IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2026

CORAM :

THE HONOURABLE MR.SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

T.C.A.No.17 of 2026

The Principal Commissioner of Income Tax-I
Chennai - 600 034.

.. Appellant(s)

Vs

M/s.Estra Enterprises Private Limited,
6th Floor, Tower C, Jek Meadows,
No.51, Rajiv Gandhi Salai,
Sholinganallur - 600 119.
PAN : AABCE6928K

.. Respondent(s)

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, dated 16.05.2025 in ITA.No.1653/Chny/2024.

For Appellant(s): Mr.T.Ravi Kumar

JUDGMENT

(Judgment of the Court was delivered by G.ARUL MURUGAN, J.)

This appeal is preferred by the revenue challenging the order of ITAT Chennai dated 16.05.2015 in ITA.No.1653/Chny/2024 confirming the order of CIT(A)(NFAC) Delhi dated 06.03.2024 for the Asessment Year 2014-2015.

2. The assessee, a private limited company engaged in the business of infrastructure development, filed its return of income on 20.09.2014, declaring a total loss of Rs.19,094,365/-. The case was selected for scrutiny under CASS and a notice under Section 143(2) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] was issued on 29.08.2015. Pursuant to the reply filed and on hearing the assessee for the Assessment Year 2014-15, the assessment order came to be passed on 20.12.2016, disallowing the loss of Rs.19,094,365/- and making additions to a sum of Rs.111,253,777/-.

3. Subsequently, the Assessing Officer issued notice under Section 148 of the Act on 30.03.2021. The reasons for reopening the assessment are extracted in the order of ITAT, which reads as follows;

"4. The assessment for the assessment year 2014-15 has been reopened u/s 147 of the Act vide notice dated 30th March 2021 for the following reasons (as provided in the notice under section 143(2) read with section 147 of the Act vide reference no.ITBA/AST/F/143(2) 4/2021-22/103273 7796(1) dated 30th April 2021):

a. It is noticed that as per Note 24 to annual accounts 2013-14, the assessee on 8.6.2013 converted the land held by it as fixed assets to project in progress. The value of the land as on the date of conversion as Rs.3401,556,840/-. The notional/profit on conversion of fixed asset to project in progress of 1254,289,672/- has not been recognised in the books of accounts of the Company. It has also been stated that taxability u/s 45(2) would arise only in the year of sale and from Note 5 under Current inabilities, the assessee has received advance from Customer segregating to Rs.3684,686,467 and Rs.1300,000,000/- from the JDA Partners.

b. As per the definition u/s 2(47), transfer in relation to a capital asset includes, sale, exchange or relinquishment of the assets or the extinguishment of any right therein. Transfer also includes any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the transfer of property act 882: or Transfer of Immovable property under agreement to sell. Transfer deemed to be take place on the date on which possession a immovable property is given in pursuance of agreement to sell, Hence capital gains arise in the year in which possession in given buyer, not the date on which property is registered in the name of buyer.

c. The Joint development agreement entered into by the assesee with the developer is a legal transfer agreement in respect of sale of land proportionate to 60% of the total built up area. As the assessee has relinquished his right over the 60% share, liability to pay tax arises irrespective of incidence of handing Over of the built up area by the developer Tax on Capital gain escaping assessment being the notional profit on conversion of Rs.1254,289,672/- would work out to Rs.42,63,33,059/-."

4. The assessee filed its reply to the notice, the contents of which are extracted in the order of CIT(A), which reads as follows;

"5……… The assessee stated that the assessee received Rs.30 crore as refundable deposit and Rs.100 crore as short term interest bearing loan from M/s Prestige Estates Projects Ltd, which cannot be treated as sale consideration. This is not acceptable as there is transfer - relinquishment of rights of the property, for which the assessee entered into financial transactions with M/s Prestige Estates Projects Ltd. The assessee has also received advances from customers. The assessee has further stated that the provisions of sec 45(2) are applicable in his case. As per the definition u/s 2(47), transfer in relation to a capital asset includes, sale, exchange or relinquishment of the assets or the extinguishment of any right therein. Transfer also includes any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the transfer of property act, 1882; or Transfer of immovable property under agreement to sell. Transfer deemed to be take place on the date on which possession of immovable property is given in pursuance of agreement to sell. Hence capital

gains arise in the year in which possession in given to buyer, not the date on which property is registered in the name of buyer. The Joint development agreement entered into by the assessee with the developer is a legal transfer agreement in respect of sale of land proportionate to 60% of the total built up area. As the assessee has relinquished his right over the 60% share, liability to pay tax arises irrespective of incidence of handing over of the built up area by the developer."

5. The Assessing Officer completed the assessment under Section 147 r/w 144B of the Act and made additions to a sum of Rs.1,254,289,672/- on account of undisclosed capital gains by the assessee in view of the conversion of capital asset into stock in trade.

6. The assessee challenged the assessment order in appeal before the CIT(A). The appeal was mainly questioning the assumption of jurisdiction by the Assessing Officer. The issue raised found favour with the appellate authority and the CIT(A), by order dated 06.03.2024 allowed the appeal and set aside the additions made. The further appeal filed by the revenue before the ITAT, Chennai, also came to be dismissed. Assailing the orders of the first and second appellate authorities, the revenue has preferred the above appeal.

7. Mr.T.Ravi Kumar, learned counsel for the revenue argued that the reason for which the case was reopened was not dealt with in the regular assessment. Since the earlier assessment has been made by assessing the income at a low rate, the reopening of assessment under Section 147 of the Act is valid and it is not based on mere change of opinion. He further submitted that when capital gains are attracted in view of the conversion of capital asset, the same having not been considered in the original assessment, it is always open to the Assessing Officer to reopen the assessment. The orders of the appellate authorities in setting aside the assessment and not considering this legal aspect are erroneous.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. The return of income filed by the assessee on 20.09.2014 for the Assessment Year 2014-2015 was assessed and an assessment order under Section 143(3) of the Act was passed by the Assessing Officer on 20.12.2016 by disallowing the loss of Rs.19,094,365/- and making additions to a sum of Rs.111,253,777/-. The assessment was reopened by issuing notice under Section 148 of the Act on

30.03.2021.

10. Section 147 of the Act enables reassessment by issuing notice under Section 148, within a period of four years from the end of the relevant Assessment Year. For easy reference, Section 147 of the Act (during the relevant period, prior to substitution in the Finance Act, 2021) reads as follows:-

> *"147. Income escaping assessment - If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*
>
> *Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:*
>
> *……………………..*
>
> *………………………"*

11. In the instant case, when the assessment order was passed on 20.12.2016, notice under Section 148 of the Act reopening the assessment had been passed on 30.03.2021 beyond the period of four years. As such, the proviso to Section 147 of the Act gets triggered. In such circumstances, the revenue has to satisfy that the reopening of the assessment fulfills the precondition as stipulated under proviso to Section 147 of the Act. The Revenue has to establish that the assessee has failed to disclose fully and truly all material facts necessary for the assessment for the relevant assessment year and the revenue is in possession of new material to come to a conclusion that there is an escape of income in the assessment.

12. A Division Bench of this Court in the case of *M/s.Citadel Fine Pharmaceuticals Ltd. V. The Deputy Commissioner of Income Tax* reported in *(2025) 476 ITR 193*, in which one of us (*G.Arul Murugan, J.*) was a party, while dealing with the issue of reopening of assessment beyond four years, after referring to the decisions of the Hon'ble Supreme Court in *CIT V. Kelvinator of India Ltd.* reported in

320 ITR 561 and the recent decision in *Mangalam Publications V. Commissioner of Income Tax, Kottayam* reported in *461 ITR 159*, concluded that when the department has not brought on record any new material to establish failure on the part of the assessee to have made a full and true disclosure, the assumption of jurisdiction under Section 147 is bad in law. The relevant portion is extracted hereunder;

> *"17. We are supported in this view by the judgments of the Supreme Court in CIT V. Kelvinator of India Ltd. (320 ITR 561) and CIT V. ICICI Bank Ltd. (349 ITR 482).*
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> *18. In ICICI Bank Ltd. (supra), the Supreme Court has held as follows:*
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> > *The short point which arises in this batch of civil appeals is whether interest earned by the assessees-banks on dated Government securities was liable to be assessed under section 2(7) read with Section 4 of the Interest Tax Act, 1974. In our view, there is a basic difference between loans and advances on the one hand and investments/securities on the other. This difference is indicated in the provisions of the Income tax Act, the Companies Act as well as the Bank Regulation Act. These aspects have been discussed in detail in two decisions of the Bombay High Court, namely Discount and Finance House of India Ltd. v. S.K. Bhardwaj, CIT reported in MANU/MH/0628/2002, as also in another decision of the Bombay High Court reported in MANU/MH/0629/2002 in the case of CIT v. United Western Bank Ltd. It is not in dispute that the revenue has accepted the aforesaid two judgments of the Bombay High Court. We are in agreement with the view expressed by the Bombay High Court.*

19. In a recent judgment in the case of Mangalam Publications V. Commissioner of Income Tax, Kottayam (461 ITR 159), the Supreme Court dealt with the 'perennial question in Income tax jurisprudence' relating to re-assessment of income under Section 147 of the Act as in the present case. The defence taken by that assessee, as in the present case, was that the re-assessment proceedings were barred by limitation as the notice had been issued beyond the period of 4 years from the end of the relevant assessment year.

20. Judgments of the Supreme Court in the case of Kelvinator (supra), CIT V. Bimal Kumar Damani (261 ITR 87), Srikrishna (P) Ltd. V. CIT ((1999) 9 SCC 534), Phool Chand Bajrang Lal V.CIT ((1993) 4 SCC 77), CIT V. Lakhmani Mewal Das (103 ITR 437) and Calcutta Discount Co. Ltd. V. CIT (41 ITR 191) were taken into consideration by the Court and the re-assessments were ultimately quashed on the ground that the Department had not established any failure on the part of that assessee to make available relevant material for completion of assessment even at the original stage. In that context, the Bench states as follows:

> *73. It is true that Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The assessee is under further obligation to disclose all material facts necessary for his assessment for that year fully and truly. However, as has been held by the constitution bench of this Court in Calcutta Discount Company Limited (supra), while the duty of the assessee is to disclose fully and truly all primary and relevant facts necessary for assessment, it does not extend beyond this. Once the primary facts are disclosed by the assessee, the burden shifts onto the assessing officer. It is not the case of the revenue that the assessee had made a false*

declaration. On the basis of the "balance sheet" submitted by the assessee before the South Indian Bank for obtaining credit which was discarded by the CIT(A) in an earlier appellate proceeding of the assessee itself, the assessing officer upon a comparison of the same with a subsequent balance sheet of the assessee for the assessment year 1993-94 which was filed by the assessee and was on record, erroneously concluded that there was escapement of income and initiated reassessment proceedings. 74. We may also mention that while framing the initial assessment orders of the assessee for the three assessment years in question, the assessing officer had made an independent analysis of the incomings and outgoings of the assessee for the relevant previous years and thereafter had passed the assessment orders under Section 143(3) of the Act. We have already taken note of the fact that an assessment order under Section 143(3) is preceded by notice, enquiry and hearing under Section 142(1), (2) and (3) as well as under Section 143(2). If that be the position and when the assessee had not made any false declaration, it was nothing but a subsequent subjective analysis of the assessing officer that income of the assessee for the three assessment years was much higher than what was assessed and therefore, had escaped assessment. This is nothing but a mere change of opinion which cannot be a ground for reopening of assessment.

21. In light of the discussion supra, and the admitted and apparent position that the Department has not brought on record any material to establish failure of the Appellant to make a full and true disclosure, the assumption of jurisdiction under section 147 if held to be bad in law. Though the discussion in regard to the assumption of jurisdiction beyond the period of limitation would suffice to allow this writ petition, in the interests of completion, we add a few words on the merits too."

13. In the case on hand, the reasons for reopening the assessment have been extracted above. It is stated that as per Note 24 to annual accounts 2013-14, the assessee on 08.06.2013 had converted the land held by it as fixed assets to project in progress. Further, as per the provisions of Section 45(2) of the Act, the profits or gains arising from transfer by way of conversion by the owner of a capital asset into a stock in trade shall be chargeable to income tax accounts and since the same was not assessed, there is reason to believe for reopening the assessment.

14. In fact, the entire materials in respect of the joint development agreement entered into with the buyers were also submitted and considered by the Assessing Officer and also dealt with in the assessment order. However, the Assessing Officer, by rejecting the objections to reopening, had passed the assessment order under Section 147 of the Act making the additions.

15. The CIT(A) had considered all these aspects and observed that the assessee has converted land held by it as fixed assets to project in progress and has not recognised the notional profit on conversion in books of accounts. This information already formed part of the annual accounts and there is nothing new in it that has come to the notice of Assessing Officer after conclusion of scrutiny proceedings. When no new materials have been brought in for reopening and all the materials necessary were already available during original assessment, the assessee has truly and fully disclosed.

16. The CIT(A) had also noted that the land in dispute was sold in parts only in the financial year 2015-16 and therefore, as per section 45(2), liability to sale is in the Assessment Year 2016-17 and the assessee has offered said income as capital gains in the Assessment Year 2016-17. Further holding that adding the same in Assessment Year 2014-15, will clearly be a double taxation of the same amount had allowed the appeal, setting aside the reopening of assessment.

17. The ITAT has considered these aspects and found that there has been no failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment and there is no new information available with the Assessing Officer with regard to assumption of jurisdiction under Section 147 of the Act to reopen the assessment. The relevant portion of ITAT order reads as follows;

> *"11. As we see from the above reasons recorded by the AO for reopening assessment that there is no allegation that failure of the assessee to disclose fully and truly all material facts necessary for the assessment. We also find that after the original scrutiny assessment, no new information or material came in the hand of AO which gave jurisdiction to AO to reopen the present case. We are of the considered view that in this the case, existence of 'jurisdictional fact' is missing which is sine qua non for the exercise of power by the AO u/s 147 of the Act."*

18. The decision of this Court in the case of *ACIT Vs Seshasayee Paper and Board Ltd.* reported in [2023] taxmann.com 432 (Madras), was followed in rejecting the appeal, as there was no recording of the existence of circumstances, either failure on the part of the assessee to disclose fully and truly all material particulars which would confer jurisdiction to proceed/initiate reassessment proceedings beyond four years.

19. Admittedly, the entire materials were placed on record in the assessment by the assessee before the Assessing Officer and after the Assessing Officer passed the assessment order, nothing has been recorded in the reasons for reopening that there was any failure to disclose fully and truly all materials for assessment on the part of the assessee or that the Assessing Officer was in possession of any new tangible materials to reach the conclusion to have reasons to believe that the income has escaped the assessment.

20. When the return filed by the assessee was adjudicated upon and accepted by the Assessing Officer, which resulted in the assessment order and further, the conversion to stock in trade was also sold in parts only in the financial year 2015-16 and the capital gains have been calculated and paid in the assessment year 2016-17, the reason to reopen the assessment under Section 147 of the Act is a mere change of opinion, which is impermissible as held by the Hon'ble Supreme Court in the case of *Kelvinator* and other decisions referred supra.

21. In such circumstances, we see no error or any infirmity in the findings arrived at by the ITAT warranting interference. No substantial questions of law arise for consideration in this appeal.

22. Accordingly, this appeal stands dismissed. There shall be no order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN, J)
17.03.2026

Index : Yes/No
Neutral Citation : Yes/No
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To:

1.The Assistant Registrar
Income Tax Appellate Tribunal
"A" Bench, Chennai.

2.The Principal Commissioner of Income Tax-I
Chennai - 600 034.

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

sri

T.C.A.No.17 of 2026

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