

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.5734/Mum/2024
(Assessment year: 2011-12)

Business India Publications Limited. 21 Framroz Court, 4 th Floor, Marine Drive, Next to Sea Green Hotel, Maharashtra- 400020 PAN:AAACB4739Q	vs	Income Tax Officer Income Tax Office-3(1)(2) Room No.666 AayakarBhavan, M.K. Road, Mumbai-400020
APPELLANT		RESPONDENT

Assessee by : Shri Ravikant S. Pathak,
Respondent by : Shri Leyaqt Ali Aafaqui (Sr.AR)

Date of hearing : 27/01/2026
Date of pronouncement : 30/01/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the NFAC, Delhi [for brevity 'the Id. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2011-12, date of order 27.08.2024. The impugned order emanated from the order of the Ld. Income-tax

Officer Ward 3(1)(2), Mumbai (for brevity the "Ld. AO") order passed under section 143(3) r.w.s. 147 of the Act date of order 21.12.2018.

2. The assessee has taken the following grounds:

"1) On the facts and in the circumstances of the case and in law, since the Ld. Assessing Officer had no reason to believe that any income chargeable to tax has escaped assessment the Ld. CIT(A) erred in holding that there was no infirmity in the initiation of proceedings u/s147 and issue of notice u/s148 of the Income Tax Act, 1961 by the Ld. Assessing Officer.

2) On the facts and in the circumstances of the case and in law, since the Ld. Assessing Officer has not brought on record any tangible material to substantiate that he had reason to believe that income chargeable to tax has escaped assessment, the Ld. CIT(A) erred in holding that there was sufficient material for him to form a prima facie belief that income had escaped assessment and that there was no infirmity in the initiation of proceedings u/s147 and issue of notice u/s148 of the Income Tax Act, 1961 by the Ld. Assessing Officer.

3) On the facts and in the circumstances of the case and in law, the Appellant submits that there has been no independent application of mind by the Ld. Assessing Officer to the alleged information received by him that the appellant had made one time settlement of the loans borrowed from Unit Trust of India the Ld. CIT(A) erred in holding that there was no infirmity in the initiation of proceedings u/s147 and issue of notice u/s 148 of the Income Tax Act, 1961 by the Ld. Assessing Officer.

4) On the facts and in the circumstances of the case and in law, the Appellant submits that the Ld. Assessing Officer has not obtained satisfaction of the prescribed authority on the reasons recorded by him, as required under Section 151 of the Income Tax Act, 1961 and consequently, the reassessment notice issued under Sec.148 of the Income Tax Act, 1961 and the reassessment proceedings being without jurisdiction and invalid in law the Ld. CIT(A) ought to have been annulled the reassessment order passed by the Ld. Assessing Officer.

5) On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer has nowhere disposed of the objections dated 26.11.2018 filed by the appellant to the reasons recorded for reopening, before proceeding with the reassessment proceedings and hence the Ld. CIT(A) ought to have annulled the reassessment order on the ground that the reassessment proceedings were illegal and invalid in law.

6) Without prejudice to the above grounds the appellant submits that the Ld. CIT(A) erred in upholding the addition of Rs 6,62,09,328 made by the Ld. Assessing Officer on the erroneous ground that the said amount represented interest foregone by the appellant when there was no basis for him to do so.

7) The appellant may be permitted to add, alter, amend, delete any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee filed the return u/sec. 139(1) of the Act and the assessee running the business of publishing the Magazine Business India and Auto Sales. The return was processed u/sec. 143(1) of the Act, finally the reopening was initiated by pursuing section 148 of the Act on basis of the information received by the Ld. AO for one time settlement for the loans borrowed from UTI as per the order passed by the DRT, Mumbai. The assessee filed the return in response to the notice u/sec. 148 of the Act by declaring income amount to Rs.70,12,640/-. During the course of the reassessment proceeding Ld. AO observed that the liability as per the books of the assessee is amount of Rs.21,62,09,328/- out of which the company has agreed to pay Rs.12,00,00,000/- on various dates. During the course of reassessment proceeding the assessee was asked to produce the details of interest and principal outstanding for the loans obtained from UTI. But there is no compliance from the end of the assessee. The assessee contended that the return was filed in response to the notice u/sec 148 of the Act and the objection was filed by the assessee against the recorded reason of the revenue. But without due rebuttal of the assessee's objection for reopening the impugned reassessment order was framed u/sec 143(3) r.w.s. 147 of the Act with addition amount to Rs.66,29,328/-. The aggrieved assessee filed an appeal before the Ld. CIT(A). But the Ld. CIT(A) uphold

the impugned reassessment order. Being aggrieved the assessee challenged the impugned appellate order both in the legal and on merit.

5. The Ld. AR argued filed a paper book containing **page 1 to 79** which has been placed on record. The Ld. AR advanced his argument in **ground no.5** where the Ld. AO has not disposed the objection made by the assessee in relation to reopening of the assessment. The grievance of the assessee is that the Ld.AO till the date of passing the assessment order has not disposed of the objection by passing a speaking order, as per the guidelines of Hon'ble **Supreme Court** in the case of **GKN Driveshafts (I) Ltd vs ITO** reported in **125 Taxman 963 (SC)**. The Ld.AR placed that the Ld.AO in the present case has failed to follow the directions laid down by the Hon'ble Apex Court, which makes the entire re-assessment proceedings void and, therefore, is liable to be quashed. The Ld. AR invited our attention in recorded reason which is annexed in **APB page 2**. The relevant part of the said recorded reason is reproduced as below:

"2. The information has been received in the above referred case from the DCIT(Inv)-Unit-5(4), Mumbai vide letter No. DDIT(Inv)/Unit-5(4)information/2017-18 dated 19/03/2018 received this office on 23/03/2018, wherein it was intimated that the assessee had undergone one time settlement (OTS) with the bank during the F.Y.2010-11 with UTI Bank. The bank has written off interest and other liabilities by single payment made by the assessee. So far as waiver of Interest is concerned, the treatment given by assessee could not be ascertained in the computation of income filed for the I.T.Return filed for A.Y. 2011-12. Further, whether the assessee has claimed the expenditure of interest which was waived or has shown the same as income has not been verified.

3. Section 41(1), the first requisite condition to be satisfied is that the assessee should have got deduction or benefit of allowance in respect of loss, expenditure or trading liability incurred by it and subsequently during any previous year, the assessee should have received any amount in respect of such loss, expenditure by way of remission or cessation thereof. The remission would become income only if the assessee has claimed deduction in respect of expenditure or trading

liability. The said waiver have the character of income within the meaning of Section 41(1) of the Act. In the case of assessee no assessment is done to verify the treatment given to the interest waiver.

4. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case u/s. 41(1) where income of Rs. 274296225/- chargeable to tax for A.Y. 2011-12 has escaped assessment. The assessee has not disclosed fully and truly all material facts necessary for its assessment, for the A. Yr 2011-12. Since no assessment has been made so far. Hence, I am satisfied that this is a fit case for issue of notice u/s. 148 r.w.s. 151(1) of the I.T.Act, 1961."

6. The Ld. AR contended that the assessee filed the return of income in response to the notice issued under section 148 of the Act on 21.06.2018, revised on 21/12/2018. Upon receipt of the recorded reasons, the assessee filed objections thereto before the Ld. AO on 22.10.2018. The Ld. AR submitted that the said objections form part of the assessment records. He invited our attention to the inspection order of the Ld. AO dated 23.05.2025, annexed at **APB page 1**. On perusal of the said inspection order, it is clearly recorded that the assessee had filed objections against the recorded reasons; however, there is no reference to any order or document evidencing disposal or rebuttal of the said objections by the Ld. AO.

7. The Ld. DR argued that although the assessee had filed objections, the reassessment order was passed ex parte, and therefore the Ld. AO could not respond to the objections. The Ld. DR filed written submissions placed on record at **pages 1 to 6**; however, no specific submissions were made therein regarding disposal of the assessee's objections. The Ld. DR placed reliance on the judgment of the Hon'ble **Bombay High Court** in **Export Credit Guarantee Corporation of**

India Ltd. v. ACIT, reported in **(2013) 30 taxmann.com 211 (Bom)**, to contend that failure of the Ld. AO to apply his mind constitutes tangible material justifying reopening. The Ld. DR supported the orders of the revenue authorities.

8. We heard the rival submissions and carefully examined the material available on record. The notice under section 148 of the Act was issued by the Ld. AO on 28.03.2018 on the basis of reasons recorded on 23.03.2018 and was duly served upon the assessee. In response thereto, the assessee filed the return of income on 21.06.2018, which was subsequently revised on 21.12.2018. The assessee filed detailed objections to the recorded reasons by letter dated 22.10.2018. On verification of the inspection order of the reassessment records dated 23.05.2025, we find that the Ld. AO has not referred to any order or note evidencing disposal of the objections filed by the assessee prior to completion of the reassessment. The Ld. AR placed reliance on the judgment of the Hon'ble **Bombay High Court in Kesar Terminals & Infrastructure Ltd. v. DCIT**, reported in **(2025) 474 ITR 498 (Bom)**, wherein it was held that objections raised by the assessee against the recorded reasons must be disposed of by a separate, reasoned order before proceeding with the reassessment. Passing a consolidated order rejecting the objections and completing the reassessment was held to be violative of the principles of natural justice and procedurally impermissible. The Hon'ble Court quashed the reassessment proceedings and granted relief to the assessee. Respectfully following the aforesaid judgment of the Hon'ble Bombay High Court, we hold that there was a clear failure on the part of the Ld. AO to dispose of the assessee's objections prior to framing the reassessment order. Consequently, the Ld. AO assumed jurisdiction in excess of his authority. The

reliance placed by the Ld. DR on the earlier judgment of the Hon'ble Bombay High Court is misplaced in the facts of the present case. Accordingly, we hold that the reassessment order passed without disposal of the assessee's objections is bad in law. **Ground No. 5** raised by the assessee is therefore allowed.

Since the reassessment itself has been quashed and the consequential demand stands deleted, the remaining grounds raised by the assessee are rendered academic in nature and are accordingly kept open.

9. In the result, the appeal of the assessee bearing **ITA No.5734/Mum/2024** is allowed.

Order pronounced in the open court on 30th day of January 2026.

Sd/-

(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/01/2026
SAUMYA Sr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI