

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 4159/Mum/2025
(Assessment Year: 2013-14)**

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| Yashodhan Shanti Realtors, 162-A, Mittal Tower, Rajni Patel Marg, Nariman Point, Mumbai-400021. PAN: AABFY1367P | Vs. | ACIT, CC-2(3), Room No. 803, 8 th Floor, Pratishtha Bhavan, Old CGO Annexe, M.K. Road, Mumbai-400020. |
| Appellant) | : | Respondent) |

Assessee / Appellant by : Shri Subodh Ratnaparkhi, AR
Revenue / Respondent by : Shri Swapnil Choudhary, Sr. DR
Date of Hearing : 10.09.2025
Date of Pronouncement : 19.09.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-48, Mumbai [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 17.04.2025 for Assessment Years (AY) 2013-14. The grounds raised by the assessee are as under:

“1. The Hon. CIT(A) erred in upholding the re-opening of assessment u/s 147 of the I. Tax Act 1961, by issue of the notice u/s 148 dt. 31.03.2021, not appreciating that such re-opening was not valid as per law and therefore the notice u/s 148 dt. 31.03.2021 as well as the assessment order flowing therefrom were required to be struck down and quashed as bad-in-law.

2. *The Hon. CIT(A) erred in not appreciating that the order of re-assessment framed u/s 147 on 27.03.2022 was not valid by law, as the Ld AO had not made any addition in respect of the ground for which the assessment reopened and therefore the order of re-assessment as well as the addition made therein were not justified, being bad-in-law and therefore required to be struck down and quashed.*

3. *The Hon. CIT(A) erred in upholding the addition of Rs.1,00,00,000/- as unexplained cash credit u/s 68 of the IT Act 1961, on account of unsecured loan borrowed from one M/s Clair Diamond Pvt. Ltd. without appreciating that the said unsecured loan was a genuine business loan, borrowed and repaid through proper banking channels and duly supported by substantial evidences and that the appellant had fully discharged the onus placed by section 68 of the I. T. Act, 1961 and therefore the addition made by the Ld AO was not justified and is required to be deleted.”*

2. The assessee is a partnership firm engaged in the business of Builders and Developers. The assessee filed the return of income for AY 2013-14 on 17.09.2013 declaring a total Nil income. The assessment under section 143(3) was completed on 18.02.2016 accepting the income returned by the assessee. Subsequently on the basis of information received on Insight Portal, the assessment was reopened under section 147 of the Act. The reasons recorded by the Assessing Officer (AO) for reopening are extracted as under:

“Information received head of High Value Transactions for the F.Y 2012-13. During the year consideration the assessee made suspicious transaction with following parties which are as tabulated as under

| <i>S.No.</i> | <i>Source PAN</i> | <i>Source PAN Name</i> | <i>Information FY</i> | <i>Information Value</i> |
|--------------|-------------------|------------------------|-----------------------|--------------------------|
| <i>1</i> | <i>AARFM9295L</i> | <i>MD Enterprise</i> | <i>2012-13</i> | <i>1,50,00,000/-</i> |

2. *On verification of the record it was found that in the case of M/s M.D Enterprises and M/s Yashodhan Shanti Realtors were not assessed in this charge. The case of M/s Yashodhan Shanti Realtors is centralized with this charge vide centralization order dated 09.01.2021 from ITO 17(3)-1, Mumbai*

3. Therefore, no case records are available in this charge to verify the transactions. However, it was ascertain from the information received at project insight portal that assessee did not declare its transaction in its return of income for the A.Y. 2013-14. It was also observed that assessee reported NIL turnovers in its ITR for the year consideration.

4. In view of the above, I have a reason to believe that the income of Rs 1,50,00,000/- chargeable to tax has escaped assessment on account of failure of the assessee to disclose full and true material facts within the meaning of clause (c) of Explanation-2 of section 147 of the Income-tax Act, 1961. The income chargeable to tax has escaped assessment on account of the failure of the assessee to disclose full and true material facts necessary for assessment of its income for the assessment year under consideration.

5. As per the provisions of section 151(1) of the Income-tax Act, 1961, a notice u/s. 148 of the Income-tax Act, 1961 can be issued only after the prior approval of Pr. Commissioner of Income tax (Central)-1, Mumbai. If Pr. CIT Central -1, Mumbai is satisfied that it is a fit case for issue of such notice then notice u/s 148 of the Act, will be issued. Accordingly, the kind approval of Pr. Commissioner of Income tax (Central)-1, Mumbai is sought to issue notice u/s. 148 of the Income-tax Act, 1961 for the A.Y 2013-14.”

3. The assessee in response filed the return of income on 14.04.2021 declaring the same income as declared in the original return. The AO completed the assessment under section 147 wherein he treated the loan obtained from different party i.e.M/s Clair Diamonds Pvt. Ltd. as bogus and made an addition of Rs. 1,00,00,000/- under section 68 of the Act. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee raised the legal contention stating that the reopening is bad-in-law. The CIT(A) dismissed the said contention of the assessee by holding that

“6.4 Section 147 of the Act authorizes and permits the Assessing Officer to assess or reassess income chargeable to tax, if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped a cannot be read to mean that the Assessing had escaped

assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.”

4. Aggrieved the assessee is in appeal before the Tribunal.

5. The primary argument of the ld. AR is that the AO has reopened the assessment without examining the records which fact are substantiated from the reason recorded where the AO himself is admitting that the case records of the assessee are not available with him. The ld. AR further argued that in the reasons recorded the AO has mentioned that the assessee has entered into suspicious transactions of Rs. 1,50,00,000/- with one M/s M.D. Enterprises and non-declaration of the same in the return of income whereas while completing the assessment the AO made addition towards alleged bogus loan from a different party i.e. M/s Clair Diamonds Pvt. Ltd. Accordingly, the ld. AR argued that the ratio laid down by the Hon'ble Bombay High Court in the case of CIT vs. Jet Airways India Pvt. Ltd. [2011] 331 ITR 236 (Bom.) is clearly applicable and therefore the reopening is liable to be quashed. The ld. AR also submitted that the reason to believe is unsubstantiated since it is based on mere information received as admitted by the AO himself as he did not have any record pertaining to the assessee. The ld. AR submitted that the assessee has not entered into any transactions with M/s M.D. Enterprises with whom the alleged bogus transactions have been entered into which goes to prove that the AO has reopened without examining the records of the assessee. The ld. AR further submitted that in assessee's case assessment under section 143(3) is completed and the reopening is beyond 4 years. Accordingly the ld AR submitted that the 1st proviso to section 147 is applicable to assessee's case where it mandated that the escapement of income is attributable to failure on the part of the assessee to disclose material fact

fully and truly. The ld. AR in this regard drew our attention to the details furnished during the original proceedings under section 143(3) where the assessee has furnished all the details pertaining to loan from M/s Clair Diamonds Pvt. Ltd. and that the AO has accepted the genuineness of the loan. Therefore, the ld. AR alternatively argued that the reason to believe is a mere change of opinion and in this regard relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC).

6. The ld. DR on the other hand submitted that the AO has reopened the assessment based on the specific information that the assessee has entered into transactions of alleged bogus loan and therefore the AO has rightly had a reason to believe based on which he reopened the assessment. Accordingly, the ld. DR relied on the order of the lower authorities.

7. We heard the parties and perused the material on record. In assessee's case the original assessment under section 143(3) was completed on 18.02.2016 accepting the income returned by the assessee (page 22 & 23 of paper book). Subsequently the AO reopened the assessment for the reason that the assessee has entered into suspicious transactions with M/s M.D. Enterprises to the tune of Rs. 1,50,00,000/-. We notice that the AO in the reasons recorded has stated that no records pertaining to assessee is available with him but in the same sentence the AO has stated that information received from insight portal that the assessee has not declared the transaction, (refer para 3 of the reasons recorded as extracted in the earlier part of this order). Therefore in our view there is merit in the contention that the reason to believe is merely based on the information received and that the AO would not have formed the belief without the records to know if the assessee has recorded the impugned transaction or not. We further notice that though the

reasons recorded is mentioning about a suspicious transaction with M D Enterprises, the AO while issuing the notice under section 142(1) calling for details has stated that on verification of bank statements of the assessee it is found that there is transaction undertaken by the assessee with M/s.Clair Diamonds Pvt. Ltd which is not disclosed by the said party. It is further mentioned in the said notice that the identity, credit worthiness was not proved (page 30 to 32 of paper book). A combined perusal of the reasons recorded as extracted in the earlier part of this order and the details called for through notice under section 142(1) it is clear that the AO reopened the assessment on a different ground whereas the reassessment proceedings are conducted by calling for details completely different from the reason to believe. Accordingly we are convinced with the argument of the ld AR that the ratio laid down by the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd (supra)., is applicable to assessee's case and on this ground also the reassessment fails. The without prejudice proposition of the ld AR is that the details pertaining to loan from M/s.Clair Diamonds Pvt Ltd have already been examined by the AO during the proceedings under section 143(3) of the Act and that the reassessment on the same ground is a mere change of opinion. In this regard we notice that the assessee has submitted the details pertaining to the loan taken from M/s.Clair Diamonds Pvt Ltd such as loan confirmation, ITR, Financial statements etc., before the AO and that the AO did not record any adverse finding in this regard in the order under section 143(3). Therefore in our considered view, the reassessment to re-examine the same loan transaction would amount to change of opinion which is not permissible as laid down by the Hon'ble Supreme Court in the case of Kelvinator of India Ltd (supra). Further the reassessment in the present case is beyond four years and accordingly when we examine the facts in the light of the 1st proviso we notice that the assessee has furnished all the details pertaining to the loan transaction of M/s. Clair Diamonds Pvt. Ltd before the AO during

143(3) and therefore the contention that there is no failure on the part of the assessee to disclose fully and truly all material facts has merits. In view of these discussions we have no hesitation in holding that the reopening of assessment in assessee's case is not valid and is liable to be quashed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the open court on 19-09-2025.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai