आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

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

BEFORE SMT. BEEBA PILLAI, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 7703/Mum/2025
(Assessment Year: 2014-15)

I.T.A. No. 7704/Mum/2025
(Assessment Year: 2014-15)

Spice of Life Hotels and Estates Pvt. Ltd., 1 Somnath, Ram Mandir Road, Vile Parle (East), Mumbai-400057. **PAN: AAPCS3706D**	Vs.	National Faceless Assessment Centre **[Dy. CIT-2(3)(1)]** Room No. 608, Aayakar Bhavan, M.K. Road, Mumbai-400020 .
Assessee -अपीलार्थी / Appellant	:	**Revenue -** प्रत्यर्थी / Respondent

Assessee by	:	Shri Chaitanya Joshi & Shri Siddhi Jain, AR
Revenue by	:	Dr. Raghvendra P. Chambolkar, Sr. DR
Date of Hearing	:	11.02.2026
Date of Pronouncement	:	17.02.2026

O R D E R

Per Arun Khodpia, AM:

The captioned appeals are filed by the assessee against the order of Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC), Delhi (in short "Ld. CIT(A)", dated 23.09.2025 for AY 2014-15

challenging the quantum additions made vide order under section 147 r.w.s. 143(3) dated 28.03.2022 and penalty order under section 271(1)(c) of Income Tax Act, 1961 (the Act) dated 23.03.2024. The grounds of appeal raised by the assessee in both the aforesaid appeals are as under:

I.T.A. No. 7703/Mum/2025 (Quantum Appeal)

"1. GROUND NO. I: REASSESMENT PROCEEDINGS U/S 147 OF THE ACT ARE BAD IN LAW:

1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the issuing a notice under section 148 of the Act and consequently, passing the impugned reassessment order u/s. 147 of the Act by the Ld. AO.

1.2 Therefore, the Appellant prays that the impugned notice, the consequential re-assessment proceedings and the re-assessment order be quashed.

2. GROUND NO. II: DISALLOWANCE U/S 14A R.W. RULE 8D AMOUNTING TO RS. 19,77,384/-:

2.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowance made by the Id. AO of Rs. 19,77,385/- u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('the Rules").

2.2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) while affirming the action of the Id. AO erred in, inter alia, holding that it is the total interest expenditure to be considered for computing the disallowance u/s. 14A r.w.r. 8D ignoring the interest income and not the net interest expenditure.

2.3 The Appellant therefore prays that the aforesaid addition be deleted."

I.T.A. No. 7704/Mum/2025 (Penalty Appeal)

1. GROUND NO.

1: LEVY OF PENALTY UNDER SECTION 271(1)(C) OF THE ACT IS BAD IN LAW:
1.1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified and grossly erred in confirming the action of the Ld. AO, without appreciating the facts of the Appellant's case.

1.2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing the impugned order by solely relying on the decision of the Ld. CIT(A) in the
quantum appeal.
1.3. The Id. CIT(A) further erred in confirming the levy of penalty u/s. 271(1)(c) for allegedly furnishing inaccurate particulars of income whereas the levy of penalty by the Id. AO was on account of alleged concealment of income alone.
1.4. The Appellant prays that the penalty levied be deleted.

2. GROUND NO.

2: GENERAL:
The Appellant craves leave to add, amend, modify, rescind, supplement or alter any of the Grounds stated hereinabove, either before or at the time of hearing of this appeal.

2. Brief facts are, that the assessee is engaged in the business of hotels, restaurants, club, outdoor catering and renting immovable property. The return of income for the relevant AY was filed on 30.09.2014 declaring a loss of Rs. 1,44,62,836/-. The original assessment in the present case was completed under section 143(3) on 09.09.2016, assessing the total loss of assessee at Rs. 1,46,31,252/-. Subsequently, the case of assessee was reopened by issuing a notice under section 148 of the Act on 30.03.2021. Towards the reason to believe recorded by the ld. AO, the assessee filed a preliminary objection which was disposed of by the ld. AO on 08.03.2022. Thereafter the issue regarding disallowance of interest under section 14A was discussed by the ld. AO and addition of Rs. 19,77,385/- was made. Aggrieved with the aforesaid addition assessee preferred the appeal before the ld. CIT(A) challenging the merits of addition as well as on legal grounds, that the reopening in present case was not in accordance with the mandate of law and would liable to be struck down. The

ld. CIT(A) having gone through the contentions raised by the assessee on legal aspect as well as the merits of the case have dismissed the appeal of the assessee with the following observations:

> *"**6. ANALYSIS:***
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> ***6.1**. I have carefully considered the grounds of appeal raised by the assessee and written submissions and documentary evidences made in support of the same, along with reliance placed on various judicial precedents. Also, I have examined the issue under dispute in the light of the facts and circumstances of the case as emanating from the impugned assessment order u/s. 147 r.w.s. 144B dated 28.03.2022 of the Act and relevant provisions of the statute and body of case laws on this subject.*
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> ***6.2**. The appellant has objected to the re-opening of case and that it is not based on any new material. It has been revealed that the assessee company earned exempt dividend of Rs. 10,21,927/- & also exempted share of profit from partnership firm of Rs.46,20,818/-. The company was having negative own funds of (-) Rs. 127,96,303/-. The company incurred and claimed interest expenses of Rs. 163,10,168/-. As per sec. 14A r.w. Rule 8D no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not part of total income. Hence, the interest u/s.14A of Rs.19,77,385/- has escaped assessment and hence the case was re-opened. The objections raised by the assessee during the assessment proceedings were disposed vide letter dated 08/03/2022. The relevant portion is reproduced below:*
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> ***In the analogy of the above settled laws and on an overall appreciation of the facts of the case in its entirety, the submissions/arguments of the assessee are rejected. Once the AO was in possession of proper information to firmly believe that the income has escaped assessment he had recorded reasons after due application of his mind and after obtaining approval of the competent authority notice u/s 148 of the I.T. Act, 1961 has been issued. Further, it is noticed that there are no surmises and conjectures in the AO initiating the proceedings u/s 147 as the same are based on proper reasons and***

firm belief. Thus the reassessment proceedings are well within the four corners of law and not at all illegal. Hence, the objections raised by the assessee is not tenable in law. In view of the above, the AO has sufficient reasons to believe that certain income has escaped assessment. On overall appreciation of all the facts and circumstances of the case in its entirety as well as the submission made by the assessee, the entire arguments put forth by the assessee in his submission during the course of the present proceedings are rejected. Consequently, I deem it right and lawful to proceed for completion of the reassessment in this case for the assessment year 2013-14 under section 147 of the Income Tax Act, 1961, in the manner provided under the law.

After the above discussion it is clear that the re opening of the case U/s 148 of the IT Act 1961 for the AY 2013-14 is valid and therefore you are hereby requested to make compliance to the queries being raised.

In view of the facts and circumstances of the case, I am of the considered opinion that the AO had followed the procedure laid down u/s.148 re-opening of the case and completed the assessment. There is no infirmity in the action of AO in re-opening the assessment. Therefore, the ground raised on this issue is dismissed.

6.3. *Ground No.2 is raised against the action of AO in making addition u/s.14A amounting to Rs. 19,77,385/-. After careful consideration of the assessment order, written submissions prima facie it would appear that taking into consideration, the average value of investments, average value of assets, interest expenditure as computed by the AO in the assessment order, an amount of Rs. 19,77,385/- was disallowed u/s.14A of the Act. The appellant failed miserably to rebut the findings of the AO. The appellant submitted that the disallowance should be restricted to Rs.64,779/-. The appellant submission that net interest was considered for arriving at Rs.64,779/-, which is not correct. The total interest expenditure incurred was Rs.1,63,10,168/- ignoring the interest income earned. It was observed that the appellant considered the value of the interest incorrectly for the AY 2014-15 i.e., the appellant considered net interest of Rs.5,62,839/-. The appellant ought to have considered the total interest paid*

instead of net interest, during the year, the appellant had negative capital. Therefore, the AO rightly disallowed interest expenditure under Rule 8D to the extent of Rs. 18,77,204/-

Allowing the appellant to claim full deduction for all administrative and operational expenses while enjoying the tax-free dividend income would result in an unfair advantage. The disallowance, even if the capital was interest free i.e., club membership fee collected, it is necessary to reflect true cost of managing the business activities that lead to taxable and non-taxable limbs of income. Therefore, the tax payer must prove that no expenditure what so ever was incurred to earn the tax-free income. This is an almost impossible burden as some indirect administrative costs are always attributable. Therefore, the AO rightly disallowed 0.5% of average value of investments amounting to Rs. 1,00,181/- under Rule 8D as determined by the AO, is justified. The principle of funds losing their specific identity upon entering the business makes the interest free fund argument not tenable. Therefore, the reason given by the appellant is not acceptable. Hence the ground raised on this issue is ***dismissed.****"*

3. To challenge the aforesaid decision of ld. CIT(A), the assessee had preferred the present appeal before us.

4. At the outset, the ld. AR representing the assessee requested to take up the legal issues first, raised by the assessee with multifold propositions under reliance to host of judgments, detailed as under:

"**Proposition1-1 : For reassessment beyond four years, in the absence of new tangible material, reassessment is bad-in-law**
CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC)
Idea Cellular Ltd. vs. DCIT [2008] 301 ITR 407 (Bombay HC)
CIT vs. ICICI Bank Ltd. [2013] 31 taxmann.com 53 (Bombay HC)

Proposition 2: For reassessment beyond four years, in the absence of stating "exaet" failure on the part of the Appellant to disclose truly and fully all material facts relevant for assessment, reassessment is bad-in-law

Calcutta Discount Co. Ltd. vs. ITO [1961] 41 ITR 191 (SC)
Hindustan Lever v. R.B. Wadkar (268 ITR 332) (Bombay HC)
Bombay Stock Exchange Ltd. vs. DDIT [2014] 49 taxmann.com 262 (Bombay HC)
Milton Plastics Ltd. vs. Mudit Nagpal [2023] 151 taxinann.com 24 (Bombay HC)
Everest Kanto Cylinder Ltd. vs. UOI [2024] 159 taxmann.com 51 (Bombay HC)

Proposition 3: Reopening due to mere change of opinion is bad-in-law and invalid

CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC)
ITO v. TechSpan India (P.) Ltd. [2018] 92 taxmann.com 361 (SC)
PCTT v. Century Textiles & Industries Ltd. [2018] 99 taxmann.com 206 (SC)
Aroni Commercials Ltd. v. DCIT [2017] 393 ITR 673 (Bombay HC)
Motilal R. Todi v. United States. ACIT [2017] 85 taxmann.com 234 (Mumbai Trib)

Proposition 4: Reassessment is bad in law for not following the procedure for reassessment as laid down by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd.

GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR. 19 (SC)
Motilal R. Todi v. United States. ACIT [2017] 85 taxmann.com 234 (Mumbai Trib)
Asian Paints Ltd. v. DCIT [2008] 296 ITR 90 (Bombay HC)
Dr. Batras Positive Health Clinic Pvt. Ltd. v. CIT(A) (ITA Nos. 2748, 2747 & 2761/MUM/2023)

Proposition 5: Reassessment to examine another facet of said issue is impermissible

QX KPO Services (P.) Ltd. vs. DCIT [2018] 94 taxmann.com 467 (Gujarat HC)
DCIT vs. Qx Kpo Services (P.) Ltd. [2018] 99 taxmann.com 301 (SC)
Demuric Holdings (P.) Ltd. vs. ACIT [2018] 91 taxmann.com 270 (Gujarat HC)"

5. In order to substantiate that the aforesaid propositions have a bearing on the facts of present matter, the ld. AR, drew our attention to copy of reason to believe recorded by ld. AO which were provided to the assessee along with notice dated 21.06.2021. On a perusal of the Annexure-A i.e. reasons recorded

for reopening of assessment under section 147 of the Act, at paragraph-3, the ld. AO has mentioned that "on perusal of financials of the assessee-company, the undersigned has observed the following issues", means that there was no fresh material before the ld. AO, which was the basis for reopening assessment under section 147. It is submitted that, the reassessment beyond four years would held to be bad-in-law, as held by Hon'ble Apex Court in the case of CIT vs. Kelvinator of India Ltd. (supra) and Hon'ble Bombay High Court in the case of Idea Cellular Ltd. vs. DCIT and CIT vs. ICICI Bank Ltd. (supra), wherein the Hon'ble High Courts have held that once all material was before the ld. AO and he chooses not to deal with several contentions raised by assessee in his final assessment order, it could not be said that he had not applied his mind and in such case reopening of assessment after four years could not be said to be justified.

6. Further, as the reopening in the instant matter was undisputedly initiated after four years from the end of relevant AY, therefore, the first proviso to section 147 of the Act come into play, so it is obligatory upon the ld. AO to comply with the said proviso and to demonstrate in the reason itself as to how there was a failure on the part of assessee to disclose fully and truly all the material facts necessary for its assessment. On this aspect, on a perusal of the objections disposed of by the ld. AO vide order dated 08.03.2022, he noted that "as per the settled principle of law the sufficiency of reasons could not be called

in question". also further clarified in the disposal of objection that "there is no requirement in law that in the reasons, failure of the assessee should be expressly stated in view of provisions of section 147 of the Act".

7. The ld. AO also referred the amended section stating that "the only condition now is that the ld. AO should have reason to believe that income has escaped assessment which belief can be reached in any manner and is not qualified by the pre-condition of failure by the assessee to make full and true disclosure of material facts." From such reasoning given by the ld. AO, it is emanating that the ld. AO himself is not sure about the failure on the part of assessee in disclosing of fully and truly all material facts necessary for the assessment, though the ld. AO had merely mentioned in the reasons to believe that the income has escaped by the reason of failure on the part of assessee to disclose all material facts, however nothing has brought on record in support of such statement. Under such facts and circumstances the reasons recorded by the ld. AO found to be in violation of 1st proviso to section 147, against the settled propositions as laid down by the Hon'ble Apex Court in the case of **Calcutta Discount Company Ltd. vs. ITO [1961] 41 ITR 191 (SC)** and further by the Hon'ble Bombay High Court in the case of **Hindustan Lever Vs. R.B. Wadkar, (268 ITR 332) (Bom. HC), Bombay Stock Exchange Ltd. vs. DDIT [2014] 49 taxmann.com 262 (Bom. HC), Milton Plastics Ltd. vs. Mudit**

Nagpal [2023] 151 taxmann.com 24 (Bom. HC) and Everest Kanto Cylinder Ltd. vs. UOI [2024] 159 taxmann.com 51 (Bom. HC).

8. The ld. AR further contended that the reopening was mere due to change of opinion, as all the material which was referred to by the ld. AO in the reasons for reopening were already on record during the original assessment. It was the submission that the re-assessment was also bad-in-law as the procedure required in terms of principle laid down by the Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. vs. ITO [2003] 259 ITR 19 (SC)** are not followed by the Ld. AO and further on account of re-examining of same facts for different facet of the issue would be impermissible in terms of judgments of Hon'ble Gujarat High Court in the case of **QX KPO Services (P.) Ltd. (supra) and Demuric Holdings (P.) Ltd. (supra)**.

9. In backdrop of aforesaid submissions, it was the prayer that the reassessment in the present matter was bad-in-law on the count of various legal infirmities as elaborated herein above, therefore the reopening assessment cannot be sustained in the present case.

10. Per contra, the ld. DR reiterated the facts of the case from the orders of authorities below and have submitted that the reopening was under full compliance to the provisions of the Act, which is further affirmed by the ld. CIT(A) in paragraph 6.3 of his order, therefore the legal contentions raised by

the ld. AR does not found to be acceptable in the present matter and the same are liable to be rejected.

11. We have considered the rival submissions, perused the material available on record and the case laws relied upon by the assessee. This case emanates from a reopening proceeding u/s 147 after 4 years from the end of relevant assessment year. In present matter the allegation that there was a failure on the part of assessee to disclose fully and truly all material facts requisite for the assessment was made by the ld. AO while recording the reasons, however such allegation was not supported by any description about such failure. In present case the escapement of income was observed by the ld. AO, only after re-visiting the facts and material available in the financial of the assessee, which were very much before the ld. AO during the original assessment under section 143(3) of the Act. As per settled propositions as laid down by Hon'ble courts in this respect, just allegation that there was a failure on the part of assessee does not suffice to fulfill the conditions of 1st proviso to section 147. In backdrop of such facts and circumstances, we perceive substance in the contentions raised by the ld. AR that there was no failure on the part of assessee to disclose fully and truly all material facts required for the assessment, therefore, the reopening under section 148 beyond four years cannot be validly initiated. We find that such contentions of assessee's are fully supported with the decisions and judgments referred to supra and further such contentions of ld. AR are fortified

by the recent decision of Hon'ble Bombay High Court in the case of **Global Earth Properties & Developers (P.) Ltd. vs. Union of India vide order dated 12.01.2026 reported in [2026] 183 taxmann.com 64 (Bombay.)**, wherein the Hon'ble High Court has observed as under:

