IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISIDICTION

INCOME TAX APPEAL NO. 2515 OF 2018

Commissioner of Income Tax- (Exemption),
R.No. 617 Mumbai, Piramal Chamber,
Lalbaug, ...Appellant
Mumbai – 400 012.

Versus

M/s. Muniwar Abad Charitable Trust
405A/407, Jolly Bhavan No.1 10,
New Marine Lines, Mumbai – 400 020. ... Respondent

WITH
INCOME TAX APPEAL NO. 1457 OF 2018

Commissioner of Income Tax- (Exemption),
Mumbai, Piramal Chamber, Lalbaug,
Mumbai – 400 012. ...Appellant

Versus

M/s. Muniwar Abad Charitable Trust
405A/407, Jolly Bhavan No.1 10,
New Marine Lines, Mumbai – 400 020. ... Respondent

Mr. Suresh Kumar for the Appellant.
Mr. Balakrishna V. Jhaveri for the Respondent.

CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.
RESERVED ON : 26th MARCH, 2026
PRONOUNCED ON : 29th APRIL, 2026

JUDGMENT : (PER : SHYAM C. CHANDAK, J.)

1. These are Appeals under the provisions of Section 260-A of the Income Tax Act, 1961 (for short '**the Act**') preferred by the Revenue challenging the common Order dated 6th September, 2017 passed by the Income Tax Appellate Tribunal (for short '**ITAT**'),

Mumbai in Income Tax Appeal No.784/Mum/2015 (A.Y.2004-05) and in Income Tax Appeal No.785/Mum/2015 (A.Y.2005-06) respectively. Thereby said Appeals filed by the Respondent (Assessee) were allowed. Income Tax Appeal No.2515/2018 relates to the Assessment Year 2004-05 and Income Tax Appeal No.1457/2018 pertains to the Assessment Year 2005-06.

2. The assessee resisted the Appeals by filing the Affidavit-in-Reply of its trustee Mr. Ahmed Akbarali Sundrani.

3. Heard Mr. Suresh Kumar, the learned counsel appearing for the Appellant and Mr. Balakrishna Jhaveri, the learned counsel appearing for the Respondent.

4. The Appeals raise following substantial questions of law :-

> "A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in holding proceedings u/S. 147 invalid on the ground that the income has not escaped assessment for non disclosure of true and full disclosure of facts by the assessee despite the fact that in the Return of Income and during assessment proceedings neither the complete and correct facts relating to computation of capital gain and claim of deduction u/S. 11(1A) were disclosed nor they were verified by the A.O. in original proceedings u/S. 143(3) of the I.T. Act ?
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> B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right by ignoring the decision of Hon'ble Bomby High Court in the case of Yuvraj Vs. Union of India 315 ITR 84 (Bombay HC) wherein it was held that points not decided while passing assessment order

u/S. 143(3) is not a case of change of opinion and reassessment proceedings to verify the facts not decided in original order are valid action on the part of AO?

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in not adjudicating other issue on merit?

5. Since both Appeals arise out of similar set of facts, involving common substantial questions of law, we are referring to the facts of only Income Tax Appeal No.2515/2018 herein below :-

That, an Order was passed u/S. 143(3) of the Act on 30/11/2006 assessing the total income of the assessee at Rs.Nil. Subsequently, the said assessment was re-opened with the prior approval of the DIT(E), Mumbai. The Assessing Officer ('**AO**', for short) then passed an Order u/S. 143(3) read with Section 147 of the Act on 27/12/2011 and made an addition of Rs.7,80,00,000/- on account of sale consideration being Development Right on land being Bandivali Property, Mumbai on the ground that the assessee had violated the provisions of Section 11(5) of the said Act.

Aggrieved, the assessee filed an Appeal impugning the Order dated 27/12/2011 before the learned CIT (Appeals), Mumbai being Appeal No.CIT(A)-I/IT/E-I/(64)/2011-12. The learned CIT (Appeals) upheld the re-opening of the assessment by observing that, various essential and material facts relating to the nature and mode of capital assets held by the trust and sold out during the year, were not fully disclosed; that, the Assessing Officer had also not verified and examined the mode and nature of acquisition of

the capital assets held by it; that, it had not provided the full details; that, it had not placed on record the necessary details and documents which could lead to the conclusion that there were material discrepancies in receipt of the sale consideration and the alleged fixed deposits purchased by the assessee; that, the record of cash and bank balances reflecting common pool of funds, was not sufficient to segregate the amounts and dates of fixed deposits as required for making the claim of exemption u/S. 11(1A) of the said Act; that, the claim of fixed deposits classified and recorded in the balance sheet under the head cash and bank balances was incomplete disclosure; that, it was misleading accounting; that, there was no full and true disclosure by the assessee on the issue of sale and acquisition and subsequent compliance or condition in the context of capital assets. Accordingly, the CIT(A) passed an Order dated 18.12.2014.

Being further aggrieved, the assessee preferred Income Tax Appeal No.784/Mum/2015 (A.Y.2004-05) before the ITAT, Mumbai. *Vide* impugned Order dated 6th September, 2017 the said Appeal was allowed by the ITAT, Mumbai holding that the AO has not established the failure of the assessee to disclose truly and fully the material facts necessary for making the original assessment. It has been observed that failure of the assessee is not only to be alleged but has to be demonstrated by positive evidences. The AO has used the terminology used in the Section, but has not explained as to how and which material facts the assessee did not or had failed to disclose. All the facts about the sale of development rights and investments of sale proceeds in form of FDRs was dealt with by the AO in great details in the original

assessment. Further, the ITAT has also held that there is no failure on the part of the assessee to disclose fully and truly the material facts as the assessee had filed all the details of the impugned transaction. Being aggrieved, the Revenue has preferred the Appeal.

6. Mr. Suresh Kumar, the learned counsel for the Appellant submitted that although this is a case of re-opening the assessment after a lapse of 4 years from the end of relevant assessment year, it was within permissible limits, *i.e.*, wilful suppression of material information about the income. Despite such a suppression on the part of the assessee, the ITAT has declined to accept that fact. Thus, the impugned decision and Order suffers from non-application of mind and therefore it is liable to be quashed and set-aside. To support these submissions, Mr. Suresh Kumar has relied upon the decision in the case of ***Yuvraj v. Union of India*** reported in ***[2009] 315 ITR 84 (Bombay)***.

7. In contrast, Mr. Jhaveri the learned counsel for the assessee has submitted that the impugned Order is a speaking order as it recorded sufficient reasons to disagree with the findings and the Order of the AO and thereafter, in the Order passed by the CIT (Appeals). Said findings clearly indicate that there was no suppression of the income by the trust. Consequently, this was not a fit case for re-opening the assessment after a lapse of the period of 4 years. Therefore, the impugned Order is sustainable in law.

8. We have considered these submissions and perused the entire order.

9. The AO reopened the case on the ground that the taxable income had escaped the assessment. Accordingly, notice u/S. 148 of the Act was issued to the assessee. The assessee *vide* its letter dated 31/03/2011 requested the AO to consider the original returns filed in response to the notice. After hearing the objection of assessee in respect to the supply of reasons for reopening, the AO observed and held that the assessee had sold a plot of land and received sale consideration of Rs.7,80,00,000/-. However, the assessee had failed to invest the sale consideration as required by Section 11(5) of the Act. Therefore, the assessee cannot get the benefit of accumulation as per sub-clause (b) of Section 11(2) of the Act. As a result, the sale consideration of Rs.7,80,00,000/- was added to the income of the assessee for the year under the Appeal.

10. The learned ITAT observed that the power to reopen an assessment u/S. 147 of the Act is in the nature of an exception to the general principle that an assessment order once made would be final. The effect of reopening is to partly vacate or set aside the original order of assessment and to substitute it. No doubt, escapement of income includes both non-assessment/under-assessment, but, it is mandated by the provisions of the Act that reasons to believe must necessarily show, indicate and communicate why and on what grounds it can be said that any income has escaped assessment. Reasons recorded must be germane, pertinent and disclose a prima facie belief that income has escaped assessment. The relevance of reason has to be established. So, if the reasons do not show any nexus or connection with the allegation of under assessment, they fall in the realm of suspicion, surmise or conjecture. It is observed that

reasons to believe must have a rational connection and should be relevant for the formation of a belief regarding escapement of income and should not be extraneous or irrelevant, otherwise they will be considered as invalid since they do not meet the statutory prerequisites. The policy of law is that there should be finality in all legal proceedings. Thus, stale or irrelevant issues should not and cannot be a ground to reactivate closed and concluded proceedings. Formation of rational belief that income chargeable to tax had escaped assessment is a condition precedent for validly initiating reassessment proceedings.

11. In the case of ***United Shippers Ltd. v. CIT*** reported in ***2015 SCC OnLine Bom 733***, this Court has held that when an assessment is sought to be reopened after the expiry of four years from the end of the relevant assessment year, the proviso to Section 147 of the Act stipulates a requirement that there must a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of income for that year. This is the primary and the jurisdictional requirement being the mandate of the proviso to the provisions of section 147. In this context, the ITAT observed that, "failure" on the part of the assessee is not restricted to the Income-tax return and the columns of the return or the tax audit report. The expression "failure to fully and truly disclose material facts" also relates to the stage of the assessment proceedings and there can be omission and failure on the part of the assessee during the course of the assessment proceedings. However, it was also observed that it is the duty of the AO to make an enquiry and if he did not make an enquiry, it is a case of oversight and it could not be said that the income chargeable to

tax had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts.

It is trite that, even in cases where the AO has made a mistake/error in assessing the income of an assessee, recourse to Section 147 of the Act is not available and the appropriate course would be for the Commissioner to pass an order u/S. 263 of the Act, if he finds that the assessment order is erroneous inasmuch as its is prejudicial to the interest of the Department.

12. As per the settled principles of taxation-law, when a notice for reassessment is challenged, the burden is on the Revenue to establish that the jurisdictional requirement stands satisfied. So far as reason to believe on the part of the AO is concerned, at the stage of issuing the notice only a prima facie and not a conclusive case of income escaping assessment should be established to turn down a challenge to the reopening notice.

13. In case of ***Nishith Surendrabhai v. CIT*** reported in ***2016 SCC OnLine Guj 9980*** referred by the learned ITAT, the conclusions of the Assessing Officer were based on verification of the case record. In other words, there was no material outside the assessment proceedings which enabled the Assessing Officer to conclude that income chargeable to tax had escaped assessment. The notice for reopening was issued beyond a period of four years from the end of the assessment year. The claim was also examined by the AO during the assessment proceedings. Therefore, it was held that having accepted the claim in law, but having made partial disallowance after considering the facts, it was not open to the

Assessing Officer to issue notice for reopening, that too, without any additional material which would suggest that the assessee had made a false declaration or provided inaccurate particulars.

14. In the light of aforesaid principles governing the re-opening, when the ITAT examined the matter, it found that the AO had not referred to any material, other than what was examined in the initial round of assessment proceedings, to form his belief that the assessee's income had escaped assessment. The AO's belief was based solely on the basis of material already examined by him during the first round of assessment proceedings. This aspect was confirmed by the fact that the notice issued u/S. 148 started with the sentence "*On perusal of the records it is noticed that ...*". This denoted that the notice was not issued on the basis of new tangible material, but on the reappraisal of the same material.

15. Additionally it was observed that, although the assessee had filed detailed objections against re-opening, the AO had not passed a speaking or reasoned order as to why the objections were not sustainable. It was found that the AO had not established the failure of the assessee to disclose truly and fully the material facts necessary for making original assessment. All the facts about sale of development rights and investments were produced and deliberated upon during the original assessment proceedings. Nevertheless, the AO had not explained as to how the assessee had failed in his statutory duty to disclose the material facts leading to "Rs. Nil" tax liability.

16. As to the facts of the case, the learned ITAT found that the issue of sale of development rights and investment of sale proceeds in the form of FDRs was dealt with by the AO in great details in the original Assessment. It was noticed that the assessee had filed various details of the transaction including the details of FDRs on 02/08/2006 and 20/09/2006 before the AO. The note in the computation of income for the year under appeal contained the details about the transaction. The assessee had also supplied the details of dates of receipt of consideration amounts, dates of deposits and amounts invested by the assessee during the year under consideration. By its letter dated 02/08/2006, the assessee had filed detailed note on sale of the property, order of the charity commissioner sanctioning the sale of property dated 17/03/2003 and a copy of sale agreement with VDL. Later on, by its letter dated 20/09/2006, the assessee had filed details about names and addresses of the partners of VDL, copies of fixed deposits with Development Credit Bank, a copy of bank book giving detailed narration of all the receipts and payments. It was also emphasised that all the deposits were for the term exceeding 6 months including renewals. It was also found that it had disclosed receipt of compensation of Rs.31.78 lakhs for assigning the development rights in respect of an adjacent plot on which there was a reservation. The assessee had renewed certain earlier fixed deposit and same had no connection with the compensation received on sale of plot of land. After considering the above submissions of the assessee and after deliberating upon the documents furnished by it, the AO had passed the scrutiny assessment. He had formed an informed opinion that the assessee was entitled to benefit of the provisions of Section 11 of the Act and that it had made the

investment on sale of one kind of assets in other assets within the stipulated time and in prescribed manner. Later on, he issued a notice u/S. 148 of the Act and has reappraised the same facts and has reached on a different conclusion. It was a clear case of change of opinion. There was no failure on the part of the assessee to disclose fully and truly the material facts. In the facts of the case, Mr. Suresh Kumar, the learned counsel could not take any exception to the aforesaid observations by the learned ITAT.

17. In wake of above, the learned ITAT has reversed the order of the FAA and answered the first effective ground of the appeal in favour of the assessee. As a result, it was held that the reassessment proceedings were invalid and declined to decide the other issues raised by the assessee.

18. As noted above, the facts of the Income Tax Appeal No.785/Mum/2015 were identical. The only difference was the location of the property sold and the sale price received. During the relevant financial year, the plot of land was sold in Pune for Rs.11.93 crores. Therefore, following the findings, reasons and the Order in Income Tax Appeal No.784/Mum/2015, the learned ITAT had decided the effective ground of Income Tax Appeal No.785/Mum/2015 in favour of the assessee and held that the impugned Order passed by the AO u/S. 147 was invalid.

19. In so far as the cited decision in ***Yuvraj v. Union of India*** (supra) is concerned, the facts of the said case are materially distinct from the facts of the case in hand. While examining the impugned Order in that case, this Court did not find any

application of mind to the facts of the case, the issue to be dealt with and the reasons for passing the Order. In contrast to this, in the case in hand, the impugned Order is the outcome of a thoughtful consideration of the facts, appreciation of the evidence on record in its correct perspective and application of the settled principles of law in the field. Therefore, the cited case is of no avail to the Revenue.

20. In view of the above discussion, we are of the view that there is no perversity or an infirmity in the impugned Order so as to interfere with the same. No substantial question of law arises in the Appeals. As a result, we refuse to admit both the aforesaid Appeals and dismiss the same at the stage of admission.

(SHYAM C. CHANDAK, J.) **(SUMAN SHYAM, J.)**