taxman 1 and Kerala High Court in the case of Travancore Cements Ltd. v. Asstt. CIT [2008] 305 ITR 170/[2009] 179 Taxman 117, no longer hold the field on the subject.*
10. *The ratio of both the aforesaid cases was that upon the issuance of notice under section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated. To put it differently, once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment and proceeds to issue a notice under section 148, it is not open to him to assess or reassess the income under an independent of unconnected issue, which was not the basis the notice for reopening the assessment.*
11. *Now, after the insertion of Explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under section 147 though the reasons for such issue were not included in the reasons recorded in the notice under section 148(2) on the basis of which he had initiated proceedings under section 147. Similar question came for consideration before the Division Bench of Bombay High Court in **CIT v. Jet Airways (I) Ltd. (2011) 331 ITR 236/[2010] 195 Taxman 117. The Court held as under-***

"9. The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows: (1) The Assessing Officer must have reason to

believe that any income chargeable to tax has escaped assessment for any assessment year; (if) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148, (ii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course, of the proceedings under the section."

12. *The submission of learned counsel for the revenue was that when reassessment is reopened by issuance of notice under section 148, the previous assessment is set aside and the whole assessment proceedings start afresh and the Assessing Officer has power to levy taxes on the entire income which has escaped assessment. The learned counsel relied upon the cases of Supreme Court in CIT v. Sun Engg. Works (P.) Ltd. [1992] 198 ITR 297/64 Taxman 442 and V. Jaganmohan Rao v. CIT/CEPT [1970] 75 ITR 373. On the other hand learned counsel for the assessee submitted that the words, 'and also in section 147 signify that unless the Assessing Officer assesses the income with respect to which he has formed reason to believe within the meaning of section 147, it would not be open for him to assess or reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings. Learned counsel relied upon the case of Jet Airways (1) Ltd. (supra) and also CIT v. Shri Ram Singh [2008] 306 ITR 343 (Raj.) and CIT v. Dr. Devender Gupta [2008] 174 Taxman 438 (Raj.). Reliance was also placed in the case of CI. International Hotels Ltd. v. 170 being IT Appeal No. 2736/Del/2006 dated 24-10-2008.*
13. *Similar contention was raised before the Division Bench of Bombay High Court in the case of Jet Airways (I) Ltd. (supra). The Court referred to the interpretation by Rajasthan High Court in Shri Ram Singh's case (supra) wherein it was observed as under:-*

".... it is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

14. *The Bombay High Court also discussed the cases of V. Jaganmohan Rao (supra) and Sun Engg. Works (P.) Ltd. (supra) of the Apex Court. In the case of Sun Engg. Works (P.) Ltd. (supra) the issue before the Supreme Court was whether in the course of reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of section 147, as they stood prior to the amendment on 1-4-1989. In this context, the Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under-assessment". The expression "assess" was defined as referring to a situation where the assessment is made for the first time under section 147, whereas "reassess" as referring to a situation where the assessment has already been made, but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds stipulated in section 147. The Supreme Court referred to the Judgment in the case of V.Jaganmohan Rao (supra) wherein it was held that the object of section 147 enures to the benefit of the revenue and it is not open to the assessee to convert the*

reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

15. *In Dr. Devender Gupta's case (supra), learned Tribunal has relied upon the judgment of the Punjab & Haryana High Court, in CIT v. Atlas Cycle Industries [1989] 180 ITR 319/46 Taxman 315, and concluded that the basic condition is, that the Assessing Officer has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found, that the section puts no bar on the powers of the Assessing Officer, to put to tax, any other income, chargeable to tax, which has escaped assessment, and which subsequently comes to his notice, in the course of the proceedings, but then, the prefixing words "and also", which succeeded "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". This expression was found to be making clear, that existence of the income, for which the Assessing Officer formed belief, to have escaped assessment, is a precondition, for including any other income chargeable to tax, escaping assessment, and coming to the notice of the Assessing Officer subsequently, in the course of the proceedings. Thus, unless and until such income, as giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject-matter of assessment, under section 147 "no other income" coming to the notice of the Assessing Officer, during the course of the proceedings, can be roped in.*
16. *In the case of C.J. International Hotels Ltd. (supra) before the Tribunal, the facts were almost similar as in the present case. The Tribunal relied upon the case of Shri Ram Singh (supra) while holding that the Assessing Officer was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction, to put to tax, any other income which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.*
17. **Now, coming back to the interpretation which was given by the Bombay High Court to sections 147 and 148 in view of the precedent on the subject. The Court held as under:-**

"11.... Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. **The words "and also" cannot be ignored.** The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, **the correct interpretation would be to regard those words as being conjunctive and cumulative.** It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as well as "also" have been used together and in conjunction."

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Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess: (i). 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not

*assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. **If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently.** Parliament when it enacted the provisions of section 147 with effect from 1-4-1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter."*

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."

18. *We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of V. Jaganmohan Roo (supra). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Section 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess,*

reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have Intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.

19. *In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts.*
20. *The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make disallowance respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-1 as well.*
21. *In view of our above discussions, the Tribunal was right in*

holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of revenue and the second part of the question against the revenue.

22. *The present appeal is accordingly allowed.” (Emphasis Supplied)*

On perusal of above, it is clear that the Hon'ble High Court has held that where the Assessing Officer accepts the objection of the Assessee and does not assess or reassess the income the escapement of which formed the very basis of the notice under Section 148 of the Act, it would not be open to the Assessing Officer to assess income under some other issue independently.

12. In the present case, on perusal of notice issued under Section 148 of the Act it is evident that the Assessing Officer had initiated reassessment proceedings after forming the belief that income/gain arising from sale of immovable property had escaped assessment. On perusal of the Assessment Order it can be seen that, after considering the explanation offered by the Assessee vide letter, dated 16/12/2019 and 24/12/2019, the Assessing Officer did not make any addition in respect of income/gain arising from sale of immovable property. Thus, as per the above judgments of Hon'ble High Courts it was not open to the Assessing Officer to assess interest income in the hands of the Assessee independently. Accordingly, in view of the judgment of the Hon'ble Bombay High Court in the case of Jet Airways (I). Ltd. (Supra) and the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. (Supra), the addition of INR.33,82,946/- made by the Assessing Officer in the hands of the Assessee cannot be sustained and is, therefore, deleted.
13. During the course of hearing reliance was placed by the Revenue on

Explanation 2 to Section 147 of the Act. In our view the Explanation 2 to Section 147 of the Act cannot expand the scope of Section 147(1) of the Act read with Explanation 3 thereto as interpreted by the Hon'ble High Courts in the above judgments. Explanation 2 Section 147 of the Act creates a deeming fiction by which income chargeable to tax is deemed to have escaped assessment in cases where no return of income has been filed. However, the aforesaid deeming fiction cannot be extended to give the Assessing Officer unbridled powers to initiate reassessment proceedings in cases there no return of income has been filed even without identifying any income that has escaped assessment. Clause (a) of Explanation 2 to Section 147 of the Act provides that for the purpose of Section 147 of the Act income shall be deemed to have escaped assessment where no return of income had been furnished by the Assessee although his total income (*or the total income of any other person in respect of which he is assessable*) exceeds the maximum amount which is not chargeable to tax. Therefore, Clause (a) Explanation 2 itself requires the Assessing Officer to initially form a belief that the Assessee had some income. The deeming fiction contained in Explanation 2 treats such income as income that has escaped assessment. Thus, we are of the considered view that the reasons recorded by the Assessing Officer in the present case cannot be read so as to include recording of deemed belief that interest income assessed in the hands of the Assessee had escaped assessment even though the reasons recorded did not make reference to such interest income (by virtue of deeming fiction contained in Explanation 2 to Section 147 of the Act). Given the facts and circumstances of the present case, the provisions contained in Explanation 2 to Section 147 of the Act are of no aid to the Revenue. In terms of the aforesaid, Ground No. 1 raised by the Assessee is allowed while Ground No. 2 & 3 raised by the Assessee are dismissed as having been rendered academic in nature.

14. In result, in terms of paragraph 13 above, the appeal preferred by the Assessee is allowed.

Order pronounced on 25.08.2025.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.08.2025
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai