

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.2528/MUM/2024
(Assessment Year 2012-13)

Abdul Hamid Abdul Majid Nathani

Flat No.3102, 31st Floor Kalapataru Heights,
Dr. A.L. Nair Road Agripada,
Mumbai - 400011
PAN: AABPN1625K

..... Appellant

v/s

Assistant Commissioner of Income Tax, -
22(1), Mumbai
Mumbai.

..... Respondent

Assessee by : Shri Dharan Gandhi

Revenue by : Shri Surendra Mohan, Sr.DR

Date of Hearing – 01/09/2025

Date of Order - 24/11/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 28/03/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: -

"1. The Learned Commissioner (Appeals) erred in upholding the action of the Assessing Officer ('AO') in reopening the assessment of the Assessee u/s 147 of the Income Tax Act, 1961 ('Act')."

2. *The learned Commissioner (Appeals) erred in confirming the action of learned AO in initiating reassessment proceedings without appreciating the fact that no income of the appellant chargeable to tax had escaped assessment. There was no reason to believe that income chargeable to tax had escaped assessment.*

3. *The learned Commissioner (Appeals) erred in confirming the action of learned AO in initiating reassessment proceedings without appreciating the fact that the reasons recorded for reopening were erroneous.*

4. *The learned Commissioner (Appeals) erred in perpetuating the reassessment proceedings u/s 147 even when the case was reopened solely on the basis of third party information and mere suspicion without application of mind.*

5. *The learned Commissioner (Appeals) erred in confirming the action of learned AO in initiating reassessment proceedings without appreciating the fact that there was no failure on the part of Assessee to disclose truly and fully all material facts relating to the loan transaction during the re-assessment proceedings.*

6. *The reassessment proceedings are not according to the laws, rules and regulations and hence are invalid and bad in law.*

As regards addition of Rs 5,65,00,000 u/s 68 in relation to receipt of unsecured loan

7. *The learned Commissioner (Appeals) erred in, in confirming the addition made by the learned AO amounting to Rs. 5,65,00,000 u/s 68 in relation to receipt of unsecured loan from Mr. Nadeem Kassam Supariwala.*

8. *The learned Commissioner (Appeals) failed to consider the documentary submissions which clearly indicate the creditworthiness of the lender and drew an adverse inference without independent application of mind.*

9. *The learned Commissioner (Appeals) erred in making the addition without having any documentary evidence which shows that the loan transaction of the appellant was bogus / sham / illegal.*

10. *The learned Commissioner (Appeals) failed to follow the principles of natural justice by not giving a reasonable explanation on the basis of which the addition of Rs. 5,65,00,000 was made and the ground on which he assumed that loan transaction was devoid of credit."*

3. In the present case, the assessee has challenged the validity of the reopening of the assessment under section 147 of the Act on various grounds and has also challenged the addition made by the AO under section 68 of the Act. Since the grounds challenging the reopening of assessment under section

147 of the Act have raised jurisdictional issues, therefore the same are considered at the outset.

4. As far as the issue relating to the validity of reopening under section 147 of the Act, the brief facts of the case are that for the year under consideration, the assessee filed his return of income on 20/09/2012, declaring a total income of INR 26,50,900. The return filed by the assessee was processed vide intimation dated 16/01/2013 issued under section 143(1) of the Act. Subsequently, on the basis of the information received from the DDIT (Investigation), Unit-8(3), Mumbai that the assessee has received substantial money in his bank account total amounting to INR 27,44,00,000, which has not been declared by the assessee, proceedings under section 147 of the Act were initiated, and notice under section 148 of the Act was issued to the assessee on 28/03/2019. In response to the notice issued under section 148 of the Act, the assessee filed his return of income on 17/10/2019, declaring a total income of INR 26,50,900. After receipt of the details filed by the assessee in response to the statutory notices issued under section 143(2) and section 142(1) of the Act, it was observed that the assessee had received a loan amounting to INR 5,65,00,000 from Mr. Nadeem Kassam Supariwala. Upon not being satisfied with the genuineness of the loan transaction and creditworthiness of the loan lender, the Assessing Officer ("AO"), vide order dated 28/12/2019 passed under section 143(3) read with section 147 of the Act, treated the entire loan of INR 5,65,00,000 as non-genuine and added the same to the total income of the assessee under section 68 of the Act.

5. The learned CIT(A), vide impugned order, not only dismissed the grounds raised by the assessee on the merits of the addition made under section 68 of the Act but also dismissed the grounds challenging the reopening of the assessment under section 147 of the Act. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the AO merely copied the information received from the Investigation Wing, which had made vague allegations. The learned AR by referring to the reasons recorded by the AO while reopening the assessment submitted that the reassessment proceedings under section 147 of the Act were initiated on the basis that the assessee received a substantial amount of INR 27,44,00,000 from Mr. Kassam Supariwala, however the addition under section 68 of the Act was made on the basis of the loan received by the assessee from Mr. Nadeem Kassam Supariwala. Thus, the learned AR submitted that the reasons recorded by the AO were merely a reason to suspect and to conduct a roving and fishing enquiry.

7. On the other hand, the learned Departmental Representative ("*learned DR*") vehemently relied upon the order passed by the lower authorities and submitted that the AO proceeded on the information received from the Investigation Wing.

8. We have considered the submissions of both sides and perused the material available on record. As the assessee has challenged the very basis of the assumption of jurisdiction by the AO under section 147 of the Act, it is

necessary to examine the reasons recorded by the AO while reopening the assessment, as these are the reasons which gave jurisdiction to the AO for initiating and proceeding with the reassessment. In the present case, while initiating the reassessment proceedings, the AO recorded the following reasons for reopening the assessment: -

"Reasons for reopening of assessment u/s.147 of the Income Tax Act, 1961

Name of the assessee : Shri Abdul Hamid Abdul Majid Nathani

PAN : AABPN1625K

Assessment Year : 2012-13

The assessee has filed his return of income on 20.09.2012 declaring an income of Rs. 26.50.900/-. The return was processed u/s 143(1) of income tax Act 1961.

2. The DDIT(Inv) Unit-8(3) Mumbai has forwarded information about Shri. Abdul Hamid Abdul Majid Nathani vide letter No. DDIT(Inv) Unit-8(3)/dissem. of Info./F.No.90/2018-19 dated 11.03.2019. The DDIT(Inv) Unit-8(3) has informed that

"The group has approximately twenty accounts in various lines of business ranging from jewellery. construction to textiles, Kassam Supariwala a resident of Dubai if holding Non-Resident Ordinary (NRO) savings account with Breach Candy Branch, Mumbai of Standard Chartered Bank since 06/05/2011. It appears that Kassam Supariwal instruct the overseas office of AL Rozouki Intl Exchange to facilitate transfer of money from their offices in India by sending local wire transfer (NEFT) to the customers NRO account with us. The The value of transactions involved is substantial. total value of fund received from AL Rozouki Inti. Exchange from Oct11,2012 is Rs.27.44.00.000/- Although there is no specific trend being followed in the transfer of fund between the group account an overview of a few transactions reveal that local wire transfer(NEFT) credits from AL Rozouki Inti Exchange is credited to the account of Kassam Supariwala and from there on the funds are transferred to the account of his son Nadeem Kassam Supariwala/Abdul Natathi."

3. On perusal of the return and the information received, it is observed that assessee has not declared any income/receipts from such transactions.

4. In view of the above facts and the information available, I have reason to believe that the income chargeable to tax, as mentioned above, to the tune of Rs.27.44,00,000/-, or any other income chargeable to tax which comes to my notice during the course of proceedings of re-assessment has escaped assessment for A.Y. 2012-13 within the meaning of section 147 of the IT Act

1961. I am, therefore, satisfied that the assessee has failed to disclose true and complete particulars of his income for the year under consideration. Accordingly, the case is being proposed for reopening u/s 147 of the Income Tax Act for A.Y. 2012-13.

5. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

6. Since the period of 4 years but not more than 6 years have elapsed from the end of relevant A.Y. 2012-13, prior approval of Pr. CIT-21, Mumbai is needed as per the provision of section 151 of the Income Tax Act, 1961.

7. In view of the above facts, I have reason to believe that income chargeable to tax as above to the tune of Rs. 27,44,00,000/- has escaped assessment in term of provisions of section 147 of the Act, 1961. I am, therefore, satisfied that the assessee has failed to disclose true and complete particulars of its income for year under consideration."

9. From the perusal of the same, it is evident that the AO placed heavy reliance on the information received from the Investigation Wing. We further find that, as per the information shared by the Investigation Wing, it was alleged that Mr. Kassam Supariwala, through an entity outside India, received a substantial amount of INR 27,44,00,000, which has been alleged to have been transferred by Mr Kassam Supariwala to his son, Mr. Nadeem Kassam Supariwala or the assessee. Thus, at the outset, it is evident that the information was ambiguous regarding the recipient of money from Mr. Kassam Supariwala, as there was no clear allegation that the assessee was the recipient of INR 27,44,00,000. Even then, on the basis of this information, it is evident from the record that the AO initiated the reassessment proceedings under section 147 of the Act after the expiry of a period of 4 years, but before the expiry of 6 years from the end of the relevant assessment year and alleged that the income chargeable to tax to the tune of INR 27,44,00,000 had

escaped assessment. We find that the assessee raised objections against the reopening of assessment and submitted that in his books as well as the bank statement, the amount of INR 27,44,00,000 has not been credited, and no money has been received from the overseas entity as alleged. Further, we find that vide its notice dated 20/10/2019 issued under section 142(1) of the Act, the AO, inter-alia, asked the assessee to show cause whether he has received an amount of INR 27,44,00,000 and the purpose of the same. Despite the above objections being raised by the assessee and specific query on this aspect, the AO vide its order dated 05/11/2019 rejected the objections filed by the assessee against the reopening of assessment for the year under consideration and held that he has reason to believe that income chargeable to tax to the tune of INR 27,44,00,000 has escaped assessment in terms of the provisions of section 147 of the Act. From the perusal of the said order, which forms part of the paper book from pages 25-29, we find that the AO further noted that this issue will be thoroughly investigated and sufficient opportunity will be provided to the assessee. We further find that immediately after passing the aforesaid order disposing of the assessee's objection against the reassessment proceedings, the AO issued another notice dated 18/12/2019 under section 142(1) of the Act seeking details regarding the loan of INR 5,65,00,000 received by the assessee from Mr. Nadeem Kassam Supariwala. It is undisputed that in the present case, ultimately, this loan transaction was the sole basis for making the addition under section 68 of the Act to the total income of the assessee.

10. It is trite that reasons, as recorded for reopening the reassessment, are to be examined on a standalone basis to determine the validity of proceedings under section 147 of the Act. In this regard, it is relevant to note the following observation of Hon'ble Jurisdictional High Court in Hindustan Lever Ltd vs R.B.Wadkar, reported in [2004] 268 ITR 332 (Bom.): -

*"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. **It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence.** The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*

(emphasis supplied)

11. Further, it needs to be appreciated that for initiating the proceeding under section 147 of the Act, the AO is required to have "reason to believe" that income chargeable to tax has escaped assessment. The existence of a valid "reason to believe" is a *sine qua non* to exercise the jurisdiction under section 147 of the Act. The expression "reason to believe" imports the

cumulative presence of the following four elements viz. some tangible material or materials to establish that income has escaped assessment; application of mind by the AO to such material; nexus between such material and the belief of escapement of income from assessment as envisaged under section 147; and satisfaction, based on reason, drawn tentatively by the officer that income has escaped assessment. However, in the present case, the nexus between the alleged material, i.e., information received from the Investigation Wing, and the belief of escapement of income from assessment under section 147 of the Act is missing, and thus renders the entire reasons to be merely reasons to suspect for making further investigation. This conclusion is further supported by the facts, as noted in the foregoing paragraph, that the transaction and the income which was alleged to have escaped assessment were not the ultimate bone of contention for making the addition to the total income of the assessee under section 68 of the Act. We find that the addition is also in teeth of the decision of the Hon'ble Jurisdictional High Court in CIT v/s Jet Airways India Ltd., reported in [2011] 321 ITR 236 (Bom.), wherein it was held that if after issuing a notice under section 148, the AO accepts the contention of the assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to the AO to independently assess some other income.

12. Therefore, in view of the aforesaid findings and respectfully following the judicial pronouncements cited supra, we are of the considered view that in the present case, the reasons recorded by the AO are not only vague but

also lack the vital link between the alleged material and the belief that the income of the assessee has escaped assessment. Thus, the reasons for reopening the assessment, in the present case, are bad in law. Consequently, the entire reassessment proceedings culminating in the assessment order passed under section 143(3) read with section 147 of the Act are unsustainable in law, and therefore, are quashed. As a result, grounds raised by the assessee challenging the reassessment proceedings are allowed.

13. Since the relief has been granted to the assessee on the aforementioned jurisdictional aspect, the other grounds raised by the assessee in the present appeal on merits are rendered academic and therefore are left open.

14. The application dated 20/07/2024 filed by the assessee seeking admission of an additional ground of appeal was not pressed during the hearing. Accordingly, the said application is dismissed as not pressed.

15. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 24/11/2025

Sd/-
GIRISH AGRAWAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 24/11/2025

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai.