



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1121 to 1126/PUN/2024
Assessment Years : 2012-13 to 2017-18

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| Rajarshi Shahu Shikshan Sanstha, A/P. Inam Dhamani, Tal. Miraj, Dist Sangli - 416416 Maharashtra PAN : AAATR8726J | Vs. | Income Tax Officer (Exemption), Kolhapur |
| Appellant | | Respondent |

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| Appellant by | : | Shri Kishor B Phadke |
| Respondent by | : | Shri Amit Bobde & Shri Shashank Ojha |
| Date of hearing | : | 09.10.2025 |
| Date of pronouncement | : | 18.12.2025 |

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals at the instance of assessee pertaining to A.Ys. 2012-13 to 2017-18 are directed against the separate orders dated 20.03.2024 framed by Id.CIT(A), Pune-11 emanating out of respective Assessment Orders dated 24.12.2019 passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (in short 'the Act').

2. The issues raised by the assessee in the instant batch of appeals are common. We therefore proceed to adjudicate these appeals by this consolidated order for the sake of convenience and brevity.

3. We will first espouse ITA No.1121/PUN/2024 for A.Y. 2012-13 as the lead case. In the instant appeal, assessee has raised following grounds of appeal :

“Grounds of appeal [WITHOUT PREJUDICE TO EACH OTHER]

A.Y.12-13

- 1. Learned CIT (A) has erred in fact and in law in confirming the reassessment proceedings since the A.O. has assumed the jurisdiction for reopening to tax the sums u/s.68 as per reason recorded and the approval was also given to tax the sums u/s.68 only, however A.O. has charged to tax the sums u/s.115BBC and thus the reassessment is not validly initiated and completed because the addition made in the reassessment is u/s. 115BBC which is all together different ground for which notice u/s. 148 was issued therefore the reassessment is un sustainable and bad in law and lacks legality.*
- 2. Learned CIT(A) has erred in fact and in law in confirming the addition made by A.O. without considering the fact that, no addition is made on the basis of reason recorded for which approval was given and for which notice u/s. 148 was issued and therefore in view of settled legal position as per decision of Bombay High Court in the case of Lark Chemicals Pvt Ltd ITA No.1083 of 2015 dated 28/02/2018 and also decisions of various High courts and Pune ITAT the reassessment is patently illegal and bad in law and is unsustainable.*
- 3. Learned CIT (A) has erred in fact and in law and in the circumstances in confirming the addition made by A.O. since the reassessment is not validly initiated because the original assessment is completed u/s. 143(3) on 26/02/2013 and the action taken U/S. 147 is after expiry of the four years from the end of A.Y.2012-13 and therefore the reassessment proceeding are initiated beyond the time limit and are thus time barred and bad in law and not sustainable.*
- 4. Learned CIT(A) has erred in fact and in law in confirming the addition made by A.O. without considering the fact that reassessment proceedings are initiated after expiry of four years of the assessment year and there is no failure on the part of appellant to make a return to disclose fully and truly all material facts necessary for assessment and hence the reassessment framed is bad in law and deserve to be quashed.*
- 5. Learned CIT(A) has erred in fact and in law in confirming the addition made by A.O. u/s 155BBC without considering the fact that / despite the fact that, in original assessment the counter foil of receipts issued to donor was produced before A.O. in original for*

verification and A.O. has conducted the verification on the test check basis and this fact proved beyond doubt that the appellant trust has maintained all the details of the donors as required by section 115BBC and thus claim of the department that, the appellant has not maintained particulars of donor is incorrect and preserve being contrary to the facts and therefore the addition made on such incorrect finding is patently illegal and deserve to be deleted.

6. Learned CIT(A) has erred in fact and in law in confirming the addition made by A.O. of donation received of ₹1,36,50,000 U/S.115BBC despite the fact that appellant trust has maintained all the details /particulars prescribed U/S.115BBC such as name and address of the donor and the requirements of section 115BBC are fully complied with and therefore the addition is perverse being contrary to the facts and patently illegal and deserve to be quashed.

7. Learned CIT [A] has erred in fact and in law in confirming the reassessment framed by AO despite the fact that the in the original assessment proceedings all original donation receipts were made available to A O and AO has verified it and there is no change in set of facts in reassessment proceedings and ergo the reassessment is made merely on the basis of change of opinion having similar set of facts and such an attempt is not sustainable and ergo the reassessment is bad in law being not validly initiated.

8. Learned CIT [A] has erred in fact and in law in following decision of Pune ITAT in the case of Ninaidevi Shikshan Prasarak Mandal, as well as in the case of Everest Education society because in both these cases trust did not file proper details and filed new set of details of donations in remand proceedings &the addresses were not found genuine whereas the facts of the case of the appellant are different and in the case of the appellant trust there is no issue/case of non genuine address.

9. Learned CIT [A] has erred in fact and in law in reopening the assessment u/s. 147 since there is no new/fresh tangible material other the one available before A.O. in original assessment and ergo the reopening is not validly done and in view of supreme Court decision in the case of Kelvinator India Ltd 320 ITR 561 and jurisdictional High Court decision in the case of Hindustan Lever Ltd (2004) 268 ITR 332 (Bombay), the reopening deserves to be quashed.

10. Appellant craves to leave, add / alter or amend any other grounds of appeal.”

4. Assessee has also raised following additional grounds of appeal :

"11. Without prejudice to other Grounds of appeal, Appellant contends that income from alleged "Anonymous Donations", taxable u/s 115BBC, can't exceed "Total Income" of the Appellant, considering the mechanism emerging from section 115BBC read in tandem and in comparison, with various other sections of Chapter-XII of ITA, 1961.

12. Appellant also contends that income taxable u/s 115BBC ought not to exceed 'Real Income' of the Appellant. Appellant contends that in absence of any contrary provisions (such as under section 115BBE(2)/115BBH(2), etc.), section 115BBC simply splits the "Total Income" of any assessee into two sub-sets; and; does not further increase the "quantum" of "Taxable Income" as so envisaged under other sections of the said Chapter-XII (i.e. section 115BBE(2)/115BBH(2), etc.)."

5. Though the assessee has raised various grounds of appeal including the additional grounds, we will first take up the legal issue raised in Ground No.1 challenging the assumption of jurisdiction by the Assessing officer for carrying out the re-assessment proceedings.

6. We take the basis of facts for A.Y. 2012-13. The facts in brief are that the assessee is a Charitable Organization and engaged in imparting education through various schools and colleges at the place called Miraj and adjoining districts. Nil income declared in the return for A.Y. 2012-13 furnished on 26.02.2013 and the case selected for regular scrutiny and order u/s.143(3) was passed on 25.03.2015 assessing the total income at Nil. Ld. Assessing Officer (AO) examined the records again and noticed that the assessee has claimed donation receipts of ₹1,36,50,000 from various donors during the year under consideration. Donors list was also filed on record. However, for ascertaining the genuineness of donations and donors survey u/s.133A of the Act was carried out in the case of assessee on 13.02.2019 and certain evidences were collected during the course of survey and based on such

evidences ld. AO has observed that assessee has not maintained books of account for F.Y.2017-18 and F.Y. 2018-19, assessee has not maintained any detail of the list of donors giving donation during F.Y. 2012-13, no donation receipt books maintained for any of the period starting from F.Y. 2011-12 to F.Y. 2018-19. It is further observed that some of the donors have denied to have given any donation to the assessee, therefore, the donations needs to be taxed u/s.68 of the Act as the assessee has not been able to explain satisfactorily the nature and source of the sum credited in the books. Ld. AO recorded the reasons for reopening to which objections were filed by the assessee. Thereafter, ld. AO after disposing of the objections has concluded the re-assessment proceedings making addition u/s.115BBC of the Act for Anonymous donations at ₹1,36,50,000/- and assessed income at the same amount.

7. Subsequently, the assessee preferred appeal before ld.CIT(A) and even in the submissions made by the assessee before ld.CIT(A) it has been submitted that once the list of donors containing the names and addresses have been filed the assessee has discharged onus u/s.115BBC and there is no requirement to prove the source of donation unlike section 68 of the Act. However, so far as the issue of assumption of jurisdiction u/s.147 of the Act is concerned, there is no specific finding by ld.CIT(A).

8. Now the assessee is in appeal before this Tribunal raising various issues including the legal issue and claimed that in view of judgment of Hon'ble Apex Court in the case of *National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383(SC)* the legal

issues can be raised at any stage. Submissions of Id. Counsel for the assessee with regard to the legal issue raised in Ground No.1 reads as under :

“Background

- 1. Appellant is engaged in imparting education through various schools and colleges in Miraj and adjoining district.*
- 2. For AY 2012-13 to AY 2017-18, appellant received donation from various persons and same was credited to Income and expenditure. Summary of net surplus/ deficit and Donation received are as follows:*

| <i>A.Y.</i> | <i>Net Surplus/ deficit (in Rs.)</i> | <i>Date of Order</i> | <i>Donation (in Rs.)</i> |
|----------------|--------------------------------------|----------------------|--------------------------|
| <i>2012-13</i> | <i>20,785</i> | <i>24-12-2019</i> | <i>1,36,50,000</i> |
| <i>2013-14</i> | <i>82,774</i> | <i>24-12-2019</i> | <i>1,94,03,000</i> |
| <i>2014-15</i> | <i>1,92,197</i> | <i>24-12-2019</i> | <i>2,00,50,000</i> |
| <i>2015-16</i> | <i>72,591</i> | <i>24-12-2019</i> | <i>2,51,96,000</i> |
| <i>2016-17</i> | <i>16,254</i> | <i>24-12-2019</i> | <i>2,34,00,000</i> |
| <i>2017-18</i> | <i>-20,60,094</i> | <i>24-12-2019</i> | <i>78,00,000</i> |

- 3. During the proceedings, list of donors used to be submitted by the assessee. Thereafter, to verify the genuineness of the donations, a survey u/s 133A of the Act was conducted on six premises of the assessee on 13/02/2019. Summons was issued to various donors, President and accountant of the assessee. Many statements were recorded. Thereafter, Re-assessment proceedings u/s 147 were initiated against the appellant from AY 2012-13 to AY 2017-18.*
- 4. The learned AO, while concluding the 147 assessments, held that, the donations offered as taxable income in the Income and expenditure of various years, are 'Anonymous Donation' and as such, taxed the same, u/s 115BBC.*
- 5. Appellant filed appeal before the learned CIT(A) raising various objections on technical aspects as well as on merits. However, Learned CIT(A) dismissed the appeals.*
- 6. Now, Appellant is before the Honourable ITAT, challenging these orders of learned AO and learned CIT(A).*
- 7. Appellant has prepared a ground wise summary for various years before Honourable ITAT and which is already submitted before Honourable Bench. Attached herewith as Annexure 1.*

Facts relating to Reassessments

8. 'Reasons' formed before issuance of 148 notice-'Reasons' recorded before issuance of notice u/s 148 dated 30/3/2019 are reproduced by learned AO from Page-1 to Page-12 (in italics font). Page-1 to page-10 contain details and findings of the Survey 13/2/2019 on the various school locations of the Appellant Trust. The 'key' conclusions are stated on Page-11 and Page-12 of the 147 order in following manner.

Page-11+12-Para 6(d)

Since most of the donors have denied having made any donations to the assessee trust, the claim of donations made in the books of accounts from FY 2011-12 to FY 2016-17 are not genuine. Therefore the claimed donations need to be taxed u/s 68 of the I.T Act as the assessee has not been able to explain satisfactorily the nature and source of the sums credited in the books of account.

Page-12-Para 6(g)... last 3 lines...

...substantiate any of the sources of the claimed donations during any of the above financial years... The assessee.....

..... Thus the assessee could not prove the source of the claimed donations credited in the books of account.

Page-12-Para-8... (last 3 lines)

.....The assessee could not prove the sources of the donations received during the year.....

9. Show-Cause Notice before conclusion of 147 proceedings-Learned AO also issued a SCN on 17/9/2019 and, a final opportunity of being heard vide notice / letter dated 23/10/2019. The final opportunity notice is reproduced in the 147 order at Page-33 to page-38. Final Para-4 on Page-38 reads as under.

..... You are required to produced these persons on 4/11/2019. If you fail to prove claim of donation received by you in cash amt to Rs. 1.39 CR will be treated as sums credited from unexplained sources and will be taxed u/s 68 of the Income-tax Act.

At Page-39, final show-cause notice was issued, wherein, vide Para-6.6 (last 2 line), following observations are made.

....as sums credited to the books of account from unexplained sources and taxed u/s 68 of the Income Tax act.

10. Emerging belief of the learned AO till 26/11/2019 (i.e. till 2nd SCN)- From the above reproduced paras, it emanates that the firm

belief of the learned AO was, to tax the donations of Rs. 1.39 CR as 'unexplained cash credit u/s 68 of the ITA, 1961.

11. Final assessment u/s 115BBC-As against the firm belief till 29/11/2019, the learned AO, vide 147 order dated 24/12/2019, has taxed the donations of Rs. 1.39 CR as 'Anonymous donations' u/s 115BBC of the ITA, 1961.

Ground of Appeal No. 1 & 2

12. Conention-1-Substantial difference between S. 68 v. S. 115BBC:

Appellant submits that, there the above two sections orient and aim to tax, two completely different streams of income. Here are the key differences -

a. Income of different assesses Vide S. 68, what is taxed is, an Assessee's own income, which such assessee portrays through some credit entries in his books. As against, vide S. 115BBC, what is sought to be taxed is unaccounted money of the donors (and not that of any assessee per se). Explanatory Memorandum relating to taxation of Anonymous donations, and speech of Honourable Finance Minister is enclosed herewith and marked as Annexure-2.

b. Compliances Further, level of compliances u/s 68 is quite tough (i.e. substantiate source, AND, even source of source, in some cases). As against, compliance requirement u/s 115BBC is limited to possession of details of names and addresses of donors.

c. Onus - In Section 68, entire onus to substantiate the genuineness of the sources behind credit entries and other required details is on the Appellant. In Section 115BBC, no onus to substantiate authenticity is casted on Assessee.

d. Penalty Further, S. 68 additions are lead to penal proceedings which trigger penalty u/s 271(1)(c)/270A, etc. As against, no any Penalty per se, is applicable for taxation u/s 115BBC

As such, forming 'reasons' for one phenomenon, and taxing the same for some different phenomenon, is completely conflicting. Learned AO is incorrect is starting the 147 proceedings for S. 68, continuing the same for S. 68; and concluding the matter for S. 115BBC. As a sequel, it follows, the taxation thrusted u/s 147 w.r.t. S. 115BBC is without any appropriate procedure and such taxation ought not to sustain.

13. Conention-2-S. 68 role v. S. 115BBC role-effect of Jet Airways ratio:

Another issue is, the roles performed by these two sections. S. 68 converts a non-income credit entry item in books/accounts into, 'income' per se. In other words, S. 68 deems some non-income item into income item, e.g. LOANS / SHARE CAPITAL / GIFTS, etc. etc. As against, S. 115BBC simply segregates available Total Income into two parts, i.e.

Part-1 -Anonymous donation

Part-2 -Non-Anonymous donation

Section 115BBC further provides for taxation of Part-1 at 30% rate and Part-2 at normal rates. Hence, it transpires, processes of both these sections are also different. If these tests are applied to the present subject matter, the 'reasons' recorded for issuance of 148 notice and 'income' sought to be taxed vide 148 notice, appears to be glossed over, and left at that at the point of framing the 147 order. On the contrary, a complete different taxation scheme is triggered. Such a process has been disapproved by the Honourable Bombay High Court vide decision in case of CIT v. Jet Airways (I) Pvt Ltd -331 ITR 236. Copy of the said decision is enclosed herewith and marked as Annexure-3. Courts have been disapproving attempts of I-T authorities to assessee/reassessee, (say), to change stand taken at the stage of 148 notice, and stand taken by AO at 147 order stage. Reliance is placed on the following decisions -

a) Lark Chemicals P. Ltd. Vs ACIT 99 taxmann.com 312 (SC) (Annexure-4)

b) Dhurv Patel v. ACIT-45 taxmann.com 20 (Guj) (Annexure-5)

In other words, the 'reasons' recorded in the present facts, suffer from handicap of appropriate sub-clause/limb. 'Reason recorded' and 'Reason' finally deployed are totally different from each other. It is a settled law that, when it comes to reassessment u/s 147, the 'reason' has to be specific and the same can't be extended / enhanced /supplemented, etc. This ratio emerges from the celebrated decision in the case of Hindustan Lever v. R B Wadkar-268 ITR 332 (Bom)... (copy enclosed and marked as Annexure-6.)

14. Conention-3-Erroneous/Improper charge of escapement of income

As per facts, the learned AO, vide Para-7 of the 'reasons' reproduced at Page-12 of the 147 order, appears to have proceeded on the analogy that, some taxable income has escaped assessment. As against, vide Section 115BBC, mere rate of tax is differentiated from normal income. As stated earlier, entire charge of the learned AO at the stage of formation of belief of 'escapement of income' by resorting

to Section 68 of the ITA, 1961. Had the learned AO proceeded on this analogy, the end-result would have been a NULLITY. Assuming that, the learned AO would have finally concluded that, there is 'escapement' of income by applying section 68, even then, for AY 2012-13, the 'Total Income' would have remained the same. As per facts, the said amt of Rs. 1.36 CR was anyway credited to P & L/1 & E account as 'income' only'. Categorising Appellant's 'donations' claim, as Section 68 specified 'income' would not have made any change in assessment. The Special Scheme of Taxation of Section 68 income u/s 115BBE at a Special Rate was introduced only from AY 2017-18 and onwards.. Even the negative condition of denial of set-off of any other LOSS was also introduced from AY 2017-18 only. As such, for all years till AY 2016-17, the 'reasons' formed for the belief of 'escapement of income' were specious and leading to a NULLITY. Appellant relies on CBDT Circular No. 11/2019 dated 19/6/2019 clarifying the scheme of Section 115BBE in this regard (copy enclosed and marked as Annexure-7). Appellant also relied upon the decision in case of PKM Advisory Services P Ltd v. ITO-339 ITR 585 (Guj) in this regard, a copy of which is enclosed and marked as Annexure-8.

15. Contention-4-Approval:

As per facts, the approval availed by learned AO was for proposed taxation of donations u/s 68 of the ITA, 1961. As against, the final taxation is u/s 115BBC. Per se, no approval is sought for taxation u/s 148 for the said Section 115BBC. As an effect, it transpires that, the entire taxation made by learned AO u/s 115BBC is without sanction of higher authorities. Appellant relies on the following decisions in this regard.

16. Contention-5-No notice before taxation:

Learned AO, vide Para-9.1 of his 147 order, has given an apt TABLE of various notices. Last of such notice is dated 26/11/2019 and contents of the same are stated at Page-45, para 8.2. Till this point of time, there is no any whisper of the issue of 'anonymous donations' in the 147 order. The reproduction of S. 115BBC in Para 9.1 appears to be some sudden development/ new thinking of the learned AO considering objections filed by Appellant till then. Be that, as it may, the issue remains that, for the proposed taxation u/s 115BBC, there was no any Show Cause Notice issued by learned AO. Which means, per se, Appellant has not been provided opportunity of being heard. Principle of natural justice is vitiated.

9. Ld. Counsel for the assessee referred and relied on following decisions :

- i. CIT Vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bom.)

- ii. *PCIT Vs. Lark Chemicals (P) Ltd. (2018) 99 taxmann.com 312 (SC)*
- iii. *Dhruv Parulbhai Patel Vs. ACIT (2014) 45 taxmann.com 20 (Gujarat)*
- iv. *Hindustan Lever Ltd. Vs. R.B. Wadkar 268 ITR 332 (Bombay)*
- v. *M/s. Lark Chemicals P. Ltd. Vs. ACIT – ITA No.2636/M/2013, dated 06.02.2015*

10. On the other hand, ld. Departmental Representative has contended referring to the detailed submissions which read as under :

“Sub: Written submission/counter arguments on the grounds of appeal raised by the assessee appellant in the above mentioned case -reg.

GROUND NO. 1

10.1 The first ground raised by the appellant is that the learned CIT(A) erred in confirming the reassessment proceedings, as the AO had assumed jurisdiction for reopening to tax the sum u/s. 68 of the Act as per the reasons recorded, whereas in the reassessment order, the addition was made u/s 115BBC of the Act. It is, therefore, contended that the reassessment is invalid.

In this regard, it is submitted that the validity of reassessment proceedings is to be examined with reference to the existence of a reason to believe that income has escaped assessment and not with reference to the ultimate section under which such income is finally assessed. It is well settled in law that once the AO has validly assumed jurisdiction u/s. 147 of the Act on the basis of a bona fide belief that income has escaped assessment, any variation in the section or head of income under which the escaped income is ultimately taxed does not invalidate the reassessment proceedings.

10.2 In the present case, the AO recorded reasons showing a prima facie belief that certain income chargeable to tax had escaped assessment. The law does not require the AO, at the stage of recording reasons, to conclusively determine the exact section under which such income would be assessed. During the course of reassessment, if the nature of the income is found to attract a different charging provision, the AO is well within his powers to apply the correct section of the Act.

In this case, the AO initially believed that the income was taxable u/s 68 of the Act but upon examination during reassessment, determined that it properly falls within the ambit of section 115BBC of the Act. Both provisions address unexplained or unverified receipts as section 68 of the Act dealing with unexplained cash

credits and section 115BBC of the Act with anonymous donations received by charitable or religious institutions. Thus, the underlying facts and source of escapement remain the same and only the legal characterization has been corrected. Therefore, the reassessment proceedings are validly initiated and completed. The mere change in the section under which the income is ultimately brought to tax does not render the reassessment invalid or without jurisdiction.

In support of the above contention, the following decisions are relied

(a) CIT v. Sun Engineering Works (P) Ltd. (1992) 198 ITR 297 (SC)

The Hon'ble Supreme Court held that the scope of reassessment is to assess or reassess income which has escaped assessment, and the AO is not confined to the exact items mentioned in the reasons recorded, provided the escapement arises from the same set of facts.

(b) Raymond Woollen Mills Ltd. v. ITO (1999) 236 ITR 34 (SC)

The Supreme Court held that at the stage of reopening, the AO only needs to form a prima facie belief that income has escaped assessment. The sufficiency or correctness of reasons or the specific section is not to be judged at that stage.

In view of the above facts and the decisions relied upon, the ground raised by the appellant may be rejected.

GROUND NO.2

2.1 The second ground raised by the appellant is that the Id. CIT(A) has erred in fact and in law in confirming the addition made by the Assessing Officer without considering that no addition was made on the basis of the reasons recorded, by relying upon the decision of the Hon'ble Bombay High Court in Lark Chemicals Pvt. Ltd.

In this regard, the contention of the assessee that no addition has been made on the basis of the reasons recorded for which approval was obtained is factually incorrect. In the present case, the Assessing Officer has made the addition on the very same issue for which the assessment was reopened. The only variation is the section under which the addition has been made, and such a change in the section does not invalidate the reassessment proceedings.

2.2 In the case of Lark Chemicals Pvt. Ltd., the Hon'ble Bombay High Court held that where the reassessment order did not make any addition on the issue for which the Assessing Officer had recorded reasons to believe, the reassessment proceedings were invalid in law. The said decision was rendered following the ratio laid down by the Hon'ble Bombay High Court in CIT v. Jet Airways (1) Ltd. [2011] 331 ITR 236 (Bom), wherein it was held that if the income which formed the basis of the "reason to believe" is not ultimately assessed, then the Assessing Officer cannot make

additions on other issues and the reassessment itself would be bad in law.

However, the decision in Lark Chemicals Pvt. Ltd. is not applicable to the facts of the present case, since the Assessing Officer has made an addition on the very issue for which the assessment was reopened. Furthermore, as per Explanation 3 to Section 147 of the Act (inserted by the Finance (No. 2) Act, 2009 with retrospective effect from 1st April 1989), once an assessment is validly reopened, the Assessing Officer is empowered to assess or reassess the income in respect of any issue, even though such issue was not included in the reasons recorded for reopening. In other words, once jurisdiction is validly assumed, the A.O. may examine and make additions on all other issues that come to notice during reassessment.

2.3 In Jet Airways (I) Ltd. (supra), the Hon'ble Court dealt with a situation where the addition on the original reason did not survive, and it was held that the Assessing Officer could not make additions on other issues. Similarly, in Lark Chemicals Pvt. Ltd., the Court held that where no addition was made on the original reason for reopening, reassessment would fail. However, divergent judicial views exist on this issue. The Hon'ble Karnataka High Court in N. Govinda Raju v. ITO has disagreed with the interpretation adopted by the Hon'ble Bombay High Court on the phrase "and also" used in Section 147. The Court held that while "and" is conjunctive, the expression "also" is disjunctive, and hence, when read harmoniously, the phrase "and also" cannot be treated as conjunctive.

Accordingly, it was held that the Assessing Officer may independently assess any other income, even if the original reason for reopening does not survive. The Hon'ble Court further explained that an "Explanation" clarifies the scope of the main provision, whereas a "Proviso" restricts it. Therefore, Explanation 3 to Section 147 supports and supplements the main provision, and must be read in conjunction with it. The purpose of an explanation is to elucidate the legislative intent and thereby becomes an integral part of the enactment.

Explanation 3, with retrospective effect from 1st April 1989, thus enables the Assessing Officer to assess, reassess or recompute any source of income other than that referred to in the recorded reasons. This position has been affirmed by the Hon'ble Punjab & Haryana High Court in Manjinder Singh Kang v. CIT [2012] 344 ITR 358 (P&H), wherein it was held that reassessment proceedings can validly cover additional issues even if the original reason for reopening does not survive. The same principle was reiterated in CIT v. MehakFinvest (P) Ltd. [2014] 367 ITR 769 (P&H), where the Hon'ble Court held that even if no addition is made on the issue forming the basis of reopening, the Assessing Officer is empowered to make additions on other issues that come to notice during the reassessment.

2.4 It is relevant to note that the Hon'ble Supreme Court dismissed the Special Leave Petition (SLP) against the judgment in Manjinder Singh Kang on 19.08.2011, thereby affirming the view of the Hon'ble Punjab & Haryana High Court.

Accordingly, in light of the above judicial precedents and the legislative intent of Explanation 3 to Section 147, the contention of the appellant that the reassessment is invalid merely because no addition was made on the original reason is devoid of merit. Therefore, this ground of appeal may be rejected."

11. We have heard the rival contentions and perused the record placed before us and carefully gone through the decisions relied on by both the sides. Through Ground No.1, assessee has raised legal issue challenging the assumption of jurisdiction u/s.147 of the Act and the main contention of the Id. Counsel for the assessee through this ground is that at the time of issuing reasons recorded for reopening Id. AO has alleged that there is escapement of income and section 68 of the Act needs to be applied for such escapement of income, however, while concluding the re-assessment proceedings the additions have not been made u/s.68 of the Act but have been made u/s.115BBC of the Act and therefore there is 'change of opinion' and no show cause notice/reasons/revised reasons recorded for initiating the re-assessment proceedings for escapement of income u/s.115BBC of the Act and therefore proper jurisdiction has not been assumed by the AO and therefore the re-assessment proceedings deserve to be quashed.

12. The above grievance of the assessee and submission of Id. Counsel for the assessee needs to be examined in light of the facts of the instant case. We observed that Id. AO has issued the reasons for reopening of the assessment for A.Y.

2012-13 which already stood scrutinised u/s.143(3) of the Act and the relevant part of the reasons recorded which is related to the issue under consideration reads as under :

“Reasons for reopening the assessment in the case of Rajshri Shahu Shikshan Sanstha for A.Y. 2012-13 u/s.147 of the Act.

01. xxxx

02. xxxx

03. xxxx

04. xxxx

xxxx

f) *During the course of survey proceeding Shri Vitthal Patil President of the assessee trust claimed that donation to the trust are collected through certain persons called Karyakaratas. In light of these facts regarding donation, the statement of three such Karyakartas as under were recorded U/s 131 of the IT Act*

i) *Shri Prakash G Bhandare*

ii) *Shri Vijay Patil*

Shri Prakash G. Bhandare (Head Master of Chandrabai Bhauso Patil Madhyamik Vidyalaya) in his statement stated that he has never collected donations for the trust ever since he has been working for the school beginning from 2004. Similarly Shri Vijay Patil stated that he has never collected donations for the trust from any villagers.

In view of these statements Shri Vitthal Patil was asked to submit his explanation. No satisfactory explanation has been given by him. Further, no documentary evidences in respect of details received through Karyakartas was produced by the assessee trust.

g) *During the course of survey action the assessee trust was confronted with the replies given by 26 donors to whom notices U/s 133(6) were issued by the ITO (I & CI) Kolhapur. In these replied the claimed donors denied having made as donations to the assessee trust. The assessee could not provide any answer to the above query. No satisfactory explanation was given by the assessee.*

06. *The evidences collected during the course of survey action establish the following facts.*

- a) *The assessee has not maintained books of accounts for FY 2017-18 and F.Y. 2018-19.*
- b) *The assessee has not maintained any details or the list of donors in respect o donations of Rs.1,94,03,000/- claimed to be received during FY 2012-13.*
- c) *No donation receipts books have been maintained for any of the period starting from FY 2011-12 to FY 2018-19.*
- d) *Since most of the donors have denied having made any donations to the assessee trust, the claim of donations made in the books of accounts from FY 2011-12 to FY 2016-17 are not genuine. Therefore, the claimed donations need to be taxed u/s 68 of the IT Act as the assessee has not been able to explain satisfactorily the nature and source of the sums credited to the books of account.*
- e) *The total claimed donations received by the assessee trust for different financial years is as under :-*

| <i>F Y</i> | <i>A Y</i> | <i>Donations claimed</i> |
|----------------|----------------|--------------------------|
| <i>2011-12</i> | <i>2012-13</i> | <i>13650000</i> |
| <i>2012-13</i> | <i>2013-14</i> | <i>19403000</i> |
| <i>2013-14</i> | <i>2014-15</i> | <i>20050000</i> |
| <i>2014-15</i> | <i>2015-16</i> | <i>25196000</i> |
| <i>2015-16</i> | <i>2016-17</i> | <i>23400000</i> |
| <i>2016-17</i> | <i>2017-18</i> | <i>7800000</i> |
| | <i>Total</i> | <i>109499000</i> |

f) *The assessee has claimed that no donations has been received during FY 2017-18. However, it is seen from the bank account statement that cash deposits of Rs.10,93,516/- have been made during FY 2017-18. The assessee again explained the source of cash from donations. The contention of the assessee is not correct as no details of donations have been produced. Further, in reply to Q.No. 17 of the statement the assessee has claimed that no donations were received during the year. Thus, the sources of these cash deposits remain unexplained.*

During the course of survey proceedings various statements of donors have been recorded wherein they have denied having paid any donations. Further, the claim of Karyakartas having collected donation on behalf of the trust has also been found incorrect. Thus the assessee has not been able to substantiate any of the sources of the claimed donations during any of the above financial years. The assessee could not even produce evidences of donations received during the current financial year. Thus the assessee could not prove the sources of the claimed donations credited to the books of account.

In view of the above para no.,3,4,5 and 6and information available on the record of this office, I have reason to believe that the income chargeable to tax to the extent of Rs. 1,36,50,000/- has escaped assessment. I am, therefore, satisfied that it is a fit case for initiating the Proceedings u/s 147 of IT Act, 1961 to assess Rs. 1,36,50,000/- and to assess any other income which may come to the notice during the Assessment Proceedings u/s 147 of IT Act, 1961.

08. As discussed above the assessee could not provide any documents regarding the name of the donors during the course of survey proceedings. Further no donation receipts issued to the claimed donors were provided during the course of survey proceedings since the assessee did not maintain any of them. The assessee also could not explain why the names of the donors appeared in the same order for different assessment years. The assessee could not explain the sources of the donations received during the year. Thus in view of the new facts discovered during the course of survey action it is evident that the assessee had not disclosed full and truly all material fact necessary for his assessment.

09. In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 25/03/2015. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above.

In view of the above facts, the provisions of clause (C) 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 where income chargeable to tax has escaped assessment.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue to the notice u/s 148 has been obtained separately from The Commissioner of Income Tax as per the provision of section 151 of the Act.”

13. In the above reasons recorded, we observe that in para 4(d) Id.AO has specifically stated that since the donation received during F.Y. 2011-12 to F.Y. 2016-17 are not genuine

therefore the additions needs to be taxed u/s.68 of the Act as the assessee has not been able to explain satisfactorily the nature and source of the sum credited in the books of account.

14. The assessee raised objections to the reasons recorded by Id. AO and such objections reads as follows :

"Respected Sir,

Sub: Objections and submission s for reopening of the assessment for AY 2012-13.

In this regard & in continuation of our earlier submission we further respectfully submit & explain as under.

1. We are furnishing herewith following documents.

- i. Affidavit of president of Assessee trust of Shri Vitthal Bhauso Patil.*
- ii. Copy of Panchnama conducted by state Govt revenue authority i.e. Talathi at the entire premises of the trust on 13/08/2019 after flood.*
- iii. Damaged donation receipts due to flood as referred in the Panchnama of the Talathi, photo of the same.*

In this regard, we would like to further explain and reiterate that the donations are collected by volunteers. This fact is In this regard we would like to further explain and reiterate proved beyond doubt from the statement of volunteers taken by survey team and also statement of Shri Sandip Gabale taken by survey team and also affidavit of volunteers and affidavit of Shri Sandip Gabale. Thus it is further proved that trust has not directly collected any donation.

In such scenario trust has to rely on name and amount of the donation given by the volunteers. The donation receipts mare prepared and issued on the basis of donation details given by volunteers. The lists of donation as and when asked by department are provided which were prepared by clerk who has tried to make list in alphabetical basis and while doing so has various mistake and result of this same name and amount are repeated in the list at same serial nos in different years.

2. The provisions of section 68 are not applicble to the facts of the case. The trust has collected the donations from various persons through volunteers and this fact is proved and established on record

even during the course of survey All the amounts of the donations are properly accounted and recorded in the books of accounts. Thus the donations are fully disclosed in the return of income. The donations received are credited to income and expenditure account of the trust and hence it is already shown as skin income of the trust. Your proposed action will result into double taxation of same amount. Hence all the donations are out of ambit of the provisions of section 68. Hence we object for reopening of assessment for your proposed action of addition u/s. 68 of the donation amount.”

15. In the above objections raised by the assessee in para 2, assessee has stated that provisions of section 68 of the Act are not applicable to the facts of the instant case and that all the amounts of donations are properly accounted and recorded in the books of account credited as income in the Profit and Loss account and they are fully disclosed in the return of income. It is also stated that donations received are credited to the ‘Income and Expenditure’ account and the expenses incurred during the year have been claimed against such donations and that the proposed action will result into double taxation of same account and therefore the donations in question are out of the ambit of the provisions of section 68 of the Act. The assessee has stated that section 68 of the Act has no applicability on the facts of the case. We further observe that inspite of the objections raised by the assessee ld. AO has finally concluded the re-assessment proceedings after making addition u/s.115BBC of the Act which is applicable to Anonymous donations and has not invoked section 68 of the Act. Final finding of ld. AO making the impugned addition for A.Y. 2012-13 reads as under :

“The assessee has failed to substantiate its claim of donations being genuine and received from the donors whose names were provided by the assessee. The assessee could not produce any records of the genuineness of donors either during the survey proceedings or

during the course of assessment proceedings, In view of the above provisions of law, the claimed donations are anonymous donations and need to be taxed U/s 115BBC of the IT Act as the assessee has not been able to explain satisfactorily the sources of the donations received during the year in spite of number of opportunities given to the assessee during the course of assessment proceedings. The assessee has failed to prove the genuineness of donors and the source of claimed donations of Rs.1,36,50,000/- credited to the books of accounts. These sums are therefore treated as "Anonymous Donations" and are hereby taxed u/s 115BBC of the Income Tax Act. Penalty proceedings u/s 271(1)(C) for furnishing inaccurate particular of income are hereby initiated separately.

10. After appreciating the above facts of the case the total income of the assessee is computed as under:

| | | |
|-------------------------|----------|--------------------------|
| <i>Returned Income</i> | <i>:</i> | <i>₹ Nil</i> |
| <i>Addition</i> | | |
| <i>i. As per para 7</i> | <i>:</i> | <i>Rs. 1,36,50,000/-</i> |
| <i>Assessed Income</i> | <i>:</i> | <i>Rs. 1,36,50,000/-</i> |

16. Now on going through the reasons recorded/objections raised by the assessee and final finding of the Assessing Officer, we notice that Id. AO proceeded to assume jurisdiction for carrying out the re-assessment proceedings alleging that section 68 of the Act needs to be invoked and donations received during the year needs to be taxed as unexplained cash credit, however, the final outcome of the re-assessment proceedings is the addition u/s.115BBC of the Act. Whether section 68 and section 115BBC of the Act has the same effect of taxing the assessee and whether provisions of section 68 of the Act and section 115BBC can be applied in place of each other needs to be examined. We will first go through the relevant provisions of section 68 and section 115BBC of the Act and they read as follows :

"Section 68 :
Cash credits.

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

Section 115BBC :

Anonymous donations to be taxed in certain cases.

115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iii ae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

(i) *the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—*

- (A) *Five per cent of the total donations received by the assessee; or*
- (B) *One lakh rupees, and*

(ii) *the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.*

(2) *The provisions of sub-section (1) shall not apply to any anonymous donation received by—*

- (a) *any trust or institution created or established wholly for religious purposes;*
- (b) *any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.*

(3) *For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed."*

17. On going through the above sections 68 and 115BBC of the Act, we note that section 68 of the Act is invoked when there is unexplained cash credit in the books and the assessee is unable to explain the nature and source to the satisfaction of the Assessing Officer and the same is treated as income. It means that the amount which are credited in the books of account and not shown as income, i.e. they have shown as liability or any other credit for which when the assessee is not able to discharge its onus to prove the nature and source, the same are taxed as income from other sources u/s.68 of the

Act. On the other hand, section 115BBC is applicable to Anonymous donations where the donations are already recorded in the books of account as income but in case where the persons receiving such contribution does not maintain record of the Identity indicating the name and address of the persons making such contribution and such other particulars as may be prescribed then such Anonymous donations are subject to income tax calculated @30% on the aggregate of the Anonymous donations received in excess of the higher @5% of the total donations or ₹1.00 lakh and the amount of income tax with which the assessee would have been chargeable had his total income being reduced by the aggregate of Anonymous donations received in excess of the amounts referred in sub-clause (a) and sub-clause (b) of section 115BBC(1)(i) of the Act. It therefore shows that only for not maintaining proper record of the Identity indicating the name and address of the person to make such contribution and such other particulars as prescribed in section 115BBC of the Act is invoked. Whereas in case of section 68 of the Act if the assessee is unable to explain the nature and source and more particularly the Identity, creditworthiness of the cash creditor and the genuineness of the transaction, then such credits appearing in the books of account can be taxed as income u/s.68 of the Act. We further observe that the compliance level of section 68 is more hard and even in some cases source of source is also asked for by AO whereas the compliance requirement u/s.115BBC is limited to possession of details of names and addresses of donors.

18. We further observe that the penalty provisions invoked in case of addition made u/s.68 of the Act are under section 271(1)(c)/270A of the Act whereas no penalty per se is applicable for income added u/s.115BBC of the Act. We also observe that section 68 converts any credit entry not shown as income in the books of account, into income. For example unsecured loan, share capital, other capital receipts, share premium, sundry creditors etc. whereas in case of section 115BBC of the Act the donations are already recorded in the books as income. The above discussion indicates that section 68/115BBC of the Act are applicable under different set of facts and works on different path and they cannot be substituted for one another.

19. Ld. Counsel for the assessee has highlighted this very fact that the basis assumption by way of recording the reasons for reopening of the assessment of the assessee was for escapement of income and applicability of section 68 of the Act but thereafter even when the assessee has objected to such reasons, ld. AO has not recorded new reasons mentioning the applicability of section 115BBC of the Act and withdrawing the reasons recorded for invoking section 68 of the Act. Ld. AO has straight away concluded the proceedings making the addition u/s.115BBC of the Act, i.e. under a particular provision which was never forming part of the reasons recorded for assuming jurisdiction u/s.147 of the Act. Though we have reproduced the submission of ld. Counsel for the assessee, we would like to take note of the following portion of the submissions which brings the facts of the case in a much more transparent manner :

"14. Conention-3-Erroneous/Improper charge of escapement of income

As per facts, the learned AO, vide Para-7 of the 'reasons' reproduced at Page-12 of the 147 order, appears to have proceeded on the analogy that, some taxable income has escaped assessment. As against, vide Section 115BBC, mere rate of tax is differentiated from normal income. As stated earlier, entire charge of the learned AO at the stage of formation of belief of 'escapement of income' by resorting to Section 68 of the ITA, 1961. Had the learned AO proceeded on this analogy, the end-result would have been a NULLITY. Assuming that, the learned AO would have finally concluded that, there is 'escapement' of income by applying section 68, even then, for AY 2012-13, the 'Total Income' would have remained the same. As per facts, the said amt of Rs. 1.36 CR was anyway credited to P & L/I & E account as 'income' only'. Categorising Appellant's 'donations' claim, as Section 68 specified 'income' would not have made any change in assessment. The Special Scheme of Taxation of Section 68 income u/s 115BBE at a Special Rate was introduced only from AY 2017-18 and onwards. Even the negative condition of denial of set-off of any other LOSS was also introduced from AY 2017-18 only. As such, for all years till AY 2016-17, the 'reasons' formed for the belief of 'escapement of income' were specious and leading to a NULLITY. Appellant relies on CBDT Circular No. 11/2019 dated 19/6/2019 clarifying the scheme of Section 115BBE in this regard (copy enclosed and marked as Annexure-7). Appellant also relied upon the decision in case of PKM Advisory Services P Ltd v. ITO-339 ITR 585 (Guj) in this regard, a copy of which is enclosed and marked as Annexure-8."

20. On the facts of the instant case the reasons recorded for assuming jurisdiction section 68 has been referred but thereafter finally the addition has been made u/s.115BBC of the Act. We would like to go through the judicial precedents in this regard. We take note of the Judgment of Hon'ble High Court of Gujarat in the case of *Dhruv Parulbhai Patel Vs. ACIT (2014) 45 taxmann.com 20 (Gujarat)*. In this case also, the issue was that reasons for reopening was against the claim of assessee u/s.54E of the Act but thereafter Hon'ble Court has observed that section 54E of the Act is neither applicable nor sought to be applied by the assessee and also Hon'ble Court

held against the Revenue and quashed the assessment order observing as follows :

"2. The petitioner as an individual, for the assessment year 2008-09 filed his return of income on 3.3.2009 showing total income of Rs.4,43,830/-. During the period relevant to the assessment year, the petitioner had sold a residential property and claimed exemption under section 54 of the Income-tax Act ("the Act" for short). Amount which remained unutilized was deposited by the petitioner with the State Bank of India as under:—

(a) SBI Capital Gains Savings Bank Account Rs.2,00,000/-

(b) SBI Capital Gains Deposit Scheme Rs. 37,00,000/-

3. Assessing officer undertook scrutiny of the return. During the course of assessment, various queries were raised by the Assessing Officer and replied by the petitioner. Eventually, the Assessing Officer passed an order of assessment dated 20.8.2010 making no additions to the total income of the assessee. In the body of the assessment order, he noted that the assessee had derived income from salary, from house property, profit from the firm as also capital gain. It is this scrutiny assessment the respondent desired to reopen for which impugned notice within the period of 4 years from the end of relevant assessment year came to be issued. The petitioner was supplied the reasons recorded by the assessing officer for issuing such notice with reasons read as under:—

"In this case, you have filed its return of income on 03.03.2009 declaring total income of Rs. 4,43,830/-. Further, assessment order u/s.143(3) of the Act was finalized in the case on 20.08.2010 determining total income at Rs. 4,43,810/-. Verification of case record of your revealed and your income from and capital gain and was allowed exemption of capital gain income under section 54E of the Act. For Rs.37,00,000/- invested in State Bank of India term deposit for 40 days up to 366 days i.e. for less than three years. As per provision quoted above you are not entitled to get exemption for investment less than three years."

4. The petitioner raised detailed objections under communication dated 18.9.2 less 013. In such communication he pointed out that his claim for exemption from payment of capital gain was under section 54 of the Act and not 54E. The Assessing Officer, therefore, in the reasons recorded has made wrong reference to the said section.

5. The objections of the petitioner were disposed of by the Assessing Officer on 16.12.2013. In such order he did not deal with the petitioner's pointed contention that his claim for exemption from payment of capital gain fell under section 54 and not 54E of the Act.

6. *On the basis of documents on record and the submissions made before us following aspects emerge:*

- (1) Assessment previously framed after scrutiny is sought to be reopened within a period of four years from the end of relevant assessment year. There is nothing conclusive on record to suggest that the question of assessee's claim for exemption from capital gain under section 54 was examined by the Assessing Officer.*
- (2) Undisputedly, however, the claim of the assessee was under section 54 and not 54E of the Act.*
- (3) The Assessing Officer in the reasons recorded desired to disallow the claim on the ground that as required under section 54E of the Act, the assessee did not invest the surplus for a minimum period of 36 months.*
- (4) Though through the affidavit-in-reply it is now pointed out that reference to section 54E is mere typographical error and the intention was to refer to section 54 of the Act, we are of the opinion that such stand is wholly incorrect. Had this been a case of mere typographical error, we would have ignored the mistake and referred to the correct statutory provision. The fact that reference under section 54E was however, not an error is manifest from the reasons recorded. It referred to the requirement of investing the surplus fund for a minimum period of 36 months. Such requirement flows from section 54E of the Act and not section 54. Section 54 in fact requires the assessee to acquire a new unit within a year or build himself within three years. In the later case he has to invest the surplus in specified investments. This was thus not a mere typographical error but a conscious decision on the part of the Assessing Officer to disallow the exemption claimed, for breach of the requirement of section 54E of the Act.*

7. What thus emerges from the above discussion is that the reasons on which the notice for reopening is issued lacks validity. Section 54E of the Act was neither applicable nor sought to be applied by the assessee. The question of denying any such claim under the said provision for breach of condition therein therefore simply did not arise. It is well-settled that notice for reopening has to be sustained and supported only on the basis of reasons recorded by the Assessing Officer and not with the help of extraneous ground, material or possible improvement. Reference in this respect can be made to the decision of this Court in the case of Aayojan Developers v. ITO [2011] 335 ITR 234/10 taxmann.com 226/201 Taxman 154 (Mag.) (Guj).

8. Under the circumstances, notice dated 25.3.2014 is quashed. Petition is allowed. Rule is made absolute."

21. We also take note of the judgment of Coordinate Bench, Mumbai in the case of *M/s. Lark Chemicals P. Ltd. Vs. ACIT – ITA No.2636/M/2013, order dated 06.02.2015* where the Tribunal on finding that the reopening was on the suspicion of bogus billing but the same was proved to be wrong as the addition has been made in respect of share application money received and the assessment order has been quashed on this count by observing as follows :

10. Even otherwise, in the case in hand, the issue upon which the reopening was done and the issue on which the addition was made were diagonally opposite to each other. The reopening was done on the suspicion of bogus billing allegedly arranged from Suryodaya Company i.e. the issue of bogus expenditure, which otherwise was proved to be wrong, however the addition has been made in respect of Share application money received i.e. in respect of unexplained cash credits. The Hon'ble jurisdictional High Court of Bombay in the case of "CIT vs. Jet Airways (1) Ltd." (2011) 239 CTR (Bom) 183, has categorically held that the AO may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice, however, if after issuing a notice under section 148, the AO accepted the contention of the assessee and holds that the income about which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. Similar view has been taken by the Hon'ble Rajasthan High Court in the case of "CIT vs. Shri Ram Singh", (2008) 217 CTR (Raj.) 345. We agree with the submissions made by learned AR to the effect that when the reopening of the assessment itself was not valid and even the reasons for which reopening was made have been proved to be wrong, then in that event, any decision/addition made on the basis of said reassessment is unsustainable and becomes void. Reliance can also be placed in this respect on another authority of Hon'ble Madras High Court styled as "Ace Investments Ltd. and Another Vs. Settlement Commission and Others", 264 ITR 571."

22. We further find that the above decision of the Coordinate Bench in the case of *PCIT Vs. Lark Chemicals (P) Ltd. (2018) 99 taxmann.com 312 (SC)* came up before Hon'ble Apex Court and the Hon'ble Court has dismissed the Revenue's Writ Petition

affirming the order of the Hon'ble High Court where it has been held that in the order passed consequent to initiation of re-assessment proceedings, had not confirmed addition attributable to reasonable belief of Assessing Officer while issuing reopening notice.

23. We also take note of the judgment of Hon'ble Jurisdictional High Court in the case of *Hindustan Level Ltd. Vs. R.B.Wadkar (2004) 137 Taxman 279 (Bom.)* wherein the Hon'ble Court has held as under :

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

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the assessing officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside."

24. In light of above settled judicial precedents and applying the same on the facts of the instant case, we find that the reasons to believe for assumption of jurisdiction u/s.147 of the Act by the AO was that the income has escaped assessment and section 68 of the Act needs to be invoked and the donations deserves to be taxed u/s.68 of the Act but thereafter inspite of objections raised by the assessee ld. AO has carried out the re-assessment proceedings on the basis of very same reasons believing that there is escapement of income u/s.68 of the Act but after carrying out the re-assessment proceedings has finally made addition under some other provisions of section, i.e., section 115BBC of the Act and therefore the addition has been made on some other ground which was not specified in the reasons recorded. In other words, addition has been made u/s.115BBC of the Act but reasons have been recorded referring to provisions of section 68 of the Act. Therefore, we are of the considered view that ld. AO failed to assume proper jurisdiction for carrying out the re-assessment proceedings in the case of assessee and such re-assessment proceedings deserves to be quashed. Impugned order is set aside. Ground No.1 raised by the assessee on this legal issue is allowed.

25. Assessee has also raised similar legal ground in the appeals for A.Yrs. 2013-14 to 2017-18, therefore, our decision

given for A.Y. 2012-13 would apply *mutatis mutandis* to the remaining appeals for A.Yrs. 2013-14 to 2017-18.

26. Since assessee succeeds on the legal grounds, dealing with the remaining grounds/additional grounds raised by the assessee would be merely academic in nature and therefore held to be infructuous.

27. In the result, all the appeals filed by the assessee are partly allowed as per terms indicated hereinabove.

Order pronounced on this 18th day of December, 2025.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दनांक / Dated : 18th December, 2025.
Satish

आदेश कफ ितिलिप अ ेषित / Copy of the Order forwarded to :

1. अपीलाथा / The Appellant.
2. :यथT / The Respondent.
3. The Pr. CIT concerned.
4. िवभागीय ितिनिध, आयकर अपीलीय अधकरण, "B" ब™च,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गाड' फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar
आयकर अपीलीय अधकरण, पुणे / ITAT, Pune.