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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 25.03.2025*

\+ **ITA 182/2021**

VALMIK THAPAR **.....Appellant**

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Madhur Aggarwal, Mr. Uma Shankar & Mr. Mahir Aggarwal, Advs.

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX 18.....Respondent

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikramaditya Singh, Mr. Kanishk, Ms. Nivedita, Ms. Anavntta & Ms. Yashika, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J.

1. The appellant [**the Assessee**] is an individual and has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 11.06.2021 [**the impugned order**] passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA No.6346/Del/2014 in respect of Assessment Year [**AY**] 2010-11.

2. The Assessee had filed the said appeal against an order dated 25.09.2014 passed by the Commissioner of Income Tax (Appeals) XXVI, New Delhi [**CIT(A)**], upholding the addition on account of disallowance of deduction claimed under Section 54 of the Act, in respect of an investment of ₹3,77,65,215/- in purchasing of a flat in Mumbai; but deleting the addition on

account of disallowance of a deduction of ₹1,00,00,000/- claimed under Section 54EC of the Act. The Revenue had also preferred an appeal to the extent that the learned CIT(A) had allowed a deduction under Section 54EC of the Act.

3. The Assessee had preferred the aforementioned appeal before the learned CIT(A) for assailing the order dated 26.03.2013 [**the impugned assessment order**] passed under Section 147 of the Act read with Section 143(3) of the Act.

QUESTION OF LAW

4. The present appeal was admitted by an order dated 24.11.2022 for consideration of the following question of law:

> "A. Whether in view of the additions made on the basis of reasons recorded having been deleted in the appellant's case on merits, does the reopening of assessment under Section 148 of the Act survive?"

5. It is the Assessee's case that since none of the reasons for which the assessment for AY 2010-11 was opened were sustained; no other addition or disallowance on any other grounds, could be sustained.

PREFATORY FACTS

6. The Assessee had filed his return of income for AY 2010-11 declaring an income of ₹2,91,02,041/-. This included a sum of ₹2,50,36,358/- as the income from long term capital gains arising from the sale of 50% share in house property which is described as "House No.19, Kautilya Marg, New Delhi" [**subject property**]. The Assessee had inherited the subject property and had entered into a Collaboration Agreement pursuant to which the subject property was to be reconstructed. The Assessee would retain 50% share in the

subject property as redeveloped and sell/transfer the remaining 50% share of the subject property. The total sale consideration was declared at ₹14,20,00,000/- which comprised of receipts of ₹12,50,00,000/- and cost of construction of the 50% share of the subject property, which was quantified at ₹1,70,00,000/-.

7. The Assessee had treated the fair market value of the subject property as on 01.04.1981 as the cost of acquisition of the subject property. The fair market value of the 50% of subject property [**the capital asset**] was based on a valuation report of an independent valuer whereby the same was valued at ₹77,10,000/-. The Assessee also claimed that he had incurred additional expenditure of ₹26,39,321/- on account of conversion charges from leasehold to freehold, and ₹2,11,260/- as registration charges. These charges were incurred in the financial year 2006-07.

8. On the aforesaid basis, the Assessee worked out the indexed cost of the capital asset (50% of the subject property) at ₹4,87,27,200/-. Additionally, the Assessee also computed the index costs of freehold charges and registration charges incurred in financial year 2006-07 at ₹34,71,227/-.

9. The Assessee claimed that he had made an investment for purchasing a residential flat in Mumbai in September, 2007 out of the consideration received in advance and an investment of ₹ 1,00,00,000/- (rupees one crore) in capital gains bonds out of which ₹50,00,000/- was in REC Capital Gains Bonds and ₹50,00,000/- was in NHAI Bonds. These investments were made on 24.02.2009 and 09.12.2009 respectively.

10. Accordingly, the Assessee computed the capital gains chargeable to tax at ₹2,50,36,358/-. The relevant extract of the computation of long term capital gains as furnished by the Assessee along with his income tax return, is

reproduced below:

> "III. L T CAPITAL GAIN
>
> Sale of 50% share in house No. 19 Kautilya Marg, New Delhi 142000000
> Less:
> a) Investment in residnetial flat at Mumbai in Sept. 2007 out of advance rcvd : 37765215
> b) Investment in construction of residential unit at 19 Kautilya Marg, N.D. : 17000000
> c) Investment in REC Capital gain bonds on 24.2.2009 out of advance : 5000000
> d) Investment in NHAI Bonds on 9.12.2009 out of advance : 5000000
> e) Indexed cost of 50% of area sold as per valuation report attached
> 50% cost as on 1.4.81 7710000
> Indexed cost 7710000x632/100
> f) Indexed cost of freehold charges of Rs.2639321/- and regisration charges of Rs.211260/- in F.Y. 2006-07 = 2850581 x 632/519 3471227 116963642 25036358"

THE IMPUGNED ASSESSMENT ORDER

11. The AO issued a notice dated 01.03.2012 under Section 148 of the Act seeking to reopen the assessment for AY 2010-11 and also furnished the reasons for reopening of the assessment. According to the AO, the Assessee's claim for deduction under Section 54EC of the Act was required to be confined to ₹50,00,000/- and the Assessee had claimed excess deduction of ₹50,00,000/-. Further the AO reasoned that the Assessee was entitled to claim deduction in respect of one of the properties under Section 54 of the Act but had claimed deduction in respect of two capital assets.

12. The Assessee contested the aforesaid reasoning of the AO and sought to sustain his calculation of long term capital gains chargeable to tax under

the Act. The said reassessment proceedings culminated in the assessment order dated 26.03.2013.

13. The AO did not accept the Assessee's calculation of the fair value of the capital asset as well as the indexed cost of acquisition of the capital asset. The AO determined the indexed cost of acquisition at ₹2,46,88,211/-. Accordingly, the AO determined the long term capital gains chargeable to tax at ₹11,73,11,789/-. The AO did not accept that the Assessee was entitled to any deduction in respect of costs for purchase of a residential flat at Mumbai [**new asset**]. The AO reasoned that the said flat had been purchased by the Assessee in September, 2007, however, the capital asset (50% share of the subject property) had been transferred on 25.03.2010.

14. Insofar as the claim for deduction on account of reconstruction of the subject property is concerned, the AO accepted that a deduction for sum of ₹1,70,00,000/- [**2nd new asset**] could be permitted as the completion certificate of the subject property was issued after the date of sale. In regard to the deduction under Section 54EC of the Act, the AO found that the investment in the capital gains bonds was not made within the period of six months from the date of transfer of the capital asset and accordingly rejected the said claim. After accounting for the deduction of ₹1,70,00,000/- under Section 54 of the Act, the AO determined the capital gain chargeable to tax at ₹10,03,11,789/-.

THE APPELLATE ORDER

15. The Assessee appealed the impugned assessment order on essentially three grounds. First, that the AO had erred in substituting the fair market value of the subject property in place of fair market value as determined by a

valuer. Second, that the AO had erred in not allowing the claim for deduction under Section 54 of the Act on account of investments made for purchasing a residential flat at Mumbai. Third, that the AO had erred in rejecting the claim of deduction under Section 54EC of the Act in respect of sum of ₹1,00,00,000/- invested in capital gains bonds (₹50,00,000/- in REC Capital Gains Bonds and ₹50,00,000/- in NHAI Bonds).

16. The learned CIT(A) rejected the Assessee's claim that the AO had erred in not accepting the fair market value of the asset at ₹77,10,000/- as claimed by the Assessee and upheld the AO's valuation of the capital asset at ₹7,70,160/- as on the year 1981.

17. However, the learned CIT(A) rejected the AO's reasoning that the investment made for purchasing a residential flat at Mumbai was not eligible for deduction under Section 54(1) of the Act for the reason that the investment was made prior to the sale of the subject property. The learned CIT(A) accepted that the consideration for the capital asset was received in tranches in advance and the investments had been made out of such advances. The learned CIT(A) rejected the Assessee's claim for deduction on the ground that it was not admissible in respect of two independent residential units.

18. Insofar as the Assessee's claim for deduction under Section 54EC of the Act is concerned, the learned CIT(A) deleted the said disallowance. The learned CIT(A) found that the Assessee had demonstrated that the investments in REC Capital Gains Bonds and NHAI Bonds were made from the consideration of the capital asset received by the Assessee in advance.

THE IMPUGNED ORDER

19. In view of the above, the Assessee and the Revenue appealed the said decision before the learned ITAT.

20. Whilst the Assessee's appealed the said order being aggrieved of the denial of allowance under Section 54 of the Act as well as the computation of the indexed cost of acquisition of the capital asset, the Revenue preferred the appeal against the learned CIT(A) decision to uphold the deduction under Section 54EC of the Act.

21. The Assessee also raised an additional ground to the effect that the initiation of proceedings under Section 147 of the Act was without jurisdiction and without satisfying the necessary conditions for initiation of such proceedings.

22. The learned ITAT did not accept the Assessee's contention that the AO did not have reasons to believe that its income had escaped assessment and thus, the notice issued under Section 148 of the Act and all proceedings pursuant thereto, are liable to be set aside. The learned ITAT also did not accept that a notice under Section 148 of the Act could not be issued without any tangible material indicating that the assessee's income had escaped assessment. The learned ITAT accepted that there was no such requirement in case where the return had been accepted under Section 143(1) of the Act.

23. In regard to the Assessee's challenge to the determination of the fair market value of the capital asset, the learned ITAT did not accept that the AO was bound to accept the valuation report as submitted by the Assessee. However, the learned ITAT accepted that in case of a dispute regarding valuation, the same was required to be referred to the valuation officer.

Accordingly, the learned ITAT remanded the matter to the AO for determining the fair market value of the capital asset by referring the same to the valuation officer.

24. Insofar as the Assessee's claim that it was entitled to deduction under Section 54 of the Act is concerned, the learned ITAT accepted that the deduction under Section 54 of the Act was not confined to a singular residential house. The Assessee's appeal was, thus, partly allowed.

25. Insofar as the Revenue's appeal is concerned, the same was rejected. The learned ITAT held that the Assessee would be entitled to deduction under Section 54EC of the Act in respect of the part of the consideration of ₹1 crore, which was invested in capital gain bonds.

REASONS & CONCLUSION

26. The learned counsel appearing for the Assessee has confined the present appeal on the sole ground that the additions made were not sustainable as the additions made on the basis of the reasons recorded for reopening of the assessment had been deleted.

27. At the outset, it is relevant to refer to the reasons recorded for reopening of the assessment. The same are reproduced below:

> "Return declaring an income of Rs.2,91,02,041/- for A.Y. 2010-11 in this case was filed on 26.7.2010. A perusal of computation of total income annexed with a the return shows that during the year, the assessee has received an amount of Rs.14,20,00,000/- from sale of 50% share in House No.19, Kautilya Marg, New Delhi. The assessee has declared Long Term Capital Gain of Rs.2,50,36,358/-. Out of Sale Proceeds, the assessee has made the following investments:-
>
> a) Investment in REC Capital Gain bonds on 24.02.2009 out of advance rcvd: Rs.50,00,000/-

a) Investment in NHAI Bonds on 9.12.2009 out of Advance Rs.50,00,000/-

Section 54EC reads as under:-

(1) Where the capital gains arises from the transfer of a long-term capital Asset and

(2) Proviso to Sec.54EC reads as under:-

[Provided that the investment made on or after the 1st day of April, 2007 in the long term specified asset by an assessee during any financial year does not exceed fifty Lakh rupees.]

In this case, the assessee has claimed deduction u/s 50EC for Rs.1 Crore. The assessee has invested an amount exceeding Rs.50,00,000/- in long term capital assets out of sale proceeds, proviso to Section 54EC is clearly applicable in this case. Thus the deduction u/s 54EC on LTCG amounting to Rs.50,00,000/- has been claimed in excess which required to be taxed. As assessee has made a wrong claim for deduction u/s 54EC and income (LTCG) of Rs.50 lacs chargeable to income-tax has escaped assessment.

Apart from above, assessee has also claimed deduction u/s 54 amounting to Rs.3,77,65,215/- & Rs.1,70,00,000/- by making investment in two capital assets (new property) whereas deduction u/s 54 is allowable for only one property. In view of this, the assessee has claimed excess deduction u/s 54 which is liable to be withdrawn and taxed.

In view of this, I have reason to believe that income as mentioned above has escaped assessment and accordingly proceedings u/s 147 of the Income-tax Act, 1961 are initiated. Notice u/s 148 of the Income-tax Act, 1961 is being issued."

28. It is clear from the above, that the AO had reinitiated the assessment proceedings for two reasons. First, that the deduction under Section 54EC of the Act was in excess of ₹50,00,000/- which according to the AO was not permissible. And second, that the Assessee had claimed deduction under Section 54 of the Act on account of investments made in two properties: ₹3,77,65,215/- for purchasing a flat at Mumbai [new asset] and ₹1,70,00,000/- for construction of the one half share of the subject property retained by the

Assessee. According to the AO, the deduction under Section 54 of the Act was required to be confined to only one of the said properties.

29. Admittedly, none of the two reasons were sustained by the ITAT.

30. The learned ITAT had rejected the reasoning that the deduction under Section 54 of the Act is available in respect of investment in one residential unit only. The learned ITAT, following the decision in the case of ***Arun K. Thiagarajan v. Commissioner of Income-tax (Appeals) & Anr.: (2020) 427 ITR 190***, held that Section 54 of the Act contemplated investment in "a residential house", which did not mean one residential house. The learned ITAT held that expression 'a residential house' could not be construed as a singular house.

31. It is not necessary to examine the merits of the learned ITAT's decision as the Revenue has accepted the ITAT's decision and has not filed an appeal against the impugned order. Thus, we must proceed on the basis of the AO's reasoning that the deduction under Section 54 of the Act was confined to investment made in one residential house has not been sustained.

32. Insofar as the second reason is concerned – that the deduction under Section 54EC of the Act is confined to ₹50,00,000/- only – the same was also not sustained by the learned ITAT. The learned ITAT had following the decision of the Madras High Court in ***Commissioner of Income-tax, Chennai v. C. Jaichander: (2015) 370 ITR 579*** concluded that the issue whether a deduction under Section 54EC of the Act could exceed the said amount, as claimed by the Assessee, was covered in the Assessee's favour. The Revenue's appeal against the CIT(A)'s order was, accordingly dismissed.

33. In view of the above, the principal question to be addressed is whether the additions made by the AO are sustainable if the reasons for which the reassessment proceedings had been initiated are not sustained. Undisputedly, the said question is squarely covered by the several decisions of this court.

34. In ***Ranbaxy Laboratories Limited v. Commissioner of Income-tax: (2011) 336 ITR 136***, this court had construed the expression "and also any other income chargeable to tax" as occurring in Section 147 of the Act to mean that other income could also be brought to tax provided an addition was made for the reasons that had led to initiation of assessment proceedings. We consider it apposite to set out the following extract of the said decision:

> "**17.** Now, coming back to the interpretation which was given by the Bombay High Court to sections 147 and 148 in view of the precedent on the subject, the court held as under (pages 243 and 247 of 331 ITR):
>
> > "Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under section 147 and following the issuance of a notice under section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment, and also any other income chargeable to tax. The words 'and also' cannot be ignored. The interpretation which the court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words 'assess or reassess such income and also any other income chargeable to tax which has escaped assessment', the words 'and also' cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word 'or'. The Legislature did not rest content by merely using the word 'and'. The words 'and' as well as 'also' have been used together and in

conjunction.. ..

Evidently, therefore, what Parliament intends by use of the words 'and also' is that the Assessing Officer, upon the formation of a reason to believe under section 147 and the issuance of a notice under section 148(2) must assess or reassess : (i). 'such income' ; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of section 147 with effect from April 1, 1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter. ..

Section 147 has this effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the

> basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income 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. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (I) Limited (2011) 331 ITR 236 (Bom). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice

under section 148."

35. In ***ATS Infrastructure Ltd. v. Assistant Commissioner of Income Tax, Circle 1 (1) Delhi & Ors.: Neutral Citation No. 2024:DHC:5474-DB***, this court had examined catena of decisions and reiterated the view as expressed in ***Ranbaxy Laboratories Limited v. Commissioner of Income-tax: (2011) 336 ITR 136*** (*supra*). The relevant extract of the said decision is set out below:

> "23. It becomes evident that the Court in Ranbaxy Laboratories Ltd., firstly took into consideration Section 147 of the Act, embodying the phrase "and also" prefixed to the expression "any other income chargeable to tax which has escaped assessment". It thus came to the conclusion that, while an assessment may be reopened based on certain grounds which may have led the AO to be of the opinion that income chargeable to tax had escaped assessment, once it is found thatthe reassessment power had been validly invoked, the power of the AO would not stand confined only to those aspects which may have been noticed in the original notice issued under Section 148 of the Act but would also extend to any other income which may be found to be exigible to tax.
>
> 24. This clearly appeals to reason, since Section 147 of the Act embodies a power to assess, reassess as well also to recompute. Consequently, and once that power is validly invoked, the original assessment would cease to exist in the eyes of law. Undoubtedly, once an assessment already made comes to be reopened, the AO stands empowered statutorily to undertake an assessment afresh in respect of the entire income which may have escaped assessment. However, the only additional caveat which Ranbaxy Laboratories Ltd. enters is with respect to a situation where, in the course of reassessment, the AO ultimately comes to the conclusion that no additions or variations were warranted in respect of the heads or items of income which had formed the basis for initiation of action under Section 148 of the Act. It is in the aforesaid backdrop that the Court in Ranbaxy Laboratories Ltd. proceeded on facts to hold that since no additions had ultimately been made in respect of items such as club fees, gifts and presents, and which constituted the basis for initiation of reassessment, it would not be open to the AO to revise or modulate findings on any other head or items that may have been dealt with in the original assessment.

25. The position in law which emerges from the aforesaid discussion is that while it is true that the AO would have to establish that reassessment is warranted on account of information in its possession which appears to indicate that income chargeable to taxhad escaped assessment, once the assessment itself is reopened it would not be confined to those subjects only. This would, however, be subject only to one additional rider and that being if, in the course of reassessment, the AO ultimately comes to conclude that no additions or modifications are warranted under those heads, it would not be entitled to make any additions in respect of other items forming part of the original return.

26. This position in law also finds resonance in the judgment of the Punjab and Haryana High Court in Majinder Singh Kang Versus Commissioner of Income-tax and Another:2010 SCC OnLine P&H 13401 and where it was observed:-

> "8. Learned counsel for the assessee submitted that the Assessing Officer had reopened the assessment by issuing notice under section 148 of the Act on the ground that the income from salary, perquisites and unexplained cash deposits in various accounts along with interest thereon had escaped assessment. The counsel urged that the Assessing Officer, however, while passing the reassessment order had sought to make addition of another amount without any addition having been made on the ground on the basis of which reassessment had been initiated. According to the learned counsel, no reassessment order could be passed by the Assessing Officer. Learned counsel for the assessee relied upon the following observations made by this court in CIT v. Atlas Cycle Industries [1989] 180 ITR 319 (page 322):
>
> > "...we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income-tax Officer does not get the jurisdiction to make a reassessment."
>
> 9. Support was also drawn from the decision of the Rajasthan High Court in CIT v. Shri Ram Singh (2008) 306 ITR 343 (Raj) wherein judgment of this court in Atlas Cycle Industries' case (1989) 180 ITR 319 (P&H) was followed."

Xxxx xxxx xxxx

> 12. A plain reading of Explanation 3 to section 147 clearly depicts that the Assessing Officer has power to make additions even on the ground on which reassessment notice might not have been issued in case during the reassessment proceedings, he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment under section 148 of the Act. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other ground on the basis of which income may have escaped assessment. The reassessment proceedings, thus, in the present case cannot be held to be vitiated.

36. This court has, in a recent decision in ***Pr. Commissioner of Income Tax-7 v. Sunlight Tour and Travels Pvt. Ltd.:2024 SCC OnLine Del 8234***, reiterated the aforesaid view.

37. Whilst Mr. Panda, the learned counsel appearing for the Revenue, contended that the said decisions require reconsideration, he did readily conceded that the issue involved is squarely covered by the aforementioned decisions of this court. It is material to note that the aforesaid view also resonates in ***The Principal Commissioner of Income Tax-1 v. Naveen Infradevelopers & Engineers Pvt. Limited: Neutral Citation No.: 2024:DHC:7997-DB*** and ***PCIT v. Jaguar Buildcon Pvt. Ltd. in ITA 756/2023 decided on 01.08.2024***. The Bombay High Court has also expressed the similar view in ***Commissioner of Income Tax v. Jet Airways (I.) Ltd.: (2011) 331 ITR 236***. We are unable to accept that the aforesaid view which has been consistently followed in the aforesaid decisions requires reconsideration.

38. In view of the above, the question of law as framed is answered in favour of the Assessee and against the Revenue.

39. The present appeal is allowed and the additions made by the AO in the impugned assessment order as sustained by the learned ITAT are set aside.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 25, 2025
'gsr'

Click here to check corrigendum, if any