> *"22. Be that as it may, even assuming that the argument of the learned counsel of the Respondents is to be considered, namely, that the impugned notice under section 148 of the Act dated March 31, 2021 was issued beyond a period of four years, then, in view of the first proviso to section 147 of the Act, the said notice could have been issued only if there is a failure on part of the assessee to disclose fully and truly all material facts necessary for assessment. We say this because in the present case an assessment order was already passed on June 30, 2017 under section 143(3) of the Act. In the reasons as recorded for issuing the notice under section 148 of the Act, we see that there is not even an allegation that the income of the Petitioner has escaped assessment on account of failure on the part of the Petitioner to disclose fully and truly any material fact in relation to Assessment Year 2015-16. Further, there is nothing in the reasons which would even indicate that there is any failure to disclose any material fact necessary for the assessment. In the reasons recorded, Respondent No. 3 must disclose which fact or material was not disclosed by the assessee fully and truly necessary for assessment. Further, it is settled law that the reasons are required to be read as they were recorded by the Assessing Officer and cannot be allowed to be improved subsequently. The law, in this regard, has been settled by the decision of the coordinate bench of this Court in the case of Hindustan Lever Ltd (supra). The same is, in fact, followed by decision of this Bench (B. P. Colabawalla and Firdosh P. Pooniwalla, JJ) in case of Stock Holding Corporation of India Ltd. (supra).*
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> *23. In view of what is set out above, the impugned notice under section 148 of the Act dated March 31, 2021, the impugned order disposing objections dated January 31, 2022, and the impugned assessment order dated March 30, 2022, cannot be sustained and are quashed and set aside."*

12. According to the analogy drawn in the aforesaid judgment, it was obligatory on the ld. AO while recording the reasons for reopening, to must disclose which fact or material was fully and truly necessary for assessment had not disclosed by the assessee. It is also observed by the Hon'ble High Court that the reasons are required to be read as they were recorded by the ld. AO and cannot be allowed to improved subsequently.

13. Since nothing can be brought on record by the revenue to establish the failure of assessee in furnishing of necessary material, by disclosing the same fully and truly during the assessment, therefore the reopening assessment in present case fails on this count itself. We, thus are of the considered view that the impugned notices under section 148 of the Act dated 30.03.2021 cantnot constitute a valid notice, being issued in violation of 1st proviso to section 147 of the Act, thus was not in accordance with the mandate of law and settled principle as laid down by the Hon'ble Court in the decisions referred to supra. We, accordingly, set-aside the impugned notice under section 148 of the Act for violation of 1st proviso to section 147 in absence of any finding *qua* the failure of assessee about the facts and material which was not fully and truly disclosed during the assessment, consequently the assessment under section 147 r.w.s. 143(3) based on aforesaid invalid notice under section cannot stand in the eyes of law, thus, quash the same.

14. Since, the impugned assessment in present matter has been quashed, thereby the substantive quantum addition made by the ld. AO stands deleted, therefore, the remaining grounds of appeal whatsoever raised by the assessee have become academic and does not require any separate adjudication.

15. In result, the appeal of assessee in **ITA No. 7703/Mum/2025 stands allowed** in terms of our aforesaid observations.

16. Since the quantum addition in the present case has been deleted by us on account of legal contention raised by assessee thereby quashed the assessment, therefore the penalty imposed on the assessee under section 271(1)(c) of the Act, being consequential in nature, so cannot survive, the same, accordingly, has been directed to be deleted.

17. In combined result, both the captioned appeals of assessee are **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 17-02-2026.

Sd/-	***Sd/-***
(BEEBA PILLAI)	**(ARUN KHODPIA)**
Judicial Member	**Accountant Member**

Mumbai, Dated : 17-02-2026.
**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai