

**IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH,  
MUMBAI**  
**BEFORE SHRI JUSTICE (RETD.) C. V. BHADANG, PRESIDENT**  
**&**  
**SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.4046/MUM/2025**  
**(A.Y. 2015-16)**

**ITA No.4047/MUM/2025**  
**(A.Y. 2016-17)**

Deputy Commissioner of Income Tax, Central Circle 5(4) Room No. 436, 4 <sup>th</sup> Floor, Kautilya Bhavan, BKC, Bandra (East), Mumbai - 400 051, Maharashtra	v/s. बनाम	<b>Shri Sunil Bhagwatlal Dalal</b> Flat No. 1501, Bishop Gate, Shophia College Lane, Cumballa Hill, Mumbai - 400026, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAEPD3658F</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

**प्रत्याक्षेपसं./C.O. No.213/MUM/2025**  
**(Arising out of ITA No. 4046/MUM/2025)**  
**(A.Y. 2015-16)**

**प्रत्याक्षेपसं./C.O. No.214/MUM/2025**  
**(Arising out of ITA No. 4047/MUM/2025)**  
**(A.Y. 2016-17)**

<b>Shri Sunil Bhagwatlal Dalal</b> 177/183, Kalyan Bhavan, JSS Road, Girgaon, Mumbai - 400004, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Central Circle 5(4) Room No. 436, 4 <sup>th</sup> Floor, Kautilya Bhavan, BKC, Bandra (East), Mumbai - 400 051, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAEPD3658F</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Assessee by	Dr. K. Shivaram, Sr. Advocate & Sri Rahul Hakani - Advocate
Revenue by	Shri Arun Kanti Datta, CIT-DR

Date of Hearing	19.11.2025
Date of Pronouncement	02.01.2026



## आदेश / ORDER

### PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeals preferred by the Revenue and Cross Objections of the assessee emanate from the orders passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Y.] 2015-16 and 2016-17. Since the issues are common and interlinked and also the fact that the appeals were heard together, they are being taken up together for adjudication vide this composite order for the sake of brevity. **We take up Revenue's appeal in ITA No. 4046/MUM/2025 and CO No.213/MUM/2025 together first.** Decision in the appeal would apply *mutatis mutandis* to appeal for AY 2016-17 as well.

2. The grounds of appeals are as under:-

### ITA No. 4046/MUM/2025 (A.Y. 2015-16)

1. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion, ignoring the fact that the case was reopened on the basis of fresh information regarding cash loans given to M/s Radius Estates Developers Pvt. Ltd. was received by Hon'ble Income Tax Settlement Commission.*



2. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion, ignoring the fact that Affidavit, filed by Shri Sanjay Chhabria before the Hon'ble Income Tax Settlement Commission, admitting of receiving cash loans from the assessee was a fresh material which was considered for reopening of the case for assessment.*
3. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion ignoring the fact that Hon'ble Bombay High Court, while deciding the writ petition filed by the assessee, ordered to continue the reassessment proceedings with certain directions.*
4. *On the facts and circumstances of case, the Ld. CIT(A) erred in deleting the addition of Rs. 16,81,00,000/- (being cash loan given) u/s 69 of the Act and addition of Rs. 2,99,00,000/- (being interest on cash loans) u/s 69A of the Act, ignoring the fact that during proceedings before Hon'ble Income Tax Settlement Commission, M/s Radius Estates Developers Pvt. Ltd. accepted that it had received cash loans from the assessee.*
5. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 16,81,00,000/- (being cash loan given) u/s 69 of the Act and addition of Rs. 2,99,00,000/- (being interest on cash loans) u/s 69A of the Act, ignoring the fact that Shri Sanjay Chhabria in his affidavit filed before Hon'ble Income Tax Settlement Commission, had accepted of receiving cash loans from the assessee.*
6. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 16,81,00,000/- (being cash loan given) u/s 69 of the Act and addition of Rs. 2,99,00,000/- (being interest on cash loans) u/s 69A of the Act, ignoring the fact that addition made on the basis of similar information in the case of Monish Ghansham Makhija for AY 2016-17 was accepted by Shri Monish Ghansham Makhija and taxes were paid by him in Vivad se Vishwas Scheme.*



The grounds of cross objections are as under:-

**C.O. No.213/MUM/2025(AY 2015-16)**

1. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that Ld AO failed to produce Shri Sanjay Chhabria for cross-examination and thus the learned Assessing Officer failed to produce his witnesses and prove his case and hence, the addition of Rs. 16,81,00,000/-u/s. 68 may be deleted.*
2. *On the facts and circumstances of the case, the learned CIT(A) failed to appreciate that non-supply of statement of Shri Sanjay Chhabria recorded during search violates the principles of natural justice of the assessee and hence the addition of Rs. 16,81,00,000/- u/s. 68 may be deleted.*

3. At the outset, it was noticed that the instant appeals of the Revenue are delayed by six days. In this regard, an application for condonation of the delay has been submitted alongwith an affidavit mainly attributing the delay due to procedural formalities. Since the delay is negligible and the reasons stated are considered to be sufficient cause, we condone the delay and proceed to adjudicate the appeals on merit.

3.1 Likewise, the CO filed by the assessee is also delayed. The assessee has pleaded that grounds of appeal of the Department were received on 20.06.2025 and 30 days ended on 19.07.2025, and hence there is a delay of 17 days in filing cross-objection. The assessee forwarded the grounds of appeal to his Chartered Accountant on



10/7/2025 who was under the bonafide impression that time to file cross-objection was 60 days. Hence, there was delay in filing cross objection. It has also filed the affidavit of the CA to support to support his contention and to condone the delay which is stated to be unintentional, for bonafide reasons and due to the circumstances beyond its the control. Reliance is placed on Collector, Land Acquisition vs. Mst. Katiji & Ors. (1987) 167 ITR 471 (SC). Considering the detailed reasons, we condone the delay.

**3.2 Additional ground of appeal-** The assessee has made a request as per Rule 27 of Income Tax (Appellate Tribunal) Rules 1963, in respect of a legal contention on non-affording opportunity of cross-examination and non-furnishing statement of third party relied upon by AO. The legal contention goes to the root of the matter. It is stated that the issue was raised before the CIT(A) who dismissed the ground of appeal of the assessee. As all the facts are available on the record of the Assessing officer / CIT(A), Assessee may be permitted to file the present application. The assessee relies on Gilbert & Barkar Manufacturing Co. 111 ITR 529 (Bom) and Assam Co. Ltd. vs. CIT 256 ITR 423 (Gau). On due consideration, we admit the additional ground which goes into the very root of the impugned issues and is also discernible from the facts on record itself.



4. **Ground nos.1 to 3** pertain the reopening of the case u/s 147/148 of the Act which is stated to be bad in law. According to the assessment order, the assessee filed return of income for the relevant assessment year on 27.12.2016 declaring income of Rs.3,01,64,690/-. Subsequently, this case was selected for scrutiny assessment consequent to Search and seizure operation u/s. 132(1) of the Act which was conducted on 'The Wadhwa Group' on 16.12.2015. Assessment order u/s. 143(3) r.w.s. 153C of the Act was completed on 28.12.2017 on assessed income of Rs.3,77,29,327/-.The then AO received order of hon'ble Income Tax Settlement Commission(ITSC) u/s 254(D) of the Act in the case of M/s Raghuleela Builders Pvt Ltd and M/s Radius Estates & Developers Pvt Ltd dated 31.08.2018 wherein new facts had been informed about the assessee pertaining to AY 2015-16. Thereafter, recording the specific reasons and after obtaining approval for reopening assessment u/s. 151(1) of the Act, notice u/s. 148 was issued. Reasons recorded are reproduced as follows: -

“During the course of proceedings before the Hon'ble Income Tax Settlement Commission (hereinafter referred as 'ITSC') u/s 245D(4) of the Act carried out after the search assessment proceedings, the applicant entities submitted the details viz. names, PAN and addresses vide submission dated 14.08.2018 (page no.2181-2184) filed before ITSC on 16.08.2018 pertaining to Cash loans for which the onus u/s 68 of the Act has been held to be discharged by the Hon'ble ITSC. It is seen that the following ledger account has been identified



by the applicant entities as representing Cash loan transaction undertaken by the Radius Group with the assessee i.e. Shri Sunil Dalal (PAN-AAEPD3658F) .

Name of the party/ledger account appearing in 'Tally File-Balu'

Name and Address of the Party (as submitted by the applicant to the ITSC)

Sunil Dalal-11% Sunil Dalal, 183, 1 st Floor, KalyanBhavan, JSS Road, Girgaon, Mumbai-4 AAEPD3658F

Sunil Dalal-13% Sunil Dalal, 183, 1 st Floor, KalyanBhavan, JSS Road, Girgaon, Mumbai-4 AAEPD3658F

Sunil Dalal-14% Sunil Dalal, 183, 1 st Floor, KalyanBhavan, JSS Road, Girgaon, Mumbai-4 AAEPD3658F

Sunil Dalal-18% Sunil Dalal, 183, 1 st Floor, KalyanBhavan, JSS Road, Girgaon, Mumbai-4 AAEPD3658F

Sunil Dalal New-18% Sunil Dalal, 183, 1 st Floor, KalyanBhavan, JSS Road, Girgaon, Mumbai-4 AAEPD3658F

4.1 The AO further stated that the applicant entities during the course of judicial proceedings before the ITSC had identified the above ledger account as representing cash loan transaction executed by the Radius Group with the assessee, by submitting complete details viz Name, Address and PAN of the assessee vide its submission dated 14.08.18 filed before ITSC . The Hon'ble ITSC held that onus u/s 68 had been discharged in relation to the cash loans extended by the assessee to the Radius Group. Shri Sanjay Chhabria had also filed an affidavit before the ITSC as per its direction undertaking to repay the above outstanding loans to assessee through accounted funds as per the terms of settlement as per the judgment of ITSC Special Bench in the case of M/s MAAD



Realtors and Infrastructure Pvt Ltd. The fact that Shri Sanjay Chhabria affirmed before the ITSC as per the terms of final settlement to pay the cash loans as above via cheque through accounted funds to the assessee, established a clear nexus between these cash loans and the assessee, thereby resulting in reasons to believe that cash loan transactions recorded under the above mentioned ledger accounts represent cash transactions executed by the Radius Group with the assessee.

4.2 The assessee against reassessment proceedings filed Writ petition vide No. 3378 of 2019 before Hon'ble Bombay High Court which was adjudicated with following directions by Hon'ble Bombay High Court:

- “ (i) Respondent No. 1 shall provide a legible copy of the documents relied upon for his conclusion that there were reasons to believe tax has escaped assessment including a copy of the order passed by the Settlement Commission which is referred to in the reasons to believe. The portion that does not pertain to Petitioner could be redacted by drawing a dark line over those portions;
- (ii) Those documents shall be provided to Petitioner within two weeks of receiving a request from Petitioner/Petitioner's Advocate/ Chartered Accountant, providing the list of documents required. We also make it clear that if the Assessing Officer is going to rely on any material which is not specifically mentioned in the list to be provided by Petitioner, that document/material shall also be provided before it is relied upon by the Assessing Officer;
- (iii) Within two weeks of receiving those documents/ material, Petitioner may file further submissions, showing cause as to why there is no escapement of income and why there should not be any re-opening of Petitioner's assessment;
- (iv) Within eight weeks of receiving further submission, Respondent No.1 shall pass an Assessment Order. Before passing such Assessment Order, personal hearing shall be given to Petitioner, notice whereof shall be communicated at-



least five working days in advance. If the Assessing Officer is going to rely on any judgment in his Assessment Order, a list thereof shall be provided to Petitioner along with the notice for personal hearing so that petitioner will be able to deal with/distinguish the judgments during personal hearing;  
(v) The order to be passed shall be a reasoned order, dealing with all the submissions of Petitioner.”

4.3 The directions given as above were adhered and accordingly, legible copies of following details/documents which are relied upon by Assessing officer while recording reasons for reopening were given to the assessee vide letter dated 31.07.2023 and 01.08.2023. Further, the assessee was asked to file reply along with submissions within 2 weeks from the date of this letter as per directions of Hon'ble Bombay High Court.

“I. Printout of the following ledger accounts recorded in the seized Tally File - 'Balu' and referred in the 'Reasons recorded for reopening'

- a. Sunil Dalal-11%
- b. Sunil Dalal-13%
- c. Sunil Dalal-14%
- d. Sunil Dalal-18%
- e. Sunil Dalal New-18%

II. Copy of Affidavit filed by Sanjay Chhabria dated 07.07.2018 before Income Tax Settlement Commission (ITSC).

III. Copy of Affidavit filed by Sanjay Chhabria dated 23.08.2018 before Income Tax Settlement Commission (ITSC). The details at Serial no. other than S. No 58 to 62 of the Annexure attached with said Affidavit are redacted in pursuant to the directions of Hon'ble Bombay High Court as they pertain to other third parties.

IV. Copy of order passed by Income Tax Settlement Commission which is referred in the reasons to believe. The relevant pages of the order which are related with you are shared and portion of the shared pages of order that does not pertain to you is redacted by drawing a dark line in pursuant to the directions of Hon'ble Bombay High Court as they pertain to other third parties.”

V. Copy of reasons recorded for initiation of re-assessment proceedings in this case.



VI. Copy of Writ Petition No. 369 of 2020 filed in the case of Radius Group against ITSC order in the Hon'ble Bombay High Court by Department.”

4.4 Before him, the assessee stated that copies of satisfaction note for issuing notice u/s 153C of the Act and copies of statements of Shri Sanjay Chhabria during search and post search and copy of letter filed by Shri Sanjay Chhabria/Radius Group in ITSC were not provided to the assessee. With respect to this, it was stated that copy of satisfaction note for issuing notice u/s 153C of the Act was not provided because it was an internal confidential document of the department which was relied upon by then Assessing officer for initiating assessment proceedings u/s 153C of which was already completed by passing assessment order u/s 153C r.w.s 143(3) of the Act dated 28.12.2017. Current assessment proceedings were initiated after recording reasons u/s 147 of the Act and Hon'ble Bombay High vide order dated 26.06.2023 directed to share legible documents relied upon by Assessing officer while recording reasons; satisfaction note u/s 153C of the Act did not come into this category. Reopening of the assessment proceedings are based upon affidavits filed by Sanjay Chhabria before ITSC(which were shared with assessee vide letter dated 31.07.2023) which were relied upon by AO for coming to conclusion that there were reasons to believe that tax had escaped assessment. Hon'ble Bombay High court vide order dated



26.06.2023 directed to share legible documents relied upon by Assessing officer while recording reasons; statements of Sanjay Chhabria do not come into this category. Pursuant to the directions of Hon'ble Bombay High Court legible copies of various documents were furnished to the assessee.

4.5 Before the AO, it was submitted that mere furnishing affidavit before the ITSC, did not and could not be considered as fresh tangible material so as to reopen the case. With respect to this, it is observed that the AO that Sanjay Chhabria for the first time since the conduct of search submitted the complete details viz., Names, PAN and address of parties from whom cash loans as recorded in seized data-Balu which were taken by Radius Group submitted through Affidavits dated 07.07.2018 and 23.08.2018 in proceedings before ITSC. During course of assessment proceedings u/s 153C of the Act, though the documentary evidences like ledgers, tally file named Balu were in possession with then AO and the then AO also recorded statements under oath of CFO Ujwal Desai and assessee, source of these cash loans was not clearly identified. For the first time since search conducted, affidavits filed by Sanjay Chhabria (after completion of assessment proceedings 143(3) r.w.s 153C of the Act) identified source of these cash loans recorded in Tally file named 'Balu' which were extended by assessee in this case. So,



contention of the assessee that all documentary evidences were already available with then AO while completing assessment proceedings u/s 143(3) r.w.s 153C of the Act and thus it was case of change of opinion was not found acceptable.

4.6 He further stated that even during the statement recorded under oath during assessment proceedings u/s 143(3) r.w.s 153C assessee just stated that these cash loans were arranged from third parties, but failed to give any details about these third parties. But Sanjay Chhabria through affidavits dated 07.07.2018 and 23.08.2018 before ITSC gave complete details about cash loans amounting to Rs. 247 cr., which pertained to source of these cash loans. Further, any affidavit filed before ITSC had its legal validity which is further fortified by the order of the Hon'ble ITSC. Therefore, such affidavit clearly comes under the purview of 'tangible material' so as to reopen the assessment proceedings u/s 147 of the Act.

4.7 Without prejudice to the above, it was contended that the case of assessee pertains to A.Y. 2015-16 and notice u/s 148 of the Act was sent on 31.03.2019 which was well within four years from the end of the A.Y under consideration. Thus, there was no requirement to establish that the assessee had failed to disclose fully and truly material facts necessary for its assessment and that the assessment could be re-



opened, if the assessing officer had tangible material for forming the basis of his reason to believe that income of the petitioner had escaped assessment which was in this case is Affidavits filed by Sanjay Chhabria before ITSC.

5. In the subsequent appeal, the ld.CIT(A), the assessee reiterated the same contentions as made before the AO. It was submitted that the reopening of assessment carried out was merely on account of change of opinion. No reopening of the assessment could be made merely on change of opinion by reviewing the original view already taken in the assessment order. The AO has been given power to reassess under section 147 of the Act upon certain conditions being satisfied, and he does not have power to review. It was also stated that reopening of the assessment also could not be made without any new tangible material coming into existence. In the present case, there was no new tangible material on the basis of which the AO had reopened the assessment and hence, the reopening was bad in law and liable to be quashed. No new materials were also brought on records. Reliance was also placed on various judicial decisions in this regard.

5.1 The ld.CIT(A) observed that it was undisputed fact that the AO reopened the case u/s.148 of the Act and as per the reasons recorded, the reopening of the assessment was based upon the subsequent events



taken place in respect of Radius Group assessment before the ITSC wherein the key personnel of Radius Group, Shri Sanjay Chhabria filed affidavit giving details of person from whom cash loans were received and as recorded in the tally file named Balu. Another affidavit was filed by Shri Sanjay Chhabria before ITSC wherein assurance was given that the repayment of the cash loans would be made from accounted funds of Radius Group. Based upon the above facts of the case, the AO had received information that Radius Group had filed Affidavit before ITSC and also given names of parties from whom it received cash loans as recorded and found in tally file named Balu. This information received by the AO and reliance placed on the Affidavits filed by Shri Sanjay Chhabria were the only basis for the AO to reopen the case of the assessee without any further verification and/or application of mind and without considering the fact that original assessment order was already passed in case of the assessee u/s.143(3) rws 153C of the Act wherein the entire evidence gathered in course of search action on Radius Group including CFO Shri Ujjval Desai was duly considered. The AO could not have merely acted upon the affidavit of Shri Sanjay Chhabria by treating and considering the same as new information and tangible material so as to reopen the case.



5.2 The Id.CIT(A) was of the view that the affidavits filed by Shri Sanjay Chhabria before the ITSC could not be construed as new information / tangible material when the material and evidence found from laptop of Shri Ujjval Desai, CFO of Radius Group, was duly examined during the course of assessment proceedings u/s.153C of the Act in the case of assessee. Moreover, the affidavit of Shri Sanjay Chhabria could not be considered as “tangible material” for reopening the assessment. As regard the change of opinion, it is stated by him that the undisputed fact remained that the seized material / evidence i.e. the tally file named Balu and the various ledger accounts under the name of the assessee was the basis for taking up the assessment in the case of assessee by issue of notice u/s.153C of the Act. The AO in the proceedings u/s.153C of the Act issued summons to Shri Ujjval Desai, CFO of Radius Group as also the assessee and recorded their statements. Shri Ujjval Desai categorically stated that as per his knowledge, no cash loan is extended by the assessee. After considering the seized material, statements recorded and submission of the assessee, the AO accepted the contentions of the assessee and no addition was made in respect of the ledgers found in the tally file named Balu while passing the assessment order u/s.143(3) rws 153C of the Act. It was observed by the appellate authority that in the reassessment proceedings u/s.148 of the



Act, the seized material remains the same, which was already analyzed by the AO in the course of assessment proceedings u/s.153C of the Act. For the first time during the proceedings before ITSC, Radius Group through key personnel Shri Sanjay Chhabria contended that it has received cash loans from third parties including assessee and in support of the same, Shri Sanjay Chhabria filed his affidavit. Hence, it could be concluded as per the facts on record that except for affidavit of Shri Sanjay Chhabria filed before ITSC, there was no new tangible material or evidence brought on record in reassessment proceedings corroborating cash loans given by the assessee to Radius Group. In such situation, reliance needs be placed only on the tangible material / evidence found during the search action, also for the reason that Radius group has changed its stand for the first time during ITSC proceedings in respect of the contents of tally file named Balu found from laptop of Shri Ujjval Desai, CFO of Radius Group. He placed reliance on certain case laws in holding that the jurisdictional conditions for invoking section 147 - 148 are not satisfied as there was no failure to disclose material facts fully and truly point. The Supreme Court in CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC) has held that there is difference between 'power to review' and 'power to reassess' u/s.147 of the Act and that the AO has no power to review. Similar view has been taken by Bombay High Court in



case of Knight Riders Sports Pvt. Ltd. v. ACIT (2023) 459 ITR 16 (Bom) wherein it was held that there is no ground for reopening of the assessment on mere change of opinion where the issue at hand was already dealt with during the original assessment even if the assessment order does not specifically dealt with that issue. assessment order passed u/s.143(3) rws 153C of the Act. Hence, the reopening of the assessment was found to be unsustainable in law and the same was held to be invalid.

6. During hearing before us, the ld.AR has reiterated the same contentions as made before the lower authorities claiming that the reassessment proceedings were based on change of opinion with no tangible information since all the above details were already considered by the AO during original assessment proceedings. Per contra, the ld.DR has contested the contention stating that the AO initiated proceedings based on a new information which change the entire scenario of the earlier assessment. Therefore, it was not a case of change of opinion.

7. We have carefully considered the facts of the case, perused the records and examined the case laws qua facts of the case. It is an undisputed fact that the reopening in not beyond four years from the end of the relevant assessment year. Therefore the condition regarding



full and true disclosure is not applicable to the facts of the case. In so far as change of opinion, lack of tangible materials and review or reconsideration of the same material facts are concerned, we find that the Id.CIT(A) has failed to appreciate the facts on record that the affidavit of Sri Sanjay Chabaria was not available to the AO at the time of original assessment. This new information in our view duly constitutes tangible material for the AO to resort to reopening of the case as the information had drastically changed the entire scenario of the case. It is an information received from external sources leading to a prima facie basis for initiation of reopening proceedings. Thus, it is evident that the department was in possession of fresh information which led the AO to arrive at reasons to believe necessary to invoke the provisions of section 147 of the Act. The Hon'ble Delhi High Court in the case of **AGR Investments Ltd. vs. Addl. CIT (Del) 333 ITR 146** held that that where Assessing Officer had specific information from DDIT (Investigation) as regard transactions entered into by assessee company with a number of concerns which had made accommodation entries and they were not genuine transactions, it could be said that there was material on basis of which notice under section 148 of the Act could be issued. It is further pertinent to mention here that in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011)**



**dated 15.02.2012**, the Hon'ble Delhi High Court, held that as long as there is a 'live link' between the material which was placed before the AO at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held- "*We are aware of the legal position that at the stage of issuing the notice u/s 148 the merits of the matter is not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment.*"

7.1 There is a live link between the information which was available with the AO and his formation of belief that income had escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity or reopening. In view of discussed facts of the case and judicial pronouncements on the issue of the reopening of case u/s 147 and issuance of notice u/s 148 of the Act, by the AO, we are of the considered opinion that the AO had sufficient 'reason to believe' for reopening of the case u/s 147 by issuing notice u/s 148 of the Act. We may place reliance on the case of **Central Provinces Manganese Ore Company Ltd. (191 ITR 662 SC)**, wherein the Apex Court interpreted the word "reason to believe". It was held that, the words "reason" in the phrase "reason to believe" in [section 147](#) of the Act, would mean cause or justification. If the AO has cause or



jurisdiction to know or suppose that income has escaped assessment, he can be said to have reason to believe that income has escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. In **Praful Chunilal Patel Vs. M.J.Makwana Vs. CIT**, [236 ITR 832], the hon'ble court while interpreting the term 'reason to believe', held that, the word "reason to believe" cannot mean that the AO should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and, if he likes, from any information that he receives. If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he had reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief though justified for the purpose of initiation of the proceedings under **Section 147** of the Act may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such income has escaped assessment, the AO is not required to base his belief on any final adjudication of the matter". His formation of belief is not a judicial decision but an administrative



decision. It does not determine anything at the initial stage, but the AO has a duty to proceed so as to obtain, what the taxpayer was always bound to pay if the increase is justified at all. The decision to initiate the proceedings is not to be preceded by any judicial or quasi judicial enquiry. His reasoning may be the result of official information or his own investigation or may come from any source that he considers reliable. His reason is not to be judged by a Court by the standard of what the ideal man would think. He is the actual man trusted by the legislature and charged with the duty of forming of a belief for the mere purposes of determining whether he should proceed to collect what is strictly due by law, and no other authority can substitute, its standard of sufficient reason in the circumstances, or his opinion or belief for his. Unless the ground or material on which his belief is based, is found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion that it constitutes a sufficient reason, cannot be overridden. What is, therefore, to be ascertained is, whether the alleged reason really existed, and if it did, whether it was so irrational as to be outside the limits of his administrative discretion with which the AO is invested so as to be really in disregard of the statutory condition.....".

7.2 In view of the settled principle of law as propounded by the Apex Court as well as by High court and considering the contention of



the reasons recorded for reopening and further clarification of the information made by the revenue, we are of the view that, the Assessing Officer himself was satisfied with regard to the information and other materials on record, he formed an opinion that, the income had escaped assessment. Therefore, when the information was specific with regard to transactions entered into by the assessee and the AO had applied his independent mind to the information and upon due satisfaction, led to form an opinion that the income assessee chargeable to tax had escaped assessment, which facts suggests that, there is live link between the material which suggested escapement of income and information of belief. Under the circumstances, we are satisfied that, there was enough material before the AO to initiate proceedings under [section 147](#) of the Act. Apparently, from the facts of the case as narrated above clearly shows that it is not a case of change of opinion. Even the hon'ble High Court while dealing with the writ petition filed by the assessee in the matter, did not find any infirmity in the reassessment proceedings while giving certain specific directions.

7.3 In view of the foregoing reasons and considering the facts and circumstances of the present case, we have no hesitation to hold that it could not be said that there was no material or grounds before the AO and the assumption of jurisdiction on the part of the AO under [Section](#)



147 of the Act to reopen the assessment by issuing impugned notice under Section 147 of the Act is without authority of law, which render into the notice unsustainable. The appellate order is set aside on the issue. Therefore, we hold that the assessee failed to make out a case of invalid assumption jurisdiction u/s 147 of the Act. **Therefore, ground no. 1 to 3 of the appeal are allowed.**

8. **Ground no.4 to 6** relate to the addition made by the AO which is primarily based on the statement of Sri Sanjay Chabaria .It may be stated here that in the Cross objections and additional ground of appeal, the assessee has claimed that no cross examination of the said person was accorded to the assessee. Consequently, the assessment is liable to be quashed being illegal and bad in law.

9. The ld.CIT(A),narrated the contents of the assessment order according to which during course of search action, the tally file named 'Balu' which recorded unaccounted cash transactions of Radius Group was found in the laptop of Shri Ujwal Desai(CFO of Radius Group). Further, during proceedings before ITSC, Sri Chhabria filed affidavit giving details of the names, PAN, address, amount of cash loan, amount of interest paid etc. pertaining to the cash loans recorded in the seized 'Tally File Balu'. Name and PAN of the assessee was clearly appearing in the Sr.No. 58 to Sr. No. 62 of the Annexure filed to Affidavit filed by



Sanjay Chhabria. Thus, contention of the assessee that there was no corroborative material or evidence with regard to digital record seized during search action was present was not acceptable. The AO also relied on the case of a person Sri Monish Ghansham Makhija in whose case, similar addition was made on the basis of the affidavit of Sri Chhabria and settled the dispute by availing Direct Vivad se Vishwas Scheme. Thus, affidavit filed by Sanjay Chhabria was corroborative material or evidence which explains entries in seized Tally file named 'Balu'. Seized material were supported by corroborative evidences in the form of affidavits filed before ITSC. PAN, name and address of the assessee was clearly appearing in the Sr.No. 58 to Sr. No. 62 of the annexure filed to affidavit filed by Sanjay Chhabria before ITSC. In respect of cross examination, however, it was stated by the AO that though summon u/s 131(1) of the Act was sent to Sanjay Chhabria on 13.09.2023 to present for cross examination alongwith relevant documents related to affidavits filed before ITSC on 20.09.2023 at the office of undersigned and also the assessee was also intimated about cross examination and requested to present at his office on 20.09.2023, Sanjay Chhabria failed to attend the office for necessary cross examination. The assessee in its submission stated that without granting opportunity of cross examination of the Sanjay Chhabria reliance placed on his affidavits would lead to violation



of principal of natural justice. However, the AO went ahead with the addition and no further effort was made to allow cross examination. According to him sufficient opportunities in this regard had already been accorded. Its objections raised by assessee to the 148 notice were disposed of by speaking order. Besides, in view of the directions given by Hon'ble Bombay High Court in this case legible copies of documents relied upon while recording reasons of reopening were given to assessee and time of two weeks was given to assessee to submit necessary submissions. Thus, contention of the assessee that he has denied opportunity of necessary cross examination of Sanjay Chhabria was not found acceptable. It was also stated that the assessee had quoted various case laws to substantiate how granting opportunity of cross examination was necessary condition for adherence to the principles of natural justice. But facts of this case are different where reopening of assessment proceedings were done on the basis of affidavit filed before ITSC which had its own legal validity and can be relied upon even though it is not subjected to the cross examination. Consequently, he went ahead and made to conclude that in the affidavit filed by Shri Chhabria before the Hon'ble ITSC and as per the finding given by the Hon'ble ITSC in its order, it is established that cash transaction between the assessee and the Radius Group had taken place. Therefore, it was



clearly held that the assessee had provided cash loan amounting to Rs.16.81 cr. to the Radius Group during the year under consideration which has not been disclosed by the assessee in its books of accounts and in the return of income for which assessee had not provided satisfactory explanation and thus remain as unexplained investment. Hence, a sum of Rs.16.81 cr. given to Radius Group was held to be unexplained investment u/s. 69 of the Act and is added to the total income of the assessee. Further, interest received amounting to Rs.2.99 cr. on cash loan given to Radius Group which had not been disclosed by the assessee in his books of accounts and in the return of income for which assessee had not provided satisfactory explanation was also held to be unexplained money u/s 69A of the Act and was added to the total income of assessee.

10. Before the Id.CIT(A) the assessee inter alia claimed that that there was no other corroborative evidence or material apart from the affidavit proving that the assessee had actually given any cash loan to Radius Group and no such material or evidence was found in course of search action at his residence or office premises as also from the office premises of Radius Group. Further, third party evidences and documents could not be relied upon in isolation without giving any



opportunity of cross examination. In the present case, Shri Sanjay Chhabria failed to attend the cross examination proceedings and the AO had also not made any further attempts to enforce his attendance for cross-examination.

10.1 The ld.CIT(A) observed that the entire case of the AO for making the impugned addition was based upon the affidavit filed before ITSC and its order. However, it was seen that the department has filed Writ Petition against the order of ITSC in case of Radius Group before the Hon'ble Bombay High Court wherein the department had challenged the order of ITSC and contended that Radius group had not discharged onus cast on it u/s 68 of the Act as no confirmation letter had been submitted by the Radius group in respect of loan creditors and also it had failed to furnish any evidence in support of creditworthiness of the loan creditors and genuineness of cash transactions found recorded in digital data seized during the course of search and seizure action given to ITSC in the affidavit of Shri Sanjay Chhabria. The AO had not proved that affidavit filed by the assessee was correct by bringing any corroborative evidence and thus, only the Affidavit of Shri Sanjay Chhabria could not be relied upon for making addition in the hands of the assessee, more particularly when there was no other corroborative material or evidence found suggesting any cash loan given by the



assessee to Radius Group. Accordingly, he deleted the impugned additions made u/s 69A of the Act. However, the contention of the assessee regarding cross examination was rejected on the reasons that the AO had issued summons to Shri Sanjay Chhabria for cross-examination as requested by the assessee but failed to attend proceedings.

11. Before us, the ld.AR has reiterated the same contentions as made before the lower authorities challenging the addition stated to be based on affidavit of Sri Chhabria and not supported by any corroborative evidence. He also objected to the denial of cross examination as the entire edifice of the addition is stated to be based on the affidavit only. In such a circumstance, it was incumbent on the authorities below to allow cross examination of Sri Sanjay Chhabria. Denial of the same amounted to violation of the principles of natural justice. The ld.DR on the other hand placed reliance on the assessment order on merits of the addition. In respect of cross examination, he placed reliance on the decision of the authorities below.

12. We have carefully considered all aspects of the case. There is no dispute that the AO has placed heavy reliance on the affidavit of Sri Chhabria in making the impugned additions as also for reopening the assessment proceedings. We find that the AO did make some effort to



allow the cross examination of the said person to the assessee, however, due to his non attendance, cross examination could not be taken to logical end. The records do not indicate that any fresh attempt was made by the AO in this regard. Rather, without making any such fresh effort he went ahead in drawing adverse conclusion and making the impugned additions. Therefore, it can be concluded that he did appreciate the importance of allowing cross examination of the facts and the circumstances of the case, but did not take it to a logical end and hurried to make the addition contradicting his own action. Even the Id.CIT(A) having co-terminus powers under the Act did not consider it necessary to allow the same. Such action on part of the lower authorities in our view is inconsistent with the rules of justice and fairly.

12.1 According to us, not allowing the assessee to cross-examine the witnesses though the statements of those witnesses were made the basis of the impugned order is a serious flaw as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the assessment order is based upon the statements given by the aforesaid witness. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the authorities below did not grant this opportunity to



the assessee though such an opportunity was repeatedly sought by the assessee.

12.2 In this regard, it may be stated here that in the case of **GTC Industries Ltd. v ACIT 65 ITD 380**, ITAT Mumbai Bench has relied upon the judgment of Calcutta High Court in the case of **Kisanlal Agarwalla v. Collector of Land Customs AIR 1967 & Cal. 80** and quoted this judgment in para 90 which throws light on the right of cross examination—.

*“90. There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard. This latter doctrine is known as audi alteram partem. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of audi alteram partem, that no party should be condemned unheard. No natural justice requires that there should be a kind of a formal cross-examination. Formal cross-examination is procedural justice. It is governed by rules of evidence. It is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and*



*reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the witness-box.”*

*ITAT has further held that, “As regards the dictum ‘audi alteram partem’ the assessee’s basic contention was that the statements of witnesses and materials which were relied upon by the Assessing Officer in the assessment order to reach the conclusions and findings which were adverse to the assessee should have been disclosed to the assessee and the witnesses should have been offered for cross-examination. The right to cross-examine the witness who made adverse report is not an invariable attribute of the requirement of the said dictum. The principles of natural justice do not require formal cross- examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence, and is the creation of Court. It is part of legal and statutory justice, and not a part of natural justice, therefore, of law that the revenue could not rely on any evidence which had not been subjected to cross-examination. However, if a witness has given directly incriminating statement and the addition in the assessment is based solely or mainly on such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross- examination. Adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of collateral nature.”*

12.3 In the case of **ITO v. M. Pirai Choodi 334 ITR 262** where the High Court had set aside the order of assessment, it was held by the hon’ble Supreme Court that the High Court should not have set aside the entire ground that no opportunity to cross-examine was granted, as sought by the assessee and the High Court should have directed the



Assessing Officer to grant an opportunity to the assessee to cross-examine the concerned witness.

12.4 Further, the CIT(A) who have co-terminus powers with the AO cannot delete the addition on the ground that opportunity of cross-examination was not given to the assessee, rather they should give this opportunity to the assessee even at appellate stage if it is crucial to decide the appeal and there is no other material evidence with the Assessing Officer other than the statement of the witness. Rules of evidence do not govern the income-tax proceedings strictly, as the proceedings under the Income Tax Act are not judicial proceedings in the sense in which the phrase “judicial proceedings” is ordinarily used. The Assessing Officer is not fettered or bound by technical rules of evidence contained in the Indian Evidence Act, and he is entitled to act on material which may or may not be accepted as evidence in a court of law. However, the principles of natural justice need to be applied by the income-tax authorities during assessment and appellate proceedings. Wherever Revenue collects evidences against the assessee and does not confront the same to the assessee, before using it against the assessee, the addition cannot be sustained. The hon’ble Supreme Court in the case of **Andaman Timber Industries v Commissioner of Central**



**Excise, Civil Appeal No. 4228 of 2006** has considered that if there was no material with the Department on the basis of which it could justify its action, and if the statement of the two witnesses who were unknown to the appellant was the only basis of issuing the Show Cause Notice, right to cross-examination has to be given.

12.5 Considering the aforesaid judgments, we are of the view that the AO remained under a statutory obligation to facilitate a cross-examination. The assessee could have dispelled the material that the A.O acted upon to disprove the authenticity of the loan transaction only if it was provided an opportunity to cross-examine Sri Sanjay Chabaria who had allegedly referred the name of the assessee as a lender of the impugned cash loan. Accordingly, we set aside the appellate order and restore the entire issue involving merits with a direction to the AO to allow cross examination to the assessee of the above named person and decide the issue in accordance with the provisions of the Act. The AO would also supply the statement/affidavit of Sri Sanjay Chabaria to the assessee for necessary action at its end.

12.6 We may make it clear that remanding the matter should not be in any manner construed to deciding the issue on merits. The ld.AO



would be at liberty to decide the issue after affording adequate opportunity of hearing to the assessee in this regard.

13. In the result, **the Departmental appeal is partly allowed while the Additional ground and Cross Objection are allowed for statistical purposes.**

**14. ITA No. 4047/MUM/2025 (A.Y.2016-17)**

1. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion, ignoring the fact that the case was reopened on the basis of fresh information regarding cash loans given to M/s Radius Estates Developers Pvt. Ltd. was received by Hon'ble Income Tax Settlement Commission.*
2. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion, ignoring the fact that Affidavit, filed by Shri Sanjay Chhabria before the Hon'ble Income Tax Settlement Commission, admitting of receiving cash loans from the assessee was a fresh material which was considered for reopening of the case for assessment.*
3. *On the facts and circumstances of case, the Ld. CIT(A) erred in holding that reopening of the assessment is based on change of opinion ignoring the fact that Hon'ble Bombay High Court, while deciding the writ petition filed by the assessee, ordered to continue the reassessment proceedings with certain directions.*
4. *On the facts and circumstances of case, the Ld. CIT(A) erred in deleting the addition of Rs. 6,25,00,000/- (being cash loan given) u/s 69 of the Act and addition of Rs.6,99,00,000/-(being interest on cash loans) u/s 69A of the Act, ignoring the fact that during proceedings before Hon'ble Income Tax Settlement Commission, M/s Radius Estates Developers Pvt. Ltd. accepted that it had received cash loans from the assessee.*



5. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 6,25,00,000/-(being cash loan given) u/s 69 of the Act and addition of Rs. 6,99,00,000/-(being interest on cash loans) u/s 69A of the Act, ignoring the fact that Shri Sanjay Chhabria in his affidavit filed before Hon'ble Income Tax Settlement Commission, has accepted of receiving cash loans from the assessee.*
6. *On the facts and circumstances of the case, the Ld.CIT(A) erred in deleting the addition of Rs. 6,25,00,000/-(being cash loan given) u/s 69 of the Act and addition of Rs. 6,99,00,000/-(being interest on cash loans) u/s 69A of the Act, ignoring the fact that addition made on the basis of similar information in the case of Monish Ghansham Makhija for AY 2016-17 was accepted by Shri Monish Ghansham Makhija and taxes were paid by him in Vivad se Vishwas Scheme*

14.1 The grounds of cross objections are as under:-

**C.O. No.213/MUM/2025(AY 2016-17)**

1. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that Ld AO failed to produce Shri Sanjay Chhabria for cross-examination and thus the learned Assessing Officer failed to produce his witnesses and prove his case and hence, the addition of Rs. 16,81,00,000/-u/s. 68 may be deleted.*
2. *On the facts and circumstances of the case, the learned CIT(A) failed to appreciate that non-supply of statement of Shri Sanjay Chhabria recorded during search violates the principles of natural justice of the assessee and hence the addition of Rs. 16,81,00,000/- u/s. 68 may be deleted.*

15. All the facts in above appeals are exactly identical as in ITA No.4047/Mum/2025 and CO no.214/Mum/2025 for AY 2016-17 excepting figurative difference. The grounds relating to the validity of the assessment order, merits of case and denial of cross examination are



similar. As we have already rendered our decision while dealing with the appeal/cross appeal/additional ground for AY 2015-16, the decision as per para 13 above apply *mutatis mutandis* to the instant appeals as well. Accordingly, the **Departmental appeal is partly allowed while the Cross Objection is allowed for statistical purposes.**

16. In the result, both the Revenue's appeals are partly allowed and Cross Objections of the assessee are allowed for **statistical purposes.**

Order pronounced in the open court on **02/01/2026.**

Sd/-  
**[Justice (Retd.) C. V. BHADANG]**  
**PRESIDENT**

Sd/-  
**PRABHASH SHANKAR**  
**ACCOUNTANT MEMBER**

Place: मुंबई/Mumbai  
 दिनांक /Date 02.01.2026  
 Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai



ITA No. 4046, 4047/Mum/2025  
CO No. 213, 214/Mum/2025  
A.Y. 2015-16, 2016-17  
Sunil Bhagwatlal Dalal, Mumbai

5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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

