IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA

BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 344 & 343/Agr/2025
Assessment Year: 2013-14

Hardayal Milk Products Private Limited, 318, Shambhoo Nagar, Shikohabad.	**Vs.**	DCIT, Circle 2(2)(1), Firozabad.
PAN :AABCH7576E		
(Appellant)		**(Respondent)**

Assessee by	Sh. Sahib P. Satsangee, C.A.
Department by	Sh. R.P. Maurya, CIT (A)-1/DR

Date of hearing	16.12.2025
Date of pronouncement	29.12.2025

ORDER

PER : S. RIFAUR RAHMAN, ACCOUNTANT MEMBER:

Both these appeals have been filed by the assessee against the separate orders of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25.06.2025 for the Assessment Year 2013-14.

2. Since the issues involved in both these appeals are more or less similar, the same were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. We take up ITA No. 344/Agr/2025 as a lead case.

3. Brief facts of the case are, the appellant filed its return of income on 27.09.2013 declaring total income of Rs.1,07,22,700/-. The assessment under section 143(3) was completed on 31.03.2016, assessing total income of assessee at Rs.2,59,89,010/- after rejecting assessee's books of account u/s. 145(3) of the IT Act, 1961 and making additions on account of low net profit and disallowance of depreciation claimed on fixed assets. In first appeal preferred against the above said assessment order dated 31.03.2016, learned CIT(A) vide order dated 25.06.2025 affirmed the rejection of accounts and sustained the addition made by AO on account of low profit rate. Aggrieved, assessee preferred an appeal in ITA No.342/Agr/2025 before the ITAT, which has been partly allowed by this bench of Tribunal,

4. Subsequently, based on the information received from ADIT(Inv)-Unit 4, Kolkata vide report dated 22.03.2018, reassessment proceedings u/s. 147 of the Act were initiated by issuing notice under section 148 on 13.09.2018 after seeking prior approval of the competent authority, i.e., PCIT-2, Agra under section 151 of the Act. Based on such information available as per the reasons recorded and subsequent information received from ADIT (Inv.) Unit-3, Kolkata vide letter dated 08.03.2019, the ld. Assessing Officer observed that the appellant had received accommodation entries amounting to Rs.18,23,00,000/- from Bank

Account No. 402220110000137 held with Bank of India, Beliaghata Branch, in the name of M/s. Silver Heritage Nivas (P) Ltd. Assessing Officer further observed that this entity was identified as a shell company, managed and controlled by Shri Anuj Bukrediwala of Howrah(WB), which was reported to have been engaged in providing accommodation entries in lieu of cash. Thus, in view of the information/reports of the Investigation Wing, Kolkata, the Assessing Officer made an addition of ₹18,23,00,000/- as unexplained cash credits under Section 68 of the Act and addition of Rs.9,11,500/- on account of commission expenditure presumed to have been paid out of unexplained income. Thus, a total addition of ₹18,32,11,500/- was made under Section 68 of the Act, vide assessment order dated 23.12.2019, passed under Sections 147/143(3) of the Act.

5. Aggrievedby the above said order, the assessee preferred appeal before the learned CIT(A), where the assessee filed detailed submissions both on validity of reassessment proceedings and merits of the case. Learned CIT(A) was not convinced with the detailed submissions of the assessee and holding the reassessment proceedings as legally valid, sustained the additions made by the Assessing Officer u/s. 68 of the Act.

6. Aggrieved, the assessee has come up in this appeal, raising following grounds of appeal :

> "1. Because under the facts and in the circumstances of the case, and in law, the order passed by the CIT(A) NFAC under section 250 of the Income Tax Act, 1961 ("the Act") is bad in law and 1 void ab initio, having been passed in violation of the principles Rs. 111503750 of natural justice, as the appeal was dismissed without adequately considering even the partial submissions offered by the assessee and surrounding circumstances.
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> 2. Because the learned CIT(A) NFAC erred in law and on facts in upholding the action of the ld. Assessing Officer, ignoring the 2 facts that reassessment proceedings initiated and consequential reassessment order passed under section 147 of the Act which are illegal and void for the reason -
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> (a) that the Assessing Officer had no jurisdiction to issue notice under section 148 of the Act beyond the period of four years from the end of the relevant assessment year without 3 demonstrating in the reasons recorded as to what material facts the assessee failed to disclose fully and truly necessary for assessment, as mandatorily required by Ist proviso to section 147;
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> (b) that the reopening of the assessment is based on a mere change of opinion on the issues which were already examined by the Assessing Officer in depth during the original assessment proceedings under section 143(3) of the Act, which goes to belie the A.O.'s assertion in the reasons recorded that the issue under consideration was never examined by the Assessing Officer during the course of regular assessment and tantamount to non-application of mind;
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> (c) that the re-assessment is based solely on borrowed 5 satisfaction solely based on information of Investigation Wing without any independent verification;
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> (d) that the information received from DDIT (Inv)-Unit-3, Kolkata, on 08.03.2019, including statements of third parties (Mahendra Kumar Agarwal and Bukrediwala), is neither the part of reasons recorded for reopening the impugned assessment nor confronted to the assessee for rebuttal. Rather the very same information has been used by the Assessing Officer in another reassessment order dated 27.03.2022 passed against the assessee u/s. 147 r.w.s.144 of the Act, which goes to eradicate the adverse view taken on this basis and establish non-application of mind by the Assessing Officer;
>
> (e) that the approval accorded under section 151 of the Act by the sanctioning authority was perfunctory, cryptic and in a mechanical manner, stating "yes I am satisfied.....", without 7 any recorded discussion, deliberation, OR independent application of mind and merely based on the

proposal of the Assessing Officer, which vitiates the entire proceedings initiated under section 147 of the Act.

3. Because the learned CIT(A) NFAC has erred in law and on facts in upholding the addition of 718,23,00,000/- under section 68 of the Act, ignoring that the assessee had duly discharged the initial burden by furnishing all the requisite documentary evidence to prove identity, creditworthiness, and genuineness of the share applicants.

4. Because the learned CIT(A) NFAC has further erred in law and on facts in sustaining an addition of 79,11,500/- allegedly 9 paid as commission to Shri Anuj Bukrediwala (whose statements were said to have been recorded by Investigation Wing, Kolkata), without any independent corroboration OR opportunity for cross-examination OR even its confrontation to the assessee

5. Because the order passed by the ld. CIT(A) NFAC, 10 confirming the impugned reassessment order is bad in law, against the facts, based on conjectures and surmises and is liable to be set aside.

6. That the appellant craves leave to add, alter, amend, OR withdraw any of the aforesaid grounds at the time of hearing.

7. At the time of hearing, learned AR has made various legal contentions that the reopening of assessment is bad in law ab inito, being based on change of opinion; notice u/s. 148, having been issued after expiry of four years from the end of the assessment year under consideration and incorrect invocation of section 68 of the Act. Learned AR of the assessee has filed a detailed written submission, which reads as under :

“Reopening proceedings u/s. 147, being based on mere change of opinion and the notice u/s. 148 dated 13.09.2018, having been issued beyond the period of four years from the end of the A.Y. 2013-14, are ab initio bad in law and liable to be quashed.

2.0 At the very outset, it is submitted that the reassessment proceedings have admittedly been initiated after the expiry of four years from the end of the

relevant assessment year, and therefore, the reassessment proceedings are ex facie bad in law, being initiated without satisfying the conditions stipulated in first proviso to Section 147, and are thus liable to be quashed as void ab initio. The statutory conditions under the first proviso to Section 147 are that no action for reopening can be taken beyond four years unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. For convenience, these provisions are reproduced as under :

"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."

A bare perusal of aforesaid proviso would show that it stipulates two cumulative conditions which must be satisfied to assume jurisdiction u/s. 147 beyond four years from the end of relevant assessment year – (i) There must be failure on the part of the assessee to file the return of income and to disclose fully and truly all material facts necessary for assessment; and (ii) that the income must have escaped assessment due to such failure.

2.1 While testing the facts of the present case on the anvil of first proviso to section 147, your honour would be satisfied that the appellant has made full and true disclosure of all material facts during the original assessment proceedings and there has been no failure on its part to disclose any information which could have led to the income escaping assessment. This fact stands garnished from the following undisputed facts:

(i). That the appellant has filed his return of income u/s. 139 of the Act along with annual report, audited P&L A/c and balance sheet reflecting the impugned share application money of Rs.18,32,00,000/- received during the year from M/s. Silver Heritage Nivas (P) Ltd.

(ii). That during the original assessment proceedings under section 143(3), the appellant, vide notice dated 19.05.2015, was specifically show caused to explain the impugned share application money amounting to Rs.18,32,00,000/- received from Silver Heritage Nivas Private Ltd., in response to which, the appellant had furnished detailed explanation dated 21.10.2015 with the following details/documentary evidences:

Sl No.	**Particulars**	**PB Page No.**

a.	Complete details of share applicant, M/s. Silver Heritage Nivas Pvt. Ltd.	19
b.	Acknowledgement of ITR filed by the M/s. Silver Heritage Nivas Pvt. Ltd. for the A.Y. 2013-14	20
c.	Auditor's report along with audited financial statements of M/s. Silver Heritage Nivas Pvt. Ltd for F.Y. 2012-13	21-32
d.	Copy of bank statement of the M/s. Silver Heritage Nivas Pvt. Ltd. for F.Y. 2012-13	33-42
e.	Form of Application for Equity Shares of the Appellant Company	43-147
f.	Copy of bank statement of the assessee reflecting the receipt of share application money from the aforesaid investing company	148-276

(iii) That in the original assessment proceedings, the appellant was again issued notice under section 142(1) dated 22.01.2016 **(PB Page No. 277-278)** and show cause notice dated 16.03.2016 **(PB Page No. 280-283)** to explain the genuineness of the share application money received from Silver Heritage Nivas (P) Ltd., in response to which, the appellant furnished detailed submissions dated 10.02.2016 (**PB Page No. 279)**, 23.03.2016 (**PB Page No. 284-289)** and 28.03.2016 (**PB Page No.292-294)** with the following documentary evidences/details pertaining to genuineness of the impugned share application money :

Sl No.	**Particulars**	**PB Page No.**
a.	Copy of assessment order passed u/s. 143(3) in the case of share applicant, M/s. Silver Heritage Nivas (P) Ltd. for A.Y. 2012-13, wherein, the identical investment in equity shares with the assessee, has been accepted by the concerned Assessing Officer	**290-291**
b.	Details of investment as on 31.03.2012 made by M/s. Silver Heritage Nivas (P) Ltd.;	**293**
c.	List of investments liquidated by Silver Heritage Nivas (P) Ltd. towards payments for share applications during the impugned assessment year	**294**

(iv) The appellant emphatically invites your honour's attention to the notice dated 30.10.2014 issued under section 133(6) of the Income-tax Act (**PB Page No. 349-350)** during the original assessment proceedings, addressed to the share applicant, M/s. Silver Heritage Nivas (P) Ltd. In response to this notice, the investor company furnished a detailed reply dated 23.11.2015,explaining that the investment was made out of its capital and reserves amounting to Rs. 49.80 crore, which had remained unutilized due to adverse market conditions

in its real estate business. It was specifically clarified that the said capital was raised prior to 31.03.2012. Additionally, it was informed that the investor company was assessed to tax for A.Y. 2012–13, and to support this, a copy of the income tax return for A.Y. 2013–14 as well as the assessment order for A.Y. 2012–13 were duly submitted. (**PB Page No.351-369**).

(v) Furthermore, during the course of the original assessment proceedings, the Assessing Officer issued another notice under section 133(6) dated 22.01.2016 to M/s. Silver Heritage Nivas (P) Ltd., (**PB Page No.370-371)** seeking clarification regarding the source of credit entries of almost identical amounts appearing just prior to the transfer of funds to the assessee. In reply dated 09.02.2016, (**PB Page No. 372-373)** the investor company explained that a decision had been taken to invest in the assessee company, but since liquid funds were not readily available, the investment was made in tranches, as and when funds were realized through liquidation. It was further clarified that the total investment reflected in the company's balance sheet stood at Rs. 4,958.00 lakhs, and these were the same funds that were subsequently realized and deployed in the year under consideration. This clearly established that the source of funds emanated from capital already disclosed and assessed in the previous assessment year, A.Y. 2012–13.

2.2 That apart, in the original assessment proceedings u/s. 143(3) of the Act, the ld. Jurisdictional Assessing Officer of the appellant sought directions u/s. 144A of the Act from the Addl. CIT, *inter alia*, on appellant's share capital and genuineness or otherwise of the same, on which the Addl. CIT, vide his letter dated 30.03.2016, after taking into account the investigation pursued by the Assessing Officer and the factum of creditors having been assessed to tax, was purportedly satisfied with the reply of assessee as to the genuineness of the share capital received during the impugned year.
2.3 That in view of aforesaid extended exercise/investigations made by the Assessing Officer and elaborate explanations of the appellant supported by cogent documentary evidences as to the genuineness of impugned share capital, the ld. Assessing Officer did not make any addition on this issue in the original assessment framed u/s. 143(3) dated 31.03.2016, but without making any discussion therein on this issue. In such circumstances, it can hardly be concluded in the reopening proceedings that the appellant failed to make full and true disclosure of all material facts necessary for assessment and thus, there has been no failure on the part of the assessee to disclose any information which could have led to presume any income escaping assessment.

2.4 The reasons recorded by the ld. Assessing Officer are placed on record (**PB Page No.310-311)** The observations made by the Assessing Officer in the reasons recorded read as under:

"It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of regular assessment/reassessment. This fact is corroborated from the

contents of notices issued by the AO u/s 143(2)/142(1) and -order sheet entries dated various dates recorded during the 143(3)/147 proceedings. It is important to highlight here that material facts relevant for the assessment on issue(s) under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report, 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 aforestated reasons, it is not a case of change of opinion by the AO."

2.5 These observations are factually unsustainable and clearly demonstrate non-application of mind. They are further falsified by the detailed Office Note recorded by the Assessing Officer during the original assessment proceedings under section 143(3) of the Act, specifically addressing the issue under consideration. The Office Note, along with corresponding order-sheet entries (reproduced herein below), clearly reflects that the matter was examined, queries were raised, and the appellant's responses were considered before concluding the assessment under section 143(3). It is a settled position in law, as laid down in several judicial pronouncements, that mere absence of discussion in the assessment order does not mean that no opinion was formed by the Assessing Officer in the original assessment proceedings. It is settled position of law laid down in various judicial pronouncements that once a query was raised and reply given, an opinion would be taken to have been formed and the conscious decision is implied therein. Reassessment in such a case amount to a change of opinion, not permissible under the Act.

2.6 The Office Note of the ld. Assessing Officer to the assessment order passed under section 143(3) is reproduced as under.

Office Note

1. No AIR/CIB information was available in this case.

2. The first reason for selection of the case under CASS was "Low net profit or loss shown from large gross receipt". This was examined thoroughly and after due consideration, the books of account were rejected and net profit estimated at Rs 2,50,43,467/- (60 1% of total turnover) which is on higher side for milk processing industry which is basically low margin high volume business.

3. The second reason for selection under CASS was "Difference in opening stock in current year with the closing stock of the previous year". The assesseeexplain this apparent discrepancy to be on account of the fact that stores items have been shown at a net consumed value as required to be disclosed in the ITR schema. There is no difference in opening stock as on 01.04.2012 and closing stock as on 31.03.2012 as per audited balance sheet of the assessee company. This was also verified from books of account and hence no adverse inference is being drawn from this discrepancy.

4. During the FY2012-13 relevant to the assessment year AY2013-14 the assessee company received a sum of Rs 18.32 crore as share application money from M/s Silver Heritage Niwas Pvt. Ltd (PAN-AANCS2391A) Shyam Chamber, 7/1A, Grant lane, 2nd Floor, Room No-2F, Kolkata. Detailed inquiries were made in respect of this share applicant company from which following facts emerged:

a. The assesseevide its reply filed on 21.10.2015 produced copies of share application forms, copy of ITR of M/s Silver heritage Niwas Pvt Ltd, Bank statement of this share applicant company as well as its audited balance sheet and profit and loss account which are placed on record.

b. The notice dated 30.10.2015 u/s 133(6) of the IT Act, 1961 was issued to M/s Silver Heritage Niwas Pvt. Ltd raising various queries regarding basis and source of investment into the assessee company.

c. A reply to the above notice was received on 01.12.2015 wherein various supporting details in respect of basis of making the investment into the assessee company were filed by M/s Silver Heritage Niwas Pvt Ltd.

d. The share applicant company M/s Silver Heritage Niwas Pvt Ltd (PAN-AANCS2391A) was assessed u/s 143(3) by the jurisdictional AO for the AY 2012-13 wherein the investment and capital to the tune of Rs 49.58 crore of the share applicant company was accepted as such by the department. Copy of the assessment order was also filed and is placed on record.

e. The list of debtors of the assessee company as on 31.03.2013 shows 12 depots in Kolkata with total receivable amount of Rs 1,02,71,332/-. Since, the assessee company sells its products like Ghee etc through its consignment agents in West Bengal it is reasonable to expect the share applicant company to be familiar with the assessee company's business profile.

f. Another notice u/s 133(6) was issued on 22.01.2016 to Mis Silver Heritage Niwas Pvt Ltd, Kolkata requiring it to explain and justify the pattern of transactions in its bank account and source of making significant investment into the assessee company.

g. Reply to above notice u/s 133(6) was received on 17.02.2016 wherein the share applicant company M/s Silver Heritage Niwas Pvt Ltd. Kolkata explained that source of funds for making investment into the assessee company was through liquidation of its investments to the tune of Rs 22.86 crore (which has already been assessed u/s 143(3) of IT Act, 1961). It also explained the pattern of transactions in the bank to be on account of the fact that since money was not available in the liquid form, the investments had to be made in parts, as and when the funds were liquidated.

h. The assessee company also provided list of investments which were liquidated by the share applicant company during the FY2012-13 that formed the source of funds of the share applicant company for making investment into the assessee company. This discharged the onus cast on the assessee company as required under the proviso to section 68 w.e.f AY 2013-14.

i. The credit entries in the relevant bank statement of the share applicant company were followed backwards and few bank statement of companies from which funds were received by the share applicant company were examined. No related cash deposits were noticed.

j. The CBDT has been issuing directions from time to time in respect of adoption of non-adversarial tax regime. The instruction no-17/2015 has been issued with intent to discourage/curb tendency to frame high-pitched/unreasonable assessments. The relevant portion of this instruction is as under:

"Board has consistently been advising the field authorities to be fair, objective and rational while framing scrutiny assessment orders. Role of supervisory authorities in this regard, has also been highlighted by the Board from time to time. It has, however, been brought to the notice of Board that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to generation of unproductive work for Department."

In the spirit of above instructions directions were sought u/s 144A of IT Act, 1961 from the Ld. AddI CIT Range-2(2), Firozabad in respect of the above issue of share applicant money as was included in the show-cause notice. The relevant portion of the directions issued by Ld. AddI CIT Range-2(2), Firozabad in this regard was as under:

"In respect of accretion to share capital having regard to the balance of convenience, in respect of investigation pursued and the assessee's reply that the creditors are assessed to tax and have indeed replied to the said effect, an appropriate satisfaction may be arrived at.

Encl: As above & case record in 01 Vol.

Sd/-
(Waseem Arshad)
Addl. Commissioner of Income Tax,
Range 2(2), Firozabad"

The import of the above direction, as understood by the undersigned, was that on the basis of material on record gathered through various inquiries, the AO is required to draw his/her own appropriate satisfaction and act accordingly.

In view of the above discussion, the various details/records filed by the assessee company as well as those gathered through inquiries from the share applicant company together with the direction of the Ld. Addl CIT Range-2(2), in the opinion of undersigned the assessee company was found to have discharged the onus cast on it under section 68 of IT Act, 1961. Hence, it was considered inappropriate to draw adverse inference regarding the identity, creditworthiness and genuineness of the share applicant company on the basis of material on record.

Sd/-
(Amit Shukla)
Deputy Commissioner of Income-tax,
Circle -2(2)(1), Firozabad

2.7 The certified copy of the order sheet entries recorded in the course of the assessment proceedings under section 143(3) of the I.T. Act, 1961 are filed. **(PB Page Nos.374-376)**

2.8 In view of aforesaid office note and order sheet entries recorded during the course of the original assessment proceedings, it is abundantly clear that the issue under consideration was subjected to detailed and exhaustive enquiry. The Assessing Officer issued multiple notices, to which comprehensive replies were filed by both the assessee and the concerned share applicant. The matter was further examined in light of the case records and under the directions of the Additional Commissioner of Income Tax, Range 2(2)(1), Firozabad. Based on this thorough examination, the Assessing Officer arrived at a reasoned conclusion on the issue in dispute. **Therefore, the statement made in the reasons recorded for reopening, that the matter was not examined during the original assessment, is patently incorrect and contrary to the record**. In view of the above, it is evident that the reopening proceedings are founded merely on a change of opinion, not sustainable under the settled principles of law. Consequently, such reopening is vitiated in law and liable to be quashed.

2.9 That it is again worthwhile to mention that the ld. Assessing Officer in the reasons recorded has wrongly mentioned that the issue under consideration was never examined by the Assessing Officer during the course of regular assessment, whereas in the original assessment proceedings, several notices/show cause notices were issued to the assessee and the assessee had made elaborate submissions in their compliance supported by plethora of cogent documentary evidences, as mentioned hereinabove, so as to justify the genuineness of the impugned share application money. Mere absence of discussion in the assessment order does not mean that no opinion was formed by the Assessing Officer in the original assessment proceedings. It is settled position of law laid down in various judicial pronouncements that once a query was raised and reply given, an opinion would be taken to have been formed and the conscious decision is implied therein. Reassessment in such a case amount to a change of opinion, not permissible under the Act.

2.10 That the reasons, recorded in the present case too, are completely lacking to indicate as to what material facts were not disclosed fully and truly by the assessee so as to assume jurisdiction u/s. 147 after expiry of four years. Therefore, the jurisdictional requirement under the first proviso to Section 147, having been not satisfied, renders the entire reopening proceedings jurisdictionally invalid, as the same are based on mere change of opinion not permissible under section 147 of the Act. Accordingly, the entire reassessment proceedings are void ab initio and liable to be quashed.

2.11 That reliance can fruitfully be made on the following judicial precedents:
(a). **DCIT v. Zuari Estate Development and Investment Co. Ltd. (2014) 373 ITR 661 (SC),** whereinHon'ble Apex Court held that the condition precedent for reopening beyond four years must be strictly satisfied; otherwise, the notice is void.

(b). **Sutra Ventures Pvt Ltd v UOI (2019) 111 Taxmann.com 442 (Bom.)(HC), in which** Hon'ble Bombay High Court held that theassessee had produced all material such as acknowledgement of return, balance sheet, profit and loss account, tax audit report, return of income of directors, shareholding pattern, bank account details etc. during original assessment. Therefore, profit and loss account was thoroughly scrutinized during original assessment and, thereafter, an assessment order was passed. Accordingly, there was no failure on part of assessee to produce all material particulars during original assessment. Allowing the petition the Court held that it cannot be said that there was any failure on part of the assessee to produce any material particulars, accordingly the notice issued by the AO is quashed.

(c). **ACIT v. Kad Housing P. Ltd. (2019) 69 ITR 550 (Delhi) (Trib)**, wherein Hon'ble ITAT has observed that during the course of original assessment proceedings u/s. 143(3), the Assessee was specifically asked by the AO to discharge its onus u/s. 68 of the Act for the share application money received by it and after satisfying himself, he had accepted the transaction as genuine. Therefore, in the light of the proviso to u/s. 147 of the Act, there was no failure on part of the Assessee to disclose fully and truly, all material facts relating to the information regarding accommodation entries which was considered as new tangible material by the AO to validate the reopening of the assessment.

(d) **PCIT v. L&T Ltd. (2020) 113 taxmann.47 (Bom)(HC):SLP of revenue is dismissed. PCIT v. L&T Ltd. (2020) 268 Taxman 390 (SC).** Hon'ble Bombay High Court, dismissing the appeal of the revenue, held that notice to reopen assessment had been issued beyond four years from end of relevant assessment year and, there was no failure on part of assessee to disclose fully and truly all material facts at time of assessment. Accordingly the Tribunal rightly held that reassessment notice is issued due to change of opinion. Order of Tribunal is affirmed.

2.12 That once an issue has been examined and accepted during the original assessment proceedings making no addition, reopening of assessment on the same issue without any tangible new material amounts to a change of opinion, which is impermissible under the law. Reliance is placed on the landmark decisions in the following cases :

a) **CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC);**

b) **PCIT v. Tupperware India Pvt. Ltd. [2020] 421 ITR 371 (Del HC)** : In this case, The AO reopened the assessment based on information from the Investigation Wing regarding share capital received from alleged entry providers. Hon'ble Delhi High Court quashed the reassessment, holding that the issue of share capital had been examined during original assessment proceedings. The reassessment was based only on a change of opinion and thus not valid.

c)

c)**PCIT v. RMG Polyvinyl (I) Ltd. [2017] 396 ITR 5 (Del HC)** : In this case, reopening was based on Investigation Wing's report alleging accommodation entries in share capital. Hon'ble Delhi High Court held that reopening was invalid as the AO had already scrutinized the issue and accepted it after calling for and examining evidence during original assessment.

d)**Signature Hotels Pvt. Ltd. v. ITO [2011] 338 ITR 51 (Del HC) :**In this case, reopening was based on generic information from the Investigation Wing alleging accommodation entries, without independent application of mind by the Assessing Officer. The Hon'ble Court quashed the reassessment, noting that there was no independent verification or inquiry by the AO. It amounted to borrowed satisfaction.

e)**CIT v. Usha International Ltd. [2012] 348 ITR 485 (Del HC) (Full Bench)**, wherein it is held that if an issue was properly scrutinized during original assessment and a conscious decision was made by the AO, then reopening is barred as it amounts to change of opinion.

f) **Devansh Exports vs. ACIT, I.T.A no. 2178/Kol/2017, dtd: 15/10/2018 (ITAT)(Kol),** wherein it has been observed that the information given by DIT (Inv) can only be a basis to ignite/ trigger "reason to suspect". The AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". If the AO acts on borrowed satisfaction and without application of mind, the reopening is void.

g) **GOKUL AGRO RESOURCES LIMITED vs. DCIT (IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 4383 of 2022 With R/SPECIAL CIVIL APPLICATION NO. 4986 of 2022 order dated 22.04.2024) (SLP Dismissed SPECIAL LEAVE PETITION (CIVIL) Diary No.55481/2024 order dated 02.01.2025)**

Invalidity of re-assessment proceedings, based on mechanical approval by learned PCIT u/s. 151:

3.0 In this context, the appellant submits that the requirement for sanction to issue notice u/s. 148 by the competent authority u/s. 151 is not a mere formality but a substantive safeguard intended to prevent arbitrary or unjustified reassessment proceedings. In the present case, the PCIT has merely endorsed the reasons recorded by the Assessing Officer by stating, "*In view of the reasons recorded by the A.O., I am satisfied that this is a fit case for issue of notice u/s. 148 of the Act*". However, there is no indication of independent examination, scrutiny, or satisfaction. Such a blanket endorsement is a classic case of mechanical approval, devoid of due consideration, particularly when the reasons recorded by the Assessing Officer too are based on mere information from Investigation Wing, Kolkata, without verifying the transactions of appellant's share capital and applying independent mind thereto. Non-application of mind by the sanctioning authority, i.e., PCIT while according approval to issue notice u/s. 148, vitiates the entire proceedings. In such state of affairs, the impugned notice issued under Section 148 and the entire reassessment proceedings initiated pursuant thereto are liable to be quashed as void ab initio.

3.1 Reliance may be placed on the following decisions:

(a) **S. Goyanka Lime and Chemicals Ltd., (2015) 56 taxmann.com 390 (MP HC) (**SLP dismissed in CIT vs. S. Goyanka Lime & Chemical Ltd. [2015] 64 taxmann.com 313 (SC))

(b) **ITAT Agra Bench order dated 28.03.2025 (ITA No. 258/Agr/2024) in Shri Anil Kumar Yadav vs. ITO**

4.0 The perusal of the reassessment order dated 23.12.2019 reveals that the ld. Assessing Officer has acted against the appellant on the basis of the information received from DDIT(Inv.) Unit II Kolkata dated 08.03.2019 in Para 2.1 of the assessment order.

4.1 The certified copy of the above information in the assessment records is filed **(Copy of report filed PB Page No. 329 to 333)**. The perusal of the report of the DDIT (Inv.) Unit-3 Kolkata dated 08.03.2019 in Para 9 only mentions the amount of Rs. 15.00 lac received by the share applicant M/s Silver Heritage Nivas (P) Ltd. from M/s Akashganga Agencies (P) Ltd in Financial Year 2011-12 relevant to the Assessment Year 2012-13 and not to the impugned year. Further, the statement of Shri Anuj Bekrediwala recorded under section 132(4) of the I.T. Act, 1961 **(Copy of statement filed PB Page No. 334 to 348)** nowhere explains the name of the Share applicant M/s Silver Heritage Niwas (P) Ltd., alleged to be held as a shell company control and managed by him. The assertions of the ld. Assessing Officer that as per the above report the share applicant M/s Silver Heritage Niwas (P) Ltd. was managed and controlled by Shri Anuj Bukrediwala, who had stated it to be

shell entity and engaged in providing accommodation entries in lieu of cash are incorrect and without sound application of mind.

4.3 The ld. Assessing officer solely on the basis of unverified and general statements of certain third parties, without affording any opportunity for cross-examination and without bringing on record any specific adverse material to rebut the detailed evidences filed by appellant during the original assessment proceedings made addition under section on the basis of conjectures, surmises, and suspicion. The letter dated 08.03.2019 from DDIT (Inv) Unit 3 Kolkata including statement of Shri Anuj Bukrediwala were **neither the part of reasons recorded for reopening the assessment under section 147 of the Act, nor confronted to the appellant by way of any show cause notice for rebuttal during the re-assessment proceedings, thereby violating the principles of natural justice.**

4.4 Your honour's kind attention is invited to the decision of **Hon'ble Calcutta High Court in the case of PCIT vs. Prashant Desai (ITAT/57/2025 IA No. GA/2/2025 order dated 10.06.2025)** wherein under similar circumstances the reasons recorded referred to the investigation report of entry provider for accommodation entries to persons and help them route their money without paying taxes on the same, the Hon'ble Court held;

The Department has taken a stand that it did not act on the statement of Mahesh Sharma and that it was only one of circumstantial evidence and citing such reason the Assessing Officer declined to provide the statement of Mahesh Sharma nor to provide an apportunity to the assessee to cross examine Mahesh Sharma. Thus, in the absence of any tangible material or a live link between Mahesh Sharma and the assessee, the reopening of assessment of the assesee has to be held bad in law.

The decision in the case of Principal Commissioner of Income Tax-2 Kolkata v. M/s Coal Sale Co. Ltd. reported in 2022(7) TMI 1503 Kolkata High Court will also come to the aid of the assessee wherein it was held that the assessee therein was found to have transacted with a company through banking channel and faulted Assessing Officer for reopening the assessment what is based on the statement of a third party which was general statement and the Assessing Officer assumed that the assessee is a beneficiary of the account. It was held that without any other material the conclusion drawn by the Assessing Officer merely on receipt of the information does not muster the requirement of law to validly form the reason to believe escapement of income. With the said reasoning, the appeal filed by the revenue was dismissed.

In the instant case, the Tribunal has analysed the factual position and has pointed out the errors committed by the Assessing Officer while reopening the assessment.

Thus, we find there is no question of law, much less substantial questions of law arising for consideration in this appeal.

4.5 In the case of **Sanjay Kaul vs. ITO W.P.(C) 11198/2019 order dated 30.05.2025, Hon'ble Delhi High Court** has held

30. However, the said information cannot be sufficient reason for the AO to believe that the Petitioner"s income for AY 2014-15 had escaped assessment as it lacked specific material regarding Petitioner"s income escaping the assessment. The impugned notice was issued based on general information derived from the report of the Investigation Wing and the statement of Mr. Anil Kedia, but no specific information regarding the Petitioner"s involvement in the alleged arrangement for evading tax liability for AY 2014-15. Further, the materials based on which the said report was prepared have also not been placed on record by the Revenue.

*31. As held in **CNB FINWIZ LTD. v. DCIT, CIRCLE 6(1)** (supra) relying upon the decision of the Supreme Court **ITO & Ors. v. LakhmaniMewal Das** (supra), the "reason to believe" cannot be conflated with "reason to suspect" in arriving at the conclusion that the Petitioner"s income has escaped assessment for AY 2014-15. As the concluded assessments cannot be reopened merely based on suspicion, we find that there is no tangible material to form the "reason to believe" that the Petitioner"s income has escaped assessment in the present case.*

Incorrect invocation of section 68: without prejudice to the above grounds:

5.0 Without Prejudice to what has been stated above, the assessee respectfully submits in relation to the addition made under Section 68 of the Act, which is unjustified, contrary to law, and liable to be deleted. During the reassessment proceedings, the Assessing Officer made an addition u/s 68 of the Act in respect of share application money received from M/s. Silver Heritage Nivas Pvt. Ltd. The assessee, however, has fully satisfied the conditions envisaged in section 68 of the Act and has fully discharged the initial onus cast upon it by law, by submitting the following documents:

(i) Complete details of share applicant, M/s. Silver Heritage Nivas Pvt. Ltd.;
(ii) Copy of ITR filed by the aforesaid investing company/share applicant;
(iii) Auditor's report along with audited financial statements of share applicant for the year under consideration;
(iv) Copy of bank statement of the share applicant's operational bank account;
(v) Copy of bank statement of the assessee reflecting the receipt of share application money from the aforesaid investing company;
(vi) Copies of share application forms submitted by the investing company.
(vii) Reply of share applicant filed in pursuance to notices u/s. 133(6)
(viii) Copy of assessment order passed u/s. 143(3) in the case of share applicant, M/s. Silver Heritage Nivas (P) Ltd. for A.Y. 2012-13, wherein, the

identical investment in equity shares with the assessee, has been accepted by the concerned Assessing Officer.
(ix) Complete details of investment as on 31.03.2012 made by M/s. Silver Heritage Nivas (P) Ltd.;
(x) List of investments liquidated by Silver Heritage Nivas (P) Ltd. towards payments for share applications during the impugned assessment year.

5.1 The Ld. Assessing Officer in the present case has not pointed out any defect or inconsistency in the evidences filed, nor provided any contrary material. It is a settled principle that documentary evidence cannot be brushed aside without rebuttal or cross-examination.

5.2 Notably, similar transactions with the same party were accepted in A.Y. 2012–13, wherein no addition was made, establishing consistency in conduct and treatment of such investments.

5.3 Thus, once all the conditions of section 68 are demonstrated to be satisfied through the aforesaid documentary evidences, the initial burden stands discharged, and the onus shifts to the Department to rebut such evidence with cogent material, which the Assessing Officer has failed to discharge in the instant case before making addition u/s. 68.

6.0 Reliance is placed on the following decisions.

Inter publicity (P) Ltd. vs. DCIT ITA No. 622/Mum/2021 order dated 17.10.2023 held as under;

(Note The decision in the case of Paradise Inland Shipping (P) Ltd. (supra) has been upheld by the Hon'ble Supreme Court and the SLP filed by the Department stands dismissed in PCIT vs. Paradise Inland Shipping (P) Ltd (2018) 93 taxman.com 84 (SC).)

ITAT Chennai M/s. Lalithaa Jewellery Mart Pvt. Ltd vs. ACIT ITA 274 of 2018 & 3160 of 2017

The ACIT v. M/s. Suryadev Alloys & Power Pvt. Ltd.,ITA Nos.:1982, 1746, 1747, 1748, 1749, 1750 & 1751/CHNY/2017

Bhavya Gold Pvt. Ltd. vs ACIT, Central Circle- 25, New Delhi. ITA No.1391/Del/2018

ITO vs. M/s. Valley Comtrade Pvt. Ltd., (Earlier known as Jhawar Comtrade Pvt. Ltd.,) ITA No. 2034/AHD/2017

In view of what has been discussed above, it is prayed that the impugned re-assessment order may please be quashed and the addition so made u/s. 68 of the Act be deleted."

8. On the other hand, learned DR placed reliance on the findings of the lower authorities.

9. Considered the rival submissions and the material available on record. First, we advert to decide the legal contentions of the assessee with respect to the reassessment order being void based on change of opinion.

10. We observe that it is an undisputed fact that during the original assessment proceedings completed under section 143(3) of the Act, the Assessing Officer had specifically examined the issue of share application money of Rs.18.32 crore received by the assessee from M/s Silver Heritage Nivas Pvt. Ltd. The record clearly evidences that multiple notices under sections 143(2), 142(1) and 133(6) were issued, not only to the assessee but also directly to the share applicant. In response thereto, the assessee and the investor company furnished exhaustive details, including identity particulars, income-tax returns, audited financial statements, bank statements, share application forms, details of liquidation of investments and copies of assessment orders passed under section 143(3) in the case of the investor company.

11. We further observe that the Office Note recorded by the Assessing Officer who passed the original assessment order, forming part of the original assessment records explicitly depicts the nature of enquiries

conducted, the replies received, and the satisfaction arrived at by the Assessing Officer regarding the identity, creditworthiness and genuineness of the share applicant. The Assessing Officer also sought directions under section 144A from the Additional Commissioner of Income Tax on this count, who, after considering the material and the fact that the investor was assessed to tax, left it to the Assessing Officer to arrive at an appropriate satisfaction. Upon such consideration, the Assessing Officer consciously accepted the share application money and did not make any addition on this account under section 68 of the Act.

12. In light of the above contemporaneous records, the assertion in the reasons recorded for reopening that the issue was “never examined” during the original assessment is factually incorrect and contrary to the material on record. Merely because the assessment order does not contain a detailed discussion on this issue, it cannot be inferred that no opinion was formed. It is well settled that where a specific query is raised during the assessment proceedings and the assessee furnishes a reply thereto, an opinion is deemed to have been formed by the Assessing Officer, even if the assessment order is silent on that aspect.

13. We further find that there is no allegation, much less any material, to suggest that the assessee failed to disclose fully and truly all material facts necessary for the assessment. On the contrary, the assessee had

placed all primary facts and supporting evidences before the Assessing Officer, and the same were duly examined. The reopening, therefore, is clearly based on a mere reappraisal of the same material, which amounts to a change of opinion, not impermissible in law. Our this view stands fortified by various judicial precedents relied on by the assessee in its written submissions, reproduced hereinabove. Accordingly, learned CIT(Appeals) was not justified in upholding the validity of reopening proceedings u/s. 147 of the Act.

14. Accordingly, we hold that the assumption of jurisdiction under section 147 of the Act is invalid. The reassessment proceedings are vitiated in law and consequential reassessment order, being not sustainable is liable to be quashed. The grounds raised by the assessee on this issue are allowed.

15. Since we have quashed the very reopening proceedings as void ab initio, other contentions raised by the assessee either on other legal aspects or merits of additions made are rendered academic and need not to be specifically adjudicated. In the result, appeal filed by assessee is allowed.

ITA No. 343/Agr/2025 (A.Y. 2013-14):

16. In this case, the Assessing Officer initiated reassessment proceedings under section 147 of the Act on the basis of information

dated 19.03.2020 received from the DDIT (Inv.), Kolkata on Insight Portal, alleging that the assessee had received accommodation entries amounting to Rs.60,10,000/- during the relevant year from Shri Shravan Mishra, proprietor of M/s Sky Scrapers Dealers, through layers of bogus intermediary entities engaged in providing accommodation entries.

17. The learned AR of the assessee drew our attention to the said information dated 19.03.2020 placed at page 332 of the paper book and submitted that the amount of Rs.60,10,000/- had, in fact, been received as share application money from M/s Silver Heritage Nivas Pvt. Ltd. This very transaction is included in the total share capital of Rs.18.32 crores received from the above said investor company and had already been examined in detail and added by the Assessing Officer under section 68 of the Act in the earlier assessment order dated 23.12.2019 passed under sections 147/143(3) of the Act.

18. We have already observed that exhaustive enquiries relating to the share application money received from M/s. Silver Heritage Nivas Pvt. Ltd. had already been conducted by the Assessing Officer while framing the original assessment under section 143(3) of the Act and Since the reassessment order dated 23.12.2019 has already been quashed as void on the ground of change of opinion, the reopening of assessment in the present case is also vitiated in law, having been initiated merely on a

change of opinion. Accordingly, the appeal filed by the assessee deserves to be allowed.

19. In the result, both the appeals filed by assessee are allowed.

Order pronounced in the open court on 29.12.2025.

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29.12.2025
*aks/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra