IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.640/Mum/2021
(Assessment year 2011-12)

Royal Western India Turf Club Mahalaxmi Race Course Mahalxmi, Mumbai-400 034 PAN : AABCR8519H	vs	Principal Commissioner of Income-tax-8, Mumbai
APPELLANT		**RESPONDENT**

Appellant by	S/Shri Salil Kapoor, Sumit Lalchandani & Smt Ananya Kapoor, AR
Respondent by	Smt. Sunita Billa, [CIT, (DR)]

Date of hearing	23-09-2021
Date of pronouncement	12-10-2021

O R D E R

Per Saktijit Dey (JM)

Captioned appeal has been filed by assessee assailing the order dated 19-03-2021 passed by learned Principal Commissioner of Income Tax-8 (PCIT), Mumbai under section 263 of the Income Tax Act, 1961 for the assessment year 2011-12 (wrongly mentioned as 2015-16 in the body of the order).

2. At the outset, Shri Salil Kapoor, learned counsel for the assessee, drawing our attention to ground 3 raised a preliminary issue challenging the validity of the

revision order passed beyond the period of limitation prescribed under section 263(2) of the Act.

3. Before we deal with this issue, it is necessary to deal with basic relevant facts. Briefly stated, the assessee is a resident company engaged in the business of conducting horse races, turf club house and providing hospitality service to its members and their guests. For the assessment year under dispute assessee filed its return of income on 09-09-2011 declaring total income of Rs.1,49,08,690/-. Assessment in the case of the assessee was originally completed under section 143(3) of the Act vide order dated 06-02-2014 determining the total income at Rs.27,23,84,049/-. Against the assessment order so passed, assessee preferred appeal before learned Commissioner of Income Tax (Appeals), wherein, substantial relief was granted to the assessee. While giving effect to the order of learned Commissioner (Appeals), the assessing officer in order dated 24-06-2017 determined the income at nil under the normal provisions of the Act and computed book profit under section 115JB of the Act at Rs.1,39,38,254/-. When the matter stood thus, the assessing officer received information that the assessee had transferred certain receipts directly to its reserve under the head “life membership fee” etc which included an amount of Rs.2,00,50,000/- representing contribution from certain members towards various infrastructure facilities of the club for mutual benefit of the members of the club and such contributions are non refundable. Being of the view that the receipt of Rs.2,00,50,000/- has escaped assessment, the assessing officer reopened the assessment under section 147 of the Act and ultimately passed an order on 26-12-2018 under section 143(3) r.w.s. 147 of the Act determining the total income at Rs.2,00,50,000/-. Against the assessment order so passed, assessee preferred

appeal before learned first appellate authority. However, presently we are not concerned with that.

4. In exercise of powers conferred under section 263 of the Act, learned PCIT called for the assessment records of the assessee for the impugned assessment year. After examining the record, he was of the view that the assessment order passed under section 143(3) r.w.s. 147 of the Act is erroneous and prejudicial to the interest of the revenue as the assessing officer while completing the assessment has not enquired into and examined the following issues:-

(1) Non deduction of tax on payments made to contractors as well as professional fees aggregating to Rs.2,56,529/-;

(2) Cash deposit of Rs.31,95,28,429/- made in savings bank account maintained at Bank of India, Mahalaxmi Branch, Mumbai.

5. Accordingly, he issued a notice under section 263 of the Act requiring the assessee to show cause as to why the assessment order should not be held as erroneous and prejudicial to the interest of revenue. In response to the said notice, assessee filed its objection vehemently opposing the initiation of proceedings under section 263 of the Act. However, learned PCIT did not find merit in the submissions of the assessee. Ultimately, she passed the impugned order holding the assessment order passed under section 143(3) r.w.s. 147 of the Act to be erroneous and prejudicial to the interest of the revenue and accordingly set it aside to the assessing officer for framing a de novo assessment.

6. Learned Counsel for the assessee submitted, the assessment was reopened under section 147 of the Act for the specific purpose of assessing the escaped income of Rs.2,00,50,000/-, being the contribution received from members transferred to the reserve. He submitted, the issues on which learned PCIT held the assessment order to be erroneous and prejudicial for non-enquiry by the

assessing officer were never the subject matter of reopening; hence, the assessing officer had no occasion to enquire into those issues. He submitted, if at all any enquiry into the issues raised by learned PCIT was required, it had to be done at the time of the original assessment proceedings and not during the re-assessment proceedings. Thus, he submitted, there being no error in the assessment order passed under section 143(3) r.w.s. 147 of the Act, proceeding under section 263 of the Act would not lie. He submitted, since the learned PCIT could not have revised original assessment order passed under section 143(3) of the Act due to bar of limitation, she has proceeded to revise the re-assessment order. Thus, he submitted, the impugned order of learned PCIT is barred by limitation as provided under section 263(2) of the Act. In support of such contention, learned counsel relied upon the following decisions:-

S.No.	Particulars
1.	CIT Vs. Alagendran Finance Ltd., [2007] 293 ITR 1 (SC)
2.	Ashoka Buildcon Ltd. Vs. ACIT, [2010] 325 ITR 574 (Bom.)
3.	CIT Vs. ICICI Bank Ltd., [2012] 343 ITR 74 (Bom.)
4.	Indira Industries Vs. PCIT, [2018] 95 TAXMANN.COM 103 (Mad.)
5.	CIT Vs. Lark Chemicals Ltd, [2014] 368 ITR 655 (Bom.)
6.	CIT Vs. Bharti Airtel Ltd., [2013] 37 taxmann.com 218 (Del.)
7.	CIT Vs. Shriram Engg. Construction Co. Ltd., [201 1] 330 ITR 568 (Mad.)
8.	L.G.Electronics India (P.) Ltd. Vs. PCIT, [2016] 388 ITR 135 (All.)

9.	Jindal Steel & Power Ltd. Vs. PCIT, ITAT-New Delhi, dated 14.05.2020
10.	Malabar Industrial Co. Ltd. Vs. CIT, [2000] 243 ITR 83 (SC)
11.	CIT Vs. Gabriel India Ltd., [1993] 71 Taxmann 585 (Bom.)
12.	PCIT Vs. Delhi Airport Metro Express Pvt. Ltd., DHC-dated 05.09.20 17
13.	PCIT Vs. Medicare Ltd., DHC-dated 14.09.2017
14.	ITO Vs. D.G.Housing Projects Ltd., [2012] 343 ITR 329 (Del.)
15.	DIT Vs. Jyoti Foundation., [2013] 357 ITR 388 (Del.)
16.	Shri Narayan Tatu Rane Vs. ITO, ITAT-New Delhi-dated 06.05.2016.
	Brahma Center Development P. Ltd. Vs. PCIT, ITAT-New Delhi-dated 18.12.2019.

7. The learned departmental representative submitted, before the revisionary authority the assessee had made no representation in support of its claim. She submitted, the issue of limitation was never raised before the revisionary authority during the proceedings under section 263 of the Act. Further, she submitted, since learned PCIT has set aside the assessment order with a direction to make de novo assessment, no prejudice has been caused to the assessee.

8. We have considered rival submissions in the light of decisions relied upon and perused materials on record. Undisputedly, the original assessment in case of the assessee was completed under section 143(3) of the Act on 06-02-2014. Subsequently, the assessment was reopened under section 147 of the Act and

notice under section 148 of the Act was issued to the assessee on 26-03-2018. The reason recorded for reopening of assessment under section 147 of the Act, a copy of which is at page 40 of the paper book, would reveal that for assessing the escaped income of Rs.2,00,50,000/- being the contribution received from certain members towards infrastructure facilities, the assessing officer had reopened the assessment. Ultimately, the assessing officer completed the assessment under section 143(3) r.w.s. 147 of the Act assessing the alleged escaped income of Rs.2,00,50,000/-. Thus, neither the issue relating to non deduction of tax on payment made to contractors and professional fees nor the cash deposit of Rs.31,95,28,429/- in the savings bank account were forming part of reasons recorded. In other words, the reopening of assessment was for the specific purpose of assessing the amount of Rs.2,00,50,000/-. That being the case, it is necessary to examine whether the assessing officer in the re-assessment proceedings could have gone into the aspects raised by learned PCIT.

9. A reading of section 147 of the Act makes it clear that the assessing officer, in course of proceedings under the said provision can not only assess/reassess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision. Explanation 3 to section 147 of the Act further clarifies the substantive provision by saying that the assessing office, in course of proceedings under the said provision can not only assess/re-assess the escaped income based on which the assessment was reopened, but can also assess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under the aforesaid provision,

notwithstanding that such issue does not form part of reasons recorded for reopening of assessment. Thus, on a holistic reading of section 147 of the Act it becomes very much clear that along with escaped income for which the assessment was reopened, the assessing officer can assess other escaped income which subsequently comes to his notice in course of re-assessment proceedings. In the facts of the present case, undisputedly, the issues raised by learned PCIT neither were the subject matter of reopening as per reasons recorded, nor did such matter come to the notice of the assessing officer in course of re-assessment proceedings.

10. The reopening of assessment as contemplated under section 147 of the Act is for the specific purpose of assessing the escaped income. Therefore, in a re-assessment proceeding, the assessing officer can only assess that income which has escaped assessment. The income which is subject matter of assessment in the original assessment proceedings or which was in the domain of the assessing officer in course of original assessment proceedings certainly cannot be considered in the re-assessment proceedings. In our view, if at all, any order which can be considered to be erroneous and prejudicial to the interest of revenue for non consideration of the issues raised by learned PCIT, certainly, it has to be the original assessment order passed under section 143(3) of the Act and not the re-assessment order passed under section 143(3) r.w.s. 147 of the Act. Therefore, learned PCIT could have exercised her powers under section 263 of the Act only in respect of the original assessment order passed under section 143(3) of the Act. At this stage, we may refer to the following observations of the Hon'ble Supreme Court in case of CIT vs Alagendran Finance Ltd (supra):

> "7. A bare perusal of the order passed by the Commissioner of Income Tax would clearly demonstrate that only that part of order of assessment which related to lease

equalization fund was found to be prejudicial to the interest of the Revenue. The proceedings for reassessment have nothing to do with the said head of income. Doctrine of merger, therefore, would not apply in a case of this nature.
8. Furthermore, Explanation (c) appended to Sub-section (1) of Section 263 of the Act is clear and unambiguous as in terms thereof doctrine of merger applies only in respect of such items which were the subject matter of appeal and not which were not. The question came up for consideration before this Court in Commissioner of Income Tax v. Sun Engineering Works P. Ltd. [198 ITR 297]. Therein the assessee raised a contention that once jurisdiction under Section 147 of the Act is invoked, the whole assessment proceeding became reopened, which was negatived by the court opining:
"Section 147, which is subject to Section 148, divides cases of income escaping assessment into two clauses i.e. viz. (a) those due to the non- submission of return of income or non-disclosure of true and full facts and (b) other instances. Explanation (1) defines as to what constitutes escape of assessment. In order to invoke jurisdiction under Section 147(a) of the Act, the ITO must have reason to believe that some income chargeable to tax of an assessee has escaped assessment by reason of the omission or failure on the part of the assessee either to make a return under Section 139 for the relevant assessment year or to disclose fully and truly material facts necessary for the assessment for that year. Both the conditions must exist before an ITO can proceed to exercise jurisdiction under Section 147(a) of the Act. Under Section 147(b) the Income-tax Officer also has the jurisdiction to initiate proceedings for reassessment where he has reason to believe, on the basis of information in his possession, that income chargeable to tax has been either under- assessed or has been assessed at too low a rate or has been made the subject of excessive relief under the Act or excessive loss or depreciation allowance has been computed. In either case whether the Income-tax Officer invokes his jurisdiction under Clause (a) or Clause (b) or both, the proceedings for bringing to tax an 'escaped assessment' can only commence by issuance of a notice under Section 148 of the Act within the time prescribed under the Act. Thus, under Section 147, the assessing officer has been vested with the power to "assess or reassess" the escaped income of an assessee. The use of the expression "assess or reassess such income or recompute the loss or depreciation allowance" in Section 147 after the conditions for reassessment are satisfied, is only relatable to the preceding expression in Clauses (a) and (b) viz., "escaped assessment". The term "escaped assessment" includes both "non- assessment" as well as "under assessment". Income is said to have "escaped assessment" within the meaning of this section when it has not been charged in the hands of an assessee in the relevant year of assessment. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of Section 147 because the assessment had not been made in the regular manner under the Act. The expression "reassess" refers to a situation where an assessment has already been made but the Income-tax Officer has, on the basis of information in his possession, reason to believe that there has been under assessment on account of the existence of any of the grounds contemplated by the provisions of Section 147(b) read with the Explanation (I) thereto."
9. We may at this juncture also notice the decision of this Court in Hind Wire Industries Ltd (supra) wherein the decision of this Court in V. Jaganmohan Rao v. CIT and CEPT [75 ITR 373] interpreting the provisions of Section 34 of the Act was reproduced which

reads as under: "Section 34 in terms states that once the Income- tax officer decides to reopen the assessment, he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice under section 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under sub-section (2) of section 22, the previous underassessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started under section 34(1)(b), the Income-tax Officer had not only the jurisdiction, but it was his duty to levy tax on the entire income that had escaped assessment during that year."

10. There may not be any doubt or dispute that once an order of assessment is reopened, the previous underassessment will be held to be set aside and the whole proceedings would start afresh but the same would not mean that even when the subject matter of reassessment is distinct and different, the entire proceeding of assessment would be deemed to have been reopened.

11. In Sun Engineering Works P. Ltd (supra) also, V. Jaganmohan Rao (supra) was noticed stating:

"The principle laid down by this Court in Jaganmohan Rao's case, therefore, is only to the extent that once an assessment is validly reopened by issuance of a notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under assessment is set aside and the ITO has the 13 ITA 1307/Mum/2020 jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year The judgment in Jaganmohan Rao's case, therefore, cannot be read to imply as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jaganmohan Rao's case, as if laying down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "under assessment" but to the entire assessment for the year and starts the assessment proceeding de novo giving the right to an assessee to reagitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the

decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings"

It was furthermore held:

"As a result of the aforesaid discussion, we find that in proceedings under Section 147 of the Act, the Income Tax Officer may bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under Section 148 and where ressessment is made under Section 147 in respect of income which has escaped tax, the Income Tax Officer's jurisdiction is confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the under- assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The Income Tax Officer cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject-matter of proceedings under Section 147"

12. We may at this juncture also take note of the fact that even the Tribunal found that all the subsequent events were in respect of the matters other than the allowance of 'lease equalization fund'. The said finding of fact is binding on us. Doctrine of merger, therefore, in the fact situation obtaining herein cannot be said to have any application whatsoever. It is not a case where the subject matter of reassessment and subject matter of assessment were the same. They were not.

13. It may be of some interest to notice that a similar contention raised at the instance of an assessee was rejected by a 3-Judge Bench of this Court in Commissioner of Income-Tax v. Shri Arbuda Mills Ltd. [231 ITR 50]. This Court took note of the amendment made in Section 263 of the Act by the Finance Act, 1989 with retrospective effect from June 1, 1988, inserting Explanation (c) to Sub-section (1) of Section 263 of the Act stating: "The consequence of the said amendment made with retrospective effect is that the powers under section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under section 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

We, therefore, are clearly of the opinion that in a case of this nature, the doctrine of merger will have no application.

14. The Madras High Court in A.K. Thanga Pillai (supra), in our opinion, has rightly considered the matter albeit under Section 17 of the Wealth Tax Act, 1957 which is in pari materia with the provisions of the Act. Relying on Sun Engineering Works P. Ltd (supra), it was held: "Under section 17 of the Wealth-tax Act, 1957, even as it is under section 147 of the Income-tax Act, proceedings for reassessment can be initiated when what is assessable to tax has escaped assessment for any assessment year. The power to deal with underassessment and the scope of reassessment proceedings as explained by the Supreme Court in the case of Sun Engineering [1992] 198 ITR 297, is in relation to that which has escaped assessment, and does not extend to reopening the entire

assessment for the purpose of redoing the same de novo. An assessee cannot agitate in any such reassessment proceedings matters forming part of the original assessment which are not required to be dealt with for the purpose of levying tax on that which had escaped tax earlier. Cases of underassessment are also treated as instances of escaped assessment. The order of reassessment is one which deals with the assessment already made in respect of items which are not required to be reopened, as also matters which are required to be dealt with in order to bring what had escaped in the earlier order of assessment, to assessment. An assessee who has failed to file an appeal against the original order of assessment cannot utilise the reassessment proceedings as an occasion for seeking revision or review of what had been assessed earlier. He may only question the extent of the reassessment in so far as the escaped assessment is concerned. The Revenue is similarly bound" The same principle was reiterated by a Division Bench of the Calcutta High Court in Commissioner of Income-Tax v. Kanubhai Engineers (P.) Ltd. [241 ITR 665]."

15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under Sub-section (2) of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity."

11. Following the aforesaid decision of the Hon'ble Supreme Court, the Hon'ble jurisdictional High Court in case of Àsoka Buildcon Ltd vs ACIT (supra), has held, as under:-

"7) Section 263 empowers the Commissioner to call for and examine the record of any proceedings under the Act and to pass such orders as the circumstances of the case justify, including an order enhancing, modifying or cancelling the assessment and directing a fresh assessment, if he considers that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the Revenue. Sub-section (2) of Section 263 stipulates that no order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. That period of two years from the end of the financial year in which the original order of assessment dated 27 December 2006 was passed, has expired on 31 March 2009. Hence the exercise of the revisional jurisdiction in respect of the original order of reassessment is barred by limitation.

This is sought to be obviated by the Commissioner of Income Tax by seeking to revise, under Section 263, the order dated 27 December 2007. The order dated 27 December, 2007 was passed after the assessment was reopened on the ground of an escapement of income under Section 147 and an order of reassessment was passed by which the claim under Section 72A came to be disallowed. The submission that has been urged on behalf of the assessee is that, since the assessment was opened and an order of reassessment was passed only one issue namely, the claim under Section 72A, when the

Commissioner as a Revisional Authority under Section 263 seeks to exercise his jurisdiction on matters which did not form the subject of the order of reassessment, the period of limitation would begin to run from the original order of assessment. This submission which has been urged on behalf of the assessee would have to be accepted in view of the judgment of the Supreme Court in Commissioner of Income Tax V/s. Alagendran Finance Ltd. The issue which arose before the Supreme Court was whether, for the purpose of computing the period of limitation envisaged under sub-section (1) of Section 263, the date of the order of assessment or of the order of reassessment is to be taken into consideration. In that case, the assessee filed its return for assessment years 1994-95, 1995-96 and 1996-97 and the assessments were completed on 27 February 1997, 12 May 1997 and 30 March 1998. In the orders of assessment, the return of the assessee under the head of "Lease Equalisation Fund" were accepted. Proceedings for reassessment were initiated by the Assessing Officer and orders of reassessment were passed in respect of the following items namely (i) expenses claimed for share issue; (ii) bad and doubtful debts; and (iii) excess depreciation on gas cylinders and goods containers. Though the return of income in respect of the "Lease Equalisation Fund" was not the subject matter of the reassessment proceedings, the Commissioner of Income Tax invoked his revisional jurisdiction under Section 263 and by his order came to the conclusion that the assessee had not furnished complete details and the order of the Assessing Officer was prejudicial to the interest of the Revenue. The Tribunal held that the order which was passed under Section 263 on 29 March 2004 was barred by limitation. The Supreme Court held that the Commissioner of Income Tax, while exercising his jurisdiction under Section 263 found that only that part of the order of assessment which related to the lease equalisation fund was prejudicial to the interests of the Revenue. But the proceedings for reassessment had nothing to do with the said head of income. The Supreme Court clearly held that the doctrine of merger was not attracted to a case of that nature.

The Supreme Court followed its earlier judgment in C.I.T. V/s. Sun Engineering Co. Pvt. Ltd.2 and held that the Tribunal had found that all the subsequent events were in respect of matters other than the lease equalisation fund. In other words, this was not a case where the subject matter of the 17 ITA 1307/Mum/2020 assessment and the reassessment was the same. The Supreme Court then held as follows:-

"We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising his revisional jurisdiction reopened the order of assessment only in relation to lease equalisation fund which being not the subject of reassessment proceedings, the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity. "

8) Where an assessment has been reopened under Section 147 in relation to a particular ground or in relation to certain 2 (1992) 198 I.T.R. 297 specified grounds and, subsequent to the passing of the order of reassessment, the jurisdiction under Section 263 is sought to be exercised with reference to issues which do not form the subject of the reopening of the assessment or the order of reassessment, the period of limitation provided for in sub-section (2) of Section 263 would commence from the date of the

order of assessment and not from the date on which the order reopening the reassessment has been passed.
9) Section 147 empowers the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year to assess or reassess the said 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 the Section. Explanation 3 which has been inserted by the Finance Act (No.2) of 2009 with retrospective effect from 1 April, 1989 provides that for the purpose of assessment or reassessment under the Section, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment and such issue comes to his notice subsequently, in the course of the proceedings under the Section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148. The substantive part of Section 147 empowers the Assessing Officer to assess or reassess the income chargeable to tax which has escaped assessment and any other income which comes to his notice subsequently in the course of proceedings under the Section.
The effect of Explanation 3 is to empower the Assessing Officer to assess or reassess the income in respect of any issue which comes to the notice in the course of the proceedings under the section, though the reasons which were 18 ITA 1307/Mum/2020 recorded in the notice under Section 148(2) did not contain reference to that issue.
10) The submission which has been urged on behalf of the Revenue is that when several issues are dealt with in the original order of assessment and only one or more of them are dealt with in the order of reassessment passed after the assessment has been reopened, the remaining issues must be deemed to have been dealt with in the order of reassessment. Hence, it has been urged that the omission of the Assessing Officer, while making an order of reassessment to deal with those issues under Section 143 (3) read with 147 constitutes an error which can be revised in exercise of the jurisdiction under Section 263. The submission cannot be accepted either as a matter of first principle, based on a plain reading of the provisions of Sections 147 and 263, nor is it sustainable in view of the law laid down by the Supreme Court. The Supreme Court has now clearly held in the decision in Alagendran Finance that the doctrine of merger does not apply where the subject matter of reassessment and of the original order of assessment is not one and the same. In other words, where the assessment is sought to be reopened only one one or more specific grounds and the reassessment is confined to one or more of those grounds, the original order of assessment would continue to hold the field, save and except for those grounds on which a reassessment has been made under Section 143(3) read with Section 147. Consequently, an appeal by the assessee on those grounds on which the original order of assessment was passed and which do not form the subject of reassessment would continue to subsist and would not abate.
The order of assessment cannot be regarded as being subsumed within the order of reassessment in respect of those items which do not form part of the order of reassessment. Where a reassessment has been made pursuant to a notice under Section 148, the order of reassessment prevails in respect of those items which form part of reassessment. On items which do not form part of the reassessment, the original assessment continues to hold the field.
When the Assessing Officer reopens an assessment on a particular issue, it is open to him to make a reassessment on that issue as well as in respect of other issues which

subsequently come to his notice during the course of the proceedings under Section 147. The submission of the Revenue is that by not passing an order of reassessment in respect of other independent issues, the order of the Assessing Officer can be construed to be erroneous and to be prejudicial to the interest of the Revenue within the meaning of Section 263. The submission cannot be accepted in the facts of the present case. The substantive part of Section 147 as well as Explanation 3 enables the Assessing Officer to assess or reassess income chargeable to tax which he has reason to believe had escaped assessment and other income which has escaped assessment and which comes to his notice subsequently in the course of the 19 ITA 1307/Mum/2020 proceedings under the section. There is nothing on the record of the present case to indicate that there was any other income which had come to the notice of the Assessing Officer as having escaped assessment in the course of the proceedings under Section 147 and when he passed the order of reassessment. The Commissioner, when he exercised his jurisdiction under Section 263, in the facts of the present case, was under a bar of limitation since limitation would begin to run from the date on which the original order of assessment was passed. We must however clarify that the bar of limitation in this case arises because the revisional jurisdiction under Section 263 is sought to be exercised in respect of issues which did not form the subject matter of the reassessment proceedings under Section 143(3) read with 147. In respect of those issues, limitation would commence with reference to the original order of assessment. If the exercise of the revisional jurisdiction under Section 263 was to be in respect of issues which formed the subject matter of the reassessment, after the original assessment was reopened, the commencement of limitation would be with reference to the order of reassessment. The present case does not fall in that category.
11) Counsel appearing on behalf of the Revenue relied upon the judgment of the Supreme Court in Income Tax Officer V/s. K.L. Srihari (UHF)3. That was a case where an assessment was reopened under Section 147. The Supreme Court, after considering the original order of assessment dated 19 March 1983 and the order of reassessment dated 16 July 1987 passed under Section 147 held that the subsequent order made a fresh assessment of the entire income of the assessee. Once, in the exercise of the power under Section 147, the Assessing Officer had reassessed the entire income of the assessee, the Supreme Court held that the original order would stand effaced by the subsequent order. Srihari was, therefore, a case where the subject matter of the original order of assessment as well as of the order of reassessment was the same.
This is distinct from the situation in the subsequent judgment of 3 (2001) 118 Taxman 890 (S.C.) Alagendran Finance where the Supreme Court noted that the subject matter of the original assessment and the order of reassessment was not the same. The facts of the present case are similar to those in Alagendran Finance which must, therefore, apply.
12) For these reasons, we are of the view that the exercise of the revisional jurisdiction under Section 263 is barred by limitation. We clarify that this would not preclude the Revenue from taking recourse to any other remedy that maybe available in law."

12. The other decisions cited by learned counsel for the assessee also propound similar legal principle. Thus, in our view, the original assessment order

having been passed on 06-02-2014, the impugned order passed under section 263 of the Act is barred by limitation in view of section 263(2) of the Act. At this stage, we consider it our duty to deal with the submissions of learned departmental representative that the assessee did not represent its case before learned PCIT and did not raise the issue of limitation. On perusal of records, it is seen that learned PCIT issued the show cause notice under section 263 of the Act on 08-03-2021 and passed the impugned order on 19-03-2021 with undue haste. In fact, the assessee has raised specific grounds before us, being grounds 8 and 9, to the effect that neither hearing notice was issued to the assessee nor any opportunity of being heard was provided. Thus, we do not find merit in the submissions of learned departmental representative.

13. Since we have held that the impugned order passed under section 263 of the Act is barred by limitation, the consequence would be, it has to be declared as invalid and the assessment order has to be restored. Accordingly, we do so.

14. In view of our decision above, various other grounds raised by the assessee having become academic, are not adjudicated.

15. In the result, appeal is allowed, as indicated above.

Order pronounced on 12/10/2021.

Sd/- sd/-

(RAJESH KUMAR)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 12/10/2021
Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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Asstt. Registrar, ITAT, Mumbai