

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1999/MUM/2023  
(Assessment Year: 2014-15)**

**Deputy Commissioner of Income Tax,**  
Circle-3(3)(1), Mumbai,  
Room No. 609, Aaykar Bhavan, M.K. Road,  
Churchgate, Mumbai - 400020

..... **Appellant**

**East West Pipeline Private Limited,**  
147, 14<sup>th</sup> Floor, Atlanta, 222,  
Nariman Point, S.O. Mumbai - 400021  
[PAN:AABCP4405E]

Vs

..... **Respondent**

**Appearance**

For the Appellant/Department : Shri Biswanath Das  
For the Respondent/Assessee : Shri Madhur Agrawal

**Date**

Conclusion of hearing : 10.10.2023  
Pronouncement of order : 05.01.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Revenue has challenged the order, dated 30/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 29/03/2022, passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Revenue has raised the following grounds of appeal:

- "1. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in quashing the reassessment proceedings u/s 147 of the Income Tax Act, 1961 holding reopening of assessment as change of opinion when on the issue of a loss of Rs.6,04,35,06,392/- claimed by assessee company towards foreign exchange loss on transaction and translation the AO did not pass his opinion either during the original assessment proceedings or while passing the assessment order u/s 143(3) of the Act?*
2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in quashing the reassessment proceedings u/s 147 of the Income Tax Act, 1961 on the above ground without appreciating the ratio of Supreme Court in the case of M/s. Phool Chand Bajrang Lal [1993] 203 ITR 456 (SC), wherein it has been held that the Assessing Officer would have jurisdiction to reopen concluded assessment when the impugned transaction which led to reopening is not as per law and that mere disclosure of that transaction at the time of original assessment proceedings is not a true and full disclosure?*
3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in quashing the reassessment proceedings u/s 147 of the Income Tax Act, 1961 without appreciating the ratio of the Bombay High Court in the case of M/s. Consolidated Photo & Finvest Ltd. Vs. ACIT (2006) 151 Taxman 41 (Delhi) wherein it is held that action under section 147 was permissible even where the AO gathered his reasons to believe from the very same record as had been the subject matter of completed assessment proceeding?*
4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in quashing the reassessment proceedings u/s 147 of the Income Tax Act, 1961 without appreciating that the Hon'ble Apex Court has held in ALA Firm [1991] 55 Taxman 497 (SC)) and Hon'ble Gujarat High Court in PrafulChunilal Patel [1999] 236 ITR 832 (Guj.) have upheld the legal proposition that where mistake in assessment is caused by either an erroneous construction of transaction or due to its non-consideration, or caused by a mistake of law applicable, reopening would not amount to being on account of change of opinion and ought to be treated as valid even where there has been a complete disclosure of all relevant facts upon which a correct assessment could have been based?*
5. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting disallowance of the currency swap*

*loss incurred on transactions under the Cross Currency swap (CCS) contracts amounting to Rs. 602,95,70,7781-without appreciating that transactions entered into by the assessee company under these contracts are speculative in nature which do not fall under the exceptions mentioned in proviso under 43(5) of the Act and therefore the AO had correctly denied adjustment of this speculation loss against the normal business income as per the provisions of section 73(1) of the Income Tax Act, 1961?*

6. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting disallowance of the currency swap loss of Rs. 602,95,70,778/- without appreciating the fact that the underlying rupee loans availed by the assessee were towards financing pipeline project and the conversion of rupee loan into foreign currency loans through CCS deals resulted in a loss which is on capital account and hence the same should have been held as capital loss?*
  7. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting disallowance of the currency swap loss of Rs. 602,95,70,778/-without appreciating the fact that the impugned CCS deals were not executed to reduce the financial cost burden post commissioning of operations but they are principally aimed at reducing the principal loan burden and hence capital in nature?*
  8. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting disallowance of MTM losses of Rs. 394,29,70,479/- also which are part of the above Currency swap loss by relying on the decision of Hon'ble Supreme Court in the case of ONGC and Woodward governor without appreciating that this loss is not on account of restatement of revenue items such as current liabilities and current assets! stocks etc. whereas this loss incurred by the assessee is on capital account"*
3. The relevant facts in brief are that the Assessee is a private limited company engaged in the business of transportation of natural gas through cross country pipeline network. The Assessee filed its original return of income for the Assessment Year 2014-15 on 28/11/2014. The case of the Assessee was selected for regular scrutiny and the Assessing Officer completed the assessment under Section 143(3) of the Act vide order, dated 23/12/2016.

Subsequently, after the lapse of 4 years from the end of the Assessment Year 2014-15, reassessment proceedings were initiated under Section 147 of the Act by issuance of notice dated 30/03/2021. In response, the Assessee filed return of income on 26/04/2021. Thereafter, on obtaining a copy of the reasons recorded for reopening assessment, the Assessee filed objections against initiation of reassessment proceedings which were rejected by the Assessing Officer, vide order dated 08/03/2022. The Assessing Officer, thereafter, proceeded to frame assessment under Section 147 read with Section 144B of the Act and vide order dated 29/03/2022 made addition of INR 602,95,70,778/- disallowing loss pertaining to Cross Currency Swap Contracts (for short 'CCS') debited to Profit & Loss Account by the Assessee during the relevant previous year.

4. Being aggrieved, the Assessee preferred appeal before the CIT(A) against the Assessment Order, dated 29/03/2022, passed under Section 147 read with Section 144B of the Act challenging the validity of the re-assessment proceedings and the also challenging the addition made by the Assessing Officer on merits. Agreeing with the Assessee, the CIT(A), vide order dated 30/03/2023, quashed the assessment order, dated 29/03/2022, passed under Section 147 read with Section 144B of the Act holding that the reassessment proceedings were initiated without satisfying the requirements of Section 147 of the Act. Despite holding as aforesaid, the CIT(A) proceeded decided the issue on merits in favour of the Assessee holding that the Assessee was entitled to claim deduction for loss of INR 604,35,06,392/- pertaining to CCS under Section 37(1) of the Act as the same was a revenue loss. The Assessing Officer further held that the aforesaid loss was not speculative in nature, and

therefore, fell outside in the ambit of the provisions contained in Section 43(5) read with Section 73 of the Act.

5. Being aggrieved by the above relief granted by the CIT(A), the Revenue is in appeal before this Tribunal on the grounds reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

**Ground No. 1 to 4**

6. Ground No. 1 to 4 raised by the Revenue are directed against the order of the CIT(A) quashing the Assessment Order, dated 29/03/2022, passed under Section 147 read with Section 144B of the Act.
7. The facts relevant to adjudication of Ground No. 1 to 4 as emanating from the perusal of record are as follows. The Assessee was engaged, inter alia, in the business of setting up and operating cross country pipeline for transportation of natural gas from Kakindada in Andhra Pradesh to Bharuch in Gujarat. The Assessee had outstanding borrowings in the form of Indian Rupee loan and debentures aggregating to around INR 8,055/- Crores. The Assessee entered into CCS with authorised banks as counterparties in accordance with the guidelines issued by the Reserve Bank of India which permitted a domestic non-retail corporate entity to convert its Indian Rupee (INR) loan/liability (having comparatively higher interest rate) to foreign currency liability (having comparatively lower interest rate linked to LIBOR but having attached foreign exchange fluctuation risk) for the purpose of reducing the finance cost burden. The net effect of CCS entered into by the Assessee with the counterparty-banks was that on one hand, the Assessee granted Indian Rupee loan to the counterparties (earning interest income to

service Indian Rupee loan liability) while on the other hand, the Assessee borrowed USD equivalent of the aforesaid INR loan granted by the Assessee to the counterparties at a comparatively lower interest rates linked to LIBOR and in the process reduced the effective interest cost. Thus, the aforesaid transaction resulted in contractual assumption of rights and obligations by the Assessee and the counterparties without there being actual exchange of money representing the loan amount granted/taken. During the relevant previous year, the USD/INR movement was adverse to the Assessee and therefore, the Assessee debited loss of INR 602,95,70,778/- to the Profit & Loss Account which consisted of loss of INR 208,66,00,299/- incurred and paid by the Assessee upon settlement of CCS during the relevant previous year and loss of INR 394,29,70,479/- being mark to market loss booked in relation to CCS of INR 4,500/- Crores (equivalent to USD 864.82 Million) outstanding as on 31/03/2014.

8. In the original return of income the Assessee had claimed deduction for 'Other Expenses' of INR 906.45 Crores debited to the Profit & Loss Account. Note No. 23 forming part of Notes on Financial Statements provided break-up of 'Other Expenses' into two sub-heads - 'Operation and Maintenance Expenses' and 'Administration Expenses'. The break-up of Administration Expenses of INR 726.56 Crores included 'Net Loss/(Gain) on Foreign Currency' of INR 604.35 Crores.
9. When the case of the Assessee was selected for regular scrutiny, notice dated 14/07/2016, was issued to the Assessee under Section 142(1) of the Act and in response thereto, the Assessee filed reply to letter, dated 17/08/2016, stating that the long term provisions

represented mark to market provisions for derivative transactions and furnished a statement showing details of 'Net Loss/(Gain) on Foreign Currency transaction and translation' which read as under:

Nature of Expenses	Amount (INR)
Realised Exchange Loss – Currency Swap	208,66,00,299
Unrealised Forex Loss- Currency Swap	394,29,70,479
Realised Forex Gain – Settlement of Creditors	- 66,40,924
Realised Forex Loss- Settlement of Creditors	1,87,48,110
Unrealised Forex Loss- Revaluation of creditors	18,28,428
	604,35,06,392

10. Thus, the Assessee disclosed that the amount of INR 604,35,06,392/- debited to the Profit & Loss Account included Realised Exchange Loss on CCS of INR 208,66,00,299/- and the unrealized mark to market loss of INR 394,29,70,479/-.
11. Sequent thereto, on 18/11/2016, another notice under Section 142(1) was issued to the Assessee requiring the Assessee to, inter alia, provide the following:

*"11. ....breakup of foreign currency transaction and give accounting treatment to forex gain/loss. What are the MTM positions as on 31.03.2014. What is the net effect of notional gain/loss. Give working separately for capital expenditure and revenue expenditure."*
12. In response, vide reply letter dated 24/11/2016, the Assessee again furnished Details of 'Net Loss/(Gain) on Foreign Currency transaction and translation' along with statement of mark to market position of CCS till 31/03/2014.
13. Thereafter, vide reply letter dated 14/12/2016, the Assessee submitted that for the relevant assessment year INR 604.35 Crores has been charged to the Profit & Loss Account as 'Net Loss/(Gain) on

Foreign Currency transaction and translation' (*which includes unrealized Forex Loss on Currency Swap*) and deduction has been claimed for the same as allowable expenditure.

14. Soon thereafter, vide letter dated 21/12/2016, the Assessee also placed on record copy of Deal Confirmation - CCS between the Assessee and IndusInd Bank Ltd, for the Currency Swap done on 11/07/2013 having maturity date as 07/07/2017 (placed at page 98 to 106 of the paper-book filed by the Assessee).
15. Thereafter, the Assessing Officer completed the regular scrutiny assessment under Section 143(3) of the Act, passing Assessment Order, dated 23/12/2016, accepting the claim for deduction for Net Loss/(Gain) on Foreign Currency transaction and translation of INR 604.35 Crores which included aggregate exchange loss of INR 602,95,70,778/- related to CCS consisting of the following:

Nature of Expenses	Amount (INR)
Realised Exchange Loss – Currency Swap	208,66,00,299
Unrealised Forex Loss- Currency Swap	394,29,70,479
	602,95,70,778

16. Subsequently, a revenue audit objection was raised highlighting that there has been short levy of potential tax on account of incorrect allowance of Foreign Exchange Loss of INR 604,34,06,392/- in the case of the Assessee while passing the Assessment Order, dated 23/12/2016. (Placed at page 107 to 117 of the paper-book filed by the Assessee).
17. Later on, after the expiry of 4 years from the relevant assessment year, a notice, dated 30/03/2021, was issued under Section 148 of the Act in the case of the Assessee initiating reassessment proceedings under Section 147 of the Act for the Assessment Year



2014-15 after recording the following reasons:

*"In this case assessment u/s. 143(3) was completed on 23.12.2016 by determining current year loss at Rs.(-) 3080864616/- as per normal provisions and Book Loss at Rs. (-) 2123799944/- u/s 115JB which as per return of income filed on 28.11.2014.*

2. It is seen from the records that the assessee company has claimed a loss of Rs 604,35,06,392/ towards foreign exchange loss on transaction and translation. As per records the said loss is on account of foreign currency swap of Rs. 4500/- crores which was taken on underlying or Rupee loan. Perusal of the records revealed that there are hardly any foreign debtor or creditor for stock in trade and all the loss pertained to capital account. Further the loss is speculative in the nature as the loans were Rupee Loans. As the loans were not for stock in trade but for capital commitments, loss incurred on said loans due to fluctuation in foreign exchange rates is to be regarded as capital in nature and could not be claimed as deduction. As per section 37 of the Act, while computing income for tax purpose, expenditure of capital nature is not allowable deduction. Further, the Hon'ble High Court of Madras in case of Tube Investment of India Limited vs Joint Commissioner of Income Tax [2014] 45 Taxman.com 78 (Madras) held that whereas company utilized foreign loan for the purpose of capital equipment, loss incurred on said loan due to fluctuation in foreign exchange rate was to be regarded as capital in nature which could not be allowed as deduction. Thus, the claim of foreign exchange loss is of capital nature which required to be added back to the total income and hence the claim of the assessee on this account is improper and resulted in underassessment of income by Rs.604,35,06,392/-

3. Considering the above, it is clear that the assessee company has not disclosed the full and true material in the return of income filed and therefore, the condition specified in the proviso to Sec 147 are fulfilled. It is pertinent to mention here that even though the assessee has e-filed the audited P&L Account and Balance Sheet or other details/schedules, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discover by the AO and could not have been discovered with due diligence. For the above reasons, it is not a case of change of opinion. Therefore, I am satisfied that the assessee had failed to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration.

*4. In view of the above, it is a fit case for initiation of proceedings u/s 147 of the income Tax Act 1961, in order to frame proper assessment to bring to tax appropriate income attributable to the above, which has escaped assessment.” (Emphasis Supplied)*

18. The Assessee filed objections to reopening of assessment, vide letter dated 10/02/2022. It was contended on behalf of the Appellant that the Assessing Officer’s action of reopening of the assessment was bad in law on the following grounds:

- (i) Reopening proceedings initiated after the expiry of 4 years from the end of relevant assessment year were bad in law as the Assessee made full and true disclosures of the material facts and there was no default in making disclosure on the part of the Assessee. In the reasons recorded for reopening the assessment the Assessing Officer had failed to point out which disclosures made by the Assessee were not true or incomplete.
- (ii) Assessing Officer did not have any fresh tangible material to form a belief that income had escaped assessment. The reasons recorded itself state that on perusal of record the Assessing Officer formed a belief that the income has escaped assessment.
- (iii) The Assessee had made the relevant disclosures in the financial statements, income tax return and in the original assessment proceedings and the Assessing Officer chose not to make any addition/disallowance in respect of ‘Net Loss/(Gain) on Foreign Currency transaction and translation’ claimed by the Assessee. The Assessee had

made the primary disclosures and the reopening of assessment was done on account of change of opinion which was contrary to settled legal position.

19. However, the above contentions did not find favour with the Assessing Officer and the same were rejected by the Assessing Officer, vide order, dated 08/03/2022 holding as under:

*"3. The objections raised by the assessee have been perused and the claims made by the Assessee in the objections filed have been checked from the available record.*

- a) *Regarding the objection of the assessee at Sr. no. 2 A and 2 B, it is submitted that the notice u/s 148 had been issued with the prior approval of the competent authority. The material facts relevant to the nature of the transactions which led to loss on account of foreign exchange and the utilization of these loans whether for the revenue expenditure or capital expenditure were not found on record. Further, the currency swap loss was due to hedging activity which is speculative in nature. Such speculative currency swap contracts are derivatives and are not excluded from the clause (d) to the section 43(5) of the Income Tax Act but the assessee has not declared them as speculative or that it falls in the exception given by clause (d) of section 43(5). Such speculative loss could not be adjusted against the normal business income as per the provisions of section 73(1) of the Income Tax Act. Thus, all these facts and documents would be checked during the re-assessment proceedings after giving opportunity to the assessee.*

*As per the Deal confirmation between the Indusind Bank Limited, Mumbai and the assessee company dated 11.07.2013, such currency swap was considered to be a derivative transaction and its purpose has been defined on its page no. 6 as follows:*

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*The above clearly show that the transactions were not classified in the proper heads.*

*Thus, the assessee was found to have not disclosed the true facts about the nature of the transactions but claimed loss on account of foreign exchange. Also, the reopening has been done on the basis of tangible material and facts on record.*

- b) *Regarding the objection of the assessee at Sr. No. 2 C, it is submitted that in the case of the assessee the issue is factual and there is tangible material on record on the basis of which the reasons to believe has been formed. Further it is not change of opinion as the Assessing officer has not asked for any specific details about the issue on the aspect that the loss is speculative in the nature as the loans were Rupee Loans. Further no document related to the utilization of such loans was found on record which show that the reopening regarded such transactions as capital in nature has not been done. This information and enquiry of record were prima facie sufficient to reopen the case Thus, it is not found to be a case of change in opinion.*
- c) *The case law cited by the assessee which is mentioned above, are distinguishable as the specific aspects as considered in the reopening have not been examined earlier as discussed above. The case law cited by the assessee which is mentioned above, is distinguishable as in this case the AO had made enquiry from record.*

*Thus, the action of reopening the case is based on the factual findings. The reasons are based on the relevant material on record at the time of recording reasons. The legislative intent was to allow the AO to go through the process of assessment and Assessing officer has fulfilled all the procedural conditions as prescribed in section 147 Assessing Officer has formed the requisite belief and the reasons for the belief have a rational nexus or a relevant bearing to the formation of such belief. Further it is also submitted that relevant records were examined by the higher authorities with due application of mind before according their necessary approval. Therefore, objections raised by assessee are not tenable.*

4. *After applying the above judicial precedents to the facts of the case, the objections canvassed by the assessee against the initiation*

*of re-assessment proceedings are not tenable. Accordingly, the undersigned is of the considered opinion that there is adequate and relevant material for forming a reasonable belief that taxable income has escaped assessment and, therefore, the initiation of re-assessment proceedings by issue of notice under section 148 of the Act for A.Y. 2014-15 is in order. It is also to be noticed that as per section 147 of the I.T. Act, the Assessing Officer is expected to form only a prima facie opinion or belief regarding the applicability of the provision in question at the time of recording of reasons for reopening the assessment, and it is not necessary for Assessing Officer to conclusively establish that his belief or opinion is correct even on the merits. In view of the above discussion regarding objections of the assessee, all the objections raised by the assessee vide above referred letter are hereby disposed off in the Preceding paras. During the course of re- assessment proceedings adequate opportunity will be afforded to explain the case and the resultant order will be passed as per law on an objective appraisal of all the facts and the evidences available”.*

20. The Assessing Officer, thereafter, proceeded to pass assessment order, dated 29/03/2022, under Section 147 read with Section 144B of the Act making an addition of INR 602,95,70,778/- by disallowing the Foreign Exchange Loss relating to CCS and reassessed income of the Appellant at INR 294,87,06,162/- as against returned loss of INR 308,08,64,616/-.
21. In appeal before the CIT(A), the Assessee challenged the validity of reassessment proceedings contending that the same have been initiated in violation of the provisions contained in Section 147 of the Act. The CIT(A) agreed with the Assessee and vide order, 30/03/2023, quashed the Assessment Order dated 29/03/2022, passed under Section 147 read with Section 144B of the Act holding the reassessment proceedings were initiated on account of mere change of opinion in absence of any fresh tangible material. Further, there was no default on the part of the Assessee in making full the true disclosure, and therefore, the reassessment proceedings could

not have been initiated after the expiry of 4 years from the relevant assessment years. The final conclusion drawn by the CIT(A) in paragraph 5.2.10 of the order impugned reads as under:

*"5.2.10 In the present case, it has been demonstrated that complete details and particulars in relation to the losses incurred in currency swap derivatives was furnished by the appellant in course of the original assessment u/s 143(3) of the Act. I therefore do not find this to be a case where the facts pertaining to the impugned loss was not examined or called for by the AO or that the facts were not fully disclosed at the time of original assessment. Perusal of the records shows that the AO sought to reopen the assessment based on a different opinion which he entertained on the nature of the loss. Applying the ratio laid down in the above cited decisions (supra), I am of the considered view that the conditions precedent enshrined in the first proviso to Section 147 of the Act not fulfilled in as much as the assessment was reopened on mere change of opinion without their being any new tangible material to support the same and therefore the assessment order is held to be vitiated in law and is thus directed to be quashed, Ground Nos. 1 to 3 are therefore allowed."*

22. The Revenue is now in appeal us on this issue challenging the order passed by the CIT(A) quashing the assessment order.
23. The Learned Departmental Representative appearing before us submitted that the Assessee had not made true and full disclosure of the facts in the return of income and the financial statements. The material facts relevant for determining the nature of the loss as well as the nature of the transactions which led to loss on account of foreign exchange were not on record. As per the Deal Confirmation between the Indusind Bank Limited, and the Assessee, dated 11/07/2013, (filed during the assessment proceedings) the cross currency swap transactions were to be considered as a derivative transaction. This clearly showed that the Assessee had failed to make full & true disclosure as the Assessee had classified/disclosed the transaction and the loss arising therefrom incorrectly. Reliance

was also placed in Explanation 1 to Section 147 of the Act to contend that mere filing of documents and details before the Assessing Officer did not amount to true and full disclosure. The belief that income has escaped assessment was formed on the basis of tangible material. Further, it was not a case of mere change of opinion as the Assessing officer had not asked for any specific details regarding the nature of loss being speculative in the nature. There was adequate material for forming a belief that income had escaped assessment and, therefore, the initiation of reassessment proceedings was as per law and in compliance with the provisions of Section 147 of the Act.

24. Per contra, the Learned Authorised Representative for Assessee contended that the duty of the Assessee was limited to placing on records the primary facts, which was discharged by the Assessee by making disclosures in the financial statements, and replying to the specific queries raised by the Assessing Officer relating to foreign exchange loss related to CCS during the assessment proceedings and placing on record relevant documents including financial statements (along with Notes to accounts), details of Net Loss/(Gain) on Foreign Currency transaction and translation of INR 604.35 Crores (which included aggregate exchange loss of INR 602,95,70,778/- related to CCS) and other details/documents making the relevant disclosures. During the original assessment proceedings, the Assessing Officer drew the inference in favour of the Assessee and did not make any disallowance. On re-examining the same material already on record, reassessment proceedings were initiated on account of change of opinion without there being any fresh tangible material or any failure on the part of the Assessee to disclose true and full facts. The Learned Authorised

Representative for the Assessee took us through the various documents and details forming part of the paper-book (including financial statements, computation of income, details of foreign exchange loss and mark to market position, and various queries raised by the Assessing Officer as well as the replies filed by the Assessee during the regular scrutiny assessment proceedings) to drive home the point that there was no default on the part of the Assessee in making full and true disclosure. The Learned Authorised Representative for the Assessee submitted that since there was no default on the part of the Assessee, reassessment proceedings could not have been initiated after the expiry of 4 years from the end of the relevant assessment year. The Learned Authorised Representative for the Assessee, taking us through the reasons recorded for reopening the assessment, further submitted that the reasons recorded did not make reference to any fresh tangible material and made reference to material already on record which was considered by the Assessing Officer during the regular scrutiny assessment proceedings. Therefore, the reassessment proceedings were initiated on account of mere change of opinion on same set of facts and documents.

25. We have considered the rival submissions, perused the material on record, examined the position in law and taken into consideration the judicial precedents cited during the course of hearing. At the outset, we note that in the case before us the legality or the genuineness of the CCS was never in doubt as the same were entered into by the Assessee with the authorised banks in terms of the guidelines prescribed by the Reserve Bank of India. Therefore, reliance by the Revenue on the judgment of the Hon'ble Supreme Court in the case Phool Chand Bajrang Lal Vs. ITO: [1993] 203 ITR



456 (SC) was misplaced. We further note that it is admitted position that Assessment Order under Section 143(3) of Act was passed on 23/12/2016 after regular scrutiny assessment wherein queries relating to Foreign Exchange Loss/(Gains) were raised by the Assessing Officer. The contention of the Revenue is that no specific queries relating to the nature of loss being capital and/or speculative in nature were raised by the Assessing Officer and that the Assessee had also not placed on record any material from which the nature of loss could be determined. On the other hand that Assessee contended that all primary facts were disclosed by the Assessee and there was no default on the part of the Assessee in making full and true disclosure. Since regular scrutiny assessment had been framed on the Assessee under Section 143(3) of the Act, it was contended by the Assessee that as per the First Proviso to Section 147 of the Act, reassessment proceedings could have been initiated after the expiry of 4 years from the end of the relevant assessment year, only in case of default by the Assessee in making full & true disclosure.

26. We note that the CIT(A) has, while accepting the contention of the Assessee and quashing the assessment order, placed reliance on the judgment of the Hon'ble Supreme Court in the case of New Delhi Television Limited Vs. ACIT : 116 taxmann.com 151 (SC) wherein the Hon'ble Supreme Court has, analyzing the meaning of expression 'full & true disclosure', held as under:

*"Question No.2*

- 24. Coming to the second question as to whether there was failure on the part of the assessee to make a full and true disclosure of all the relevant facts. The case of the assessee is that it had disclosed all facts which were required to be disclosed.*

25. – 31.      xx      xx

32. A number of decisions have been cited as to what is meant by true and full disclosure. It is not necessary to multiply decisions, as law in this regard has been succinctly laid down by a Constitution Bench of this Court in *Calcutta Discount Co. Ltd. v. ITO* AIR 1961 SC 372, wherein it was held as follows:—

*'(8)...The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise — the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be.*

*(9) There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income- tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example — "I have produced the account books and*

the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account-books and the documents." His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them — including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

(10) Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else — far less the assessee — to tell the assessing authority what inferences — whether of facts or law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences — whether of facts or law — he would draw from the primary facts.

(11) If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could

*an assessee be charged with failure to communicate an inference, which he might or might not have drawn?'*

*A careful analysis of this judgment indicates that the Constitution Bench held that it is the duty of the assessee to disclose full and truly all material facts which it termed as primary facts. Nondisclosure of other facts which may be termed as secondary facts is not necessary. In light of the above law, we shall deal with the facts of the present case.*

33. *In our view the assessee disclosed all the primary facts necessary for assessment of its case to the assessing officer. What the revenue urges is that the assessee did not make a full and true disclosure of certain other facts. We are of the view that the assessee had disclosed all primary facts before the assessing officer and it was not required to give any further assistance to the assessing officer by disclosure of other facts. It was for the assessing officer at this stage to decide what inference should be drawn from the facts of the case. In the present case the assessing officer on the basis of the facts disclosed to him did not doubt the genuineness of the transaction set up by the assessee. This the assessing officer could have done even at that stage on the basis of the facts which he already knew. The other facts relied upon by the revenue are the proceedings before the DRP and facts subsequent to the assessment order, and we have already dealt with the same while deciding Issue No.1. However, that cannot lead to the conclusion that there is non-disclosure of true and material facts by the assessee."* (Emphasis Supplied)

27. The Hon'ble Supreme Court has, in the above judgment, held that the duty of the Assessee was limited to disclosure of primary facts and did not extend to communication/disclosure the inference drawn or to be drawn from the same.

28. In paragraph 7 to 15 above, we have already noted various disclosures made by the Assessee in the financial statements, and during the regular scrutiny assessment proceedings while responding to the queries raised by the Assessing Officer. During the regular scrutiny assessment proceedings, the Assessing Officer had,

vide notice, dated 14/07/2016 and 18/11/2016, called upon the Assessee to provide complete details/supporting evidences in respect of:

- i) Large expenses claimed in Profit & Loss Account vide Point No. 12 (iii) of notice under Section 142(1) dated 14/07/2016 and
- ii) Break up of foreign currency transaction, accounting treatment of forex gain/loss, effect of notional gain/loss and working for capital expenditure and revenue expenditure vide Point No. 11 of notice under Section 142(1) dated 18/11/2016

29. In response to the above notice(s), the Assessee, vide letters dated 17/08/2016 and 21/12/2016 provided the details of 'Net Gain/(Loss) of Foreign Currency Transaction and Translation' and details of currency swap contract (Trade Confirmation) vide Point No. 3 of letter dated 21/12/2016.

30. Thus, from abovesaid it is clear that the Assessee had placed on record financial statements showing that the Assessee had debited to the Profit & Loss Account for the previous year relevant to the Assessment Year 2014-15 'Net Loss/(Gain) on account of Foreign Currency Transaction & Translation' of INR 604.35 Crore which included aggregate realized/unrealized foreign exchange loss of INR 602,95,70,778/- pertaining to CCS. During the regular scrutiny assessment proceedings, the Assessee had also filed details of the mark to market losses booked in respect of CCS, both, settled and outstanding, till the end of the relevant previous year. Further, the Assessee had also placed on record one of the CCS - Deal

Confirmation, dated 11/07/2013, issued by IndusInd Bank Ltd. giving the applicable terms and conditions. On consideration of material placed before us as part of paper-book containing documents filed during the course of regular scrutiny assessment proceedings, we are of the considered view that there was no failure on the part of the Assessee to make full and true disclosure of the primary facts. Relying upon the judgment of Hon'ble Supreme Court in the case of New Delhi Television Limited Vs. ACIT: 116 taxmann.com 151 (SC), the CIT(A) had concluded that the Assessee, having disclosed truly and fully the primary facts, was not under obligation to communicate to the Assessing Officer the possible inferences which could have been drawn from the primary facts disclosed. We concur with the aforesaid view taken by the CIT(A). Further, in our view Explanation 1 to Section 147 of the Act could be not attracted in the facts and circumstances of the case as the primary facts were apparent from the details and documents submitted by the Assessee.

31. We also note that the CIT(A) had noted that specific queries were raised by the Assessing Officer in relation to Foreign Exchange Loss/(Gain) in response to which the Assessee had provided relevant financial statements, documents, details and submissions. The CIT(A) had further noted that in the reasons recorded the Assessing Officer had drawn inference that income has escaped assessment on the basis of facts already on record and not on the basis of any new material which came in the possession of the Assessing Officer subsequent to the conclusion of the assessment proceedings. The CIT(A) had concluded that reassessment proceedings were initiated on re-appraisal and re-examination of the assessment records without bringing any tangible material to show that income has

escaped assessment on account of failure on the part of the Assessee to furnish true and full facts. We do not find any infirmity with the aforesaid conclusion drawn by the CIT(A). In our view, on the basis of the primary facts disclosed by the Assessee, the Assessing Officer drew inference in favour of the Assessee and accepted Assessee's claim for deduction for 'Net Loss/(Gain) on account of Foreign Currency Transaction & Translation' of INR 604.35 Crores'. Subsequently, reassessment proceedings were initiated on account of change of opinion formed on re-appraisal of the facts already on record and examined during the regular assessment proceedings which was contrary to the judgment of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator India Ltd.: [2010] 320 ITR 561 (SC). Be that as it may, we have already concluded that there was no failure on the part of the Assessee to disclose the primary facts and therefore, in view of the provisions contained in First Proviso to Section 147 of the Act re-assessment proceedings could not have been initiated in the case of the Assessee after the expiry of 4 years for the end of relevant assessment years.

32. Accordingly, we concur with the view taken by the CIT(A) and hold that the CIT(A) was correct in quashing the Assessment Order, dated 29/03/2022, passed under Section 147 read with Section 144B of the Act of the Act. Hence, Ground No. 1 to 4 raised by the Revenue are dismissed.

**Ground No. 5 to 8**

33. As regards, Ground No. 5 to 8 raised by the Revenue dealing with the merits are concerned, the same have been rendered academic in view of the fact we have sustained the order of CIT(A) quashing the

Assessment Order dated 29/03/2022, passed under Section 147 read with Section 144B of the Act. Accordingly, without any adjudication upon the merits, Ground No. 5 to 8 to raised by the Revenue are dismissed as being infructuous.

34. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 05.01.2024.

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 05.01.2024  
*Alindra, PS*



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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