

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “F” MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3371/MUM/2025
Assessment Year: 2020-21**

Vinay Tarachand Chawla,
87, 3rd floor, Jeevan Niwas, Khan
Abdul Gaffar Khan Road, Worli Sea
Face,
Mumbai-400025.
PAN NO. ABOPC 7671 E
Appellant

Vs.

Pr. CIT-6,
Room No. 501, 5th floor, Aayakar
Bhavan, Maharishi Karve Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Ravikant Pathak
Revenue by : Mr. Vivek Perampurna, CIT-DR

Date of Hearing : 14/07/2025
Date of pronouncement : 26/09/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 27.03.2025 passed by the Ld. Pr. Commissioner of Income-tax Mumbai-6 [in short ‘the Ld. PCIT’] for assessment year 2020-21, raising following grounds:

Ground 1 & 2 - PCIT erred in passing the order u/s 263 of the Act which is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void.



Ground 3 - The PCIT erred in holding that the loss on cancellation and extinguishment of shares of Kamani Foods Private Limited

('KFPL') of Rs.42,12,27,550/- as claimed by the Appellant does not constitute 'transfer' within the meaning of section 2(47) of the Act.

Ground 4 - The PCIT erred in holding that loss of Rs.29,95,00,000/- on waiver of loan given to

KPFL does not constitute 'transfer' within the meaning of section 2(47) of the Act.

Ground 5 - The PCIT erred in holding that the claim of bad debt of Rs.3,42,57,549/- is inadmissible u/s 36(1)(vii) of the Act as there is no evidence to establish that the debt has become wholly irrecoverable and thereby directed the AO to make an enquiry in the above issue and reassess the income.

2. Briefly stated, facts of the case are that the assessee is a partner in partnership firms M/s Chinmaya Estates and M/s Chinmaya Associates (in short the 'Chinmaya'). The assessee was also having substantial shareholding in a company namely M/s Kamani Foods Private Limited (in short the 'Kamani'). The assessee filed his return of income electronically on 26.03.2021 declaring total income at Rs.1,40,11,060/-. Besides, share of profit in partnership firm, the assessee shown income from house property, capital gain on sale of securities and interest income etc. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The scrutiny assessment u/s 143(3) r.w.s. 144B of the Act was completed by the Faceless Assessment Unit vide order dated 25.09.2022, wherein the total income of the assessee was assessed at Rs.3,71,74,530/-.



Thereafter, on the basis of observation by the revenue audit, the Ld. PCIT called for the records and after examination issued notice u/s 263 of the Act on 22.01.2025 asking the assessee to justify following claim :

- (i) Loss of Rs. 42,12,27,550/-on capital reduction of share in Kamani Foods Private Limited (Kamani),*
- (ii) Capital loss of Rs. 30 Crores on waiver of right to receive the loan given to Kamani*
- (iii) Deduction of bad debt of Rs. 3,42,57,549/- being interest receivable from a partnership firm namely M/s Chinmaya Associates (Chinmaya).*

2.1 The Ld. PCIT in his show cause notice invoked Explanation 2 to section 263 of the Act wherein it is provided that an order shall be deemed to be erroneous in so far as prejudicial to the interest of the Revenue if in the opinion of the PCIT, the order passed was without making inquiries or verification which ought to have been made. The assessee vide its letter dated 28.02.2025 made detailed submission on merits as well as jurisdiction which are summarized as under:

“1.3 Loss on capital reduction in share capital of Kamani:

The assessee is shareholder of Kamani and was holding 1,43,33,060 shares for Rs 42,83,67,000/-. Pursuant to NCLT order dated 21/09/2021, Kamani reduced its capital held by all shareholders. Resultantly, the Kamani reduced the shares held by the assessee from 1,43,83,060 number of equity share to 1,04,160 number equity shares whereby the Kamani cancelled and extinguished 1,42,78,900 number of equity shares, each having face value of Rs. 10 each. On capital reduction, the assessee received consideration of Re. 0.50 per equity share aggregating to Rs. 71,39,450 (i.e. 1,42,78,900 number of equity



shares X 0.50 Paisa). As a result, the assessee claimed short term capital loss of Rs. 42,12,27,550/- (Rs. 42,83,67,000 - Rs. 71,39,450) which is duly allowable as explained by the Hon'ble Supreme Court in the case of **PCIT vs Jupiter Capital (P) Ltd (472 ITR 616)** wherein Hon'ble Supreme Court at paragraph 18 has held that "In view of the aforesaid, we are of the view that the reduction in share capital of the subsidiary company and subsequent proportionate reduction in the shareholding of the assessee would be squarely covered within the ambit of the expression "sale, exchange or relinquishment of the asset" used in Section 2(47) the Income Tax Act, 1961".

1.4 Capital loss on waiver of right to receive the loan given to Kamani:

The assessee had an amount of receivable for Rs. 42,06,30,032/-. The assessee signed a 'Deed of Settlement' on 28.02.2020 with Kamani whereby he agreed to waive or settle his loan of Rs. 30 Crores for an amount of Rs.5 lakhs and claimed the loss of Rs. 29.95 Crores as short-term capital loss. This loss is also allowed as explained by the Hon'ble jurisdictional High Court in the cases of CIT vs Siemens Nixdorf Information Systeme GmbH [2020] 114 Taxmann.com 531 Bom and PCIT vs Reliance Natural Resource Ltd [2019] 111 Taxmann.com 413 Bom, wherein Hon'ble jurisdictional High Court has held that 'Loan given by assessee to its subsidiary company would be covered by meaning of 'capital asset' under section 2(14)' [headnote from taxmann.com]. SLP filed by department against above two decisions have been dismissed by the Hon'ble Apex Court in 453 ITR 741 and 286 Taxmann 435 respectively.

1.5 Deduction of bad debt being interest receivable from Chinmaya:

The assessee is a partner in Chinmaya. The assessee introduced fund from time to time in Chinmaya on which interest receivable was Rs. 3,42,57,549/-. This interest was offered to tax year on year on accrual basis as business income and accepted by the department. Other partners also infused the funds in Chinmaya. Due to embezzlement in the firm, the firm showed its inability to pay the interest accrued by writing back the same in books of account and offering for tax. Resultantly, all the partners including the assessee written off the amount of interest receivable from Chinmaya and claimed the same as bad debt."



2.2 But the Ld. PCIT rejected the contention of the assessee and held that (i) relinquishment (extinguishment) of shares due to capital reduction is not transfer; (ii) loan given cannot be treated as capital asset as the same was not held as stock-in-trade; and (iii) since the firm 'Chinmaya' was continue to exist, the fund infused was recoverable hence, bad debt written off was not allowable as deduction. The relevant finding of the Ld. PCIT is reproduced as under:

"6. The submissions of the assessee with respect to claim of short-term capital loss amounting to Rs.76,07,27,550/- have been considered carefully and found unacceptable. Claim of short-term capital loss amounting to Rs.76,07,27,550/- includes Short-Term Capital Loss on M/s. Kamani Foods Pvt Ltd (KMFL) Share Reduction and Loan Waiver.

Capital Reduction of Shares:

Assessee sold his 50% share of M/s. Kamani Oil & realize a Capital Gain. Gain is offset against the loss of Rs.42,12,27,550/- arising due Capital Reduction of in M/s M/s. Kamani Foods Pvt Ltd. In this regard, it is noted that the Hon'ble NCLT- approved capital reduction resulted in the cancellation and extinguishment of shares held by the assessee. However, for a transaction to qualify as a "transfer" under Section 2(47) of the Income Tax Act, 1961, there must be a relinquishment or conveyance of a capital asset to another entity. The mere extinguishment of shares without a transfer to a third party does not constitute a "transfer" as defined under the Act. The Hon'ble Supreme Court in CIT vs. Grace Collis [248 ITR 323] clarified that extinguishment of rights in shares, without a conveyance, does not attract capital gains/loss. Consequently, the loss of Rs.42,12,27,550/- claimed under Section 45 is inadmissible.

Settlement of Loan to KMFL:

Further, also set off was claimed to the extent of Rs.29,95,00,000/- against his waiver of loan (foregoing the loan) which was given by him (earlier) to KMFL. For such a waiver to qualify as a "transfer" under Section 2(47), the loan must constitute a "capital asset" as per Section 2(14). Loans or receivables are excluded from the definition



of "capital asset" unless held as stock-in-trade in a money-lending business. The assessee, being an individual not engaged in money-lending, cannot treat the waived loan as a capital asset. Thus, the loss of Rs.29,95,00,000/- is not allowable under Section 45.

6.1 In light of the above, the assessee's claim of short-term capital loss arising from (i) capital reduction of KMFL shares and (ii) loan waiver to KMFL is unsustainable in law. For capital loss to be allowable under Section 45, there must be a 'transfer' of 'capital asset' as defined under Sections 2(14) and 2(47). The capital reduction involved mere extinguishment of shares without any transfer to another party, which doesn't constitute a 'transfer'. Similarly, the loan waiver cannot be treated as transfer of capital asset since the loan was not held as stock-in-trade. The AO erred in accepting these claims without proper examination of these legal aspects. Thus, the Assessing Officer's decision is erroneous both on merits and on the grounds that no further inquiries were conducted despite the facts on record warranting further examination. The failure to conduct a proper inquiry into the assessee's claims renders the assessment order erroneous and prejudicial to the interest of revenue.

7. The submissions of the assessee with respect to claim of bad debt for interest receivable from M/s. Chinmaya Associates of Rs.3,42,57,549/- have been considered carefully and found unacceptable. It is noted that the interest accrued in earlier years was offered as Business Income u/s 28(v) of the Act. The assessee's claim of bad debt for interest receivable from M/s. Chinmaya Associates is inadmissible under Section 36(1)(vii). Since, the said firm continued to exist and can therefore revive as well. Thence, there is no evidence to establish that the debt has become wholly irrecoverable. Mere filing of FIR against a partner for embezzlement doesn't automatically render the debt as bad, especially when recovery proceedings are still possible. The AO failed to verify these crucial aspects while allowing the deduction. Thus, the Assessing Officer's decision is erroneous both on merits and on the grounds that no further inquiries were conducted despite the facts on record warranting further examination. The failure to conduct a proper inquiry into the assessee's claims renders the assessment order erroneous and prejudicial to the interest of revenue.

In view of the above, I am of the considered opinion that the assessment order passed by the Assessing Officer u/s 143(3) r.w.s.144B dated 25.09.2022, is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the said order passed by the Assessing Officer is set-aside on the issue of (i) claim



of short-term capital loss amounting to Rs.76,07,27,550/- (Rs.42,12,27,550/- for Capital Reduction of Shares and Rs.29,95,00,000/- for Settlement of Loan to KMFL) and (ii) claim of bad debt for interest receivable from M/s. Chinmaya Associates of Rs.3,42,57,549/-. The AO is directed to make an enquiry in this matter and re-assess the income after giving due opportunity of being heard to the assessee.”

3. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 140. The Ld. counsel for the assessee referred to various pages of the Paper Book and submitted that the case of the assessee was selected for limited scrutiny vide notice dated 29.06.2021 issued u/s 143(2) of the Act (Paper Book page 2) for examination of issues of (i) capital gain/loss (ii) claim of any other amount allowable as deduction in Schedule as BP and (iii) business loss.

3.1 Further, the Ld. counsel for the assessee referred to Paper Book page 6 and submitted that notice u/s 142(1) of the Act dated 14.11.2021 was issued to the assessee to explain the deduction of any other amount claimed as well as deduction of capital loss claimed by him. The assessee referred to Paper Book pages 8 to 33 and submitted that assessee filed reply on 16.11.2021 explaining the deduction claimed on account of (i) bad debt written off of interest receivable (ii) loss of capital reduction and (iii) loss on waiver of loan receivable. Along with this letter, the assessee filed copy of (a) deed of settlement for loan waiver (b) affidavit of the assessee towards waiver of loan receivable (c) order dated



21.09.2020 of National Company Law Tribunal (NCLT) allowing the capital reduction.

3.2 The Ld. counsel for the assessee further referred to Paper Book pages 34 and 35 which is a notice u/s 142(1) of the Act along with query letter issued on 31.12.2021 and submitted that assessee was asked to explain and file documentary evidence for (i) bad debt written off claim (ii) loss due to capital reduction (iii) loss due to waiver of loss receivable. Further, the assessee was also issued notice on 07.02.2022, a copy of which is available on Paper Book page 36. In response to the notices, the assessee filed the relevant information, which is available on Paper Book pages 38 to 52. In said information, the assessee filed (i) return and audit financial statement of 'Chinmaya' to show that interest which is claimed as bad debt by the assessee was credited to profit and loss account of 'Chinmaya' and offered to tax (ii) other documents for deduction of loss on share capital reduction and waiver of loan.

3.3 The Ld. counsel further referred to a subsequent notice issued by the Assessing Officer on 02.03.2022 and 15.03.2022, a copy of which is available on Paper Book pages 53 and 58 of the Paper Book. In the said notices, the assessee was asked for more documents in relation to bad debt claimed of interest receivable from the 'Chinmaya'. The said notice was also complied by the assessee, a copy which is available on Paper Book page 55. The Ld. counsel for the assessee further referred to Paper Book page 61



which is a notice issued on 19.03.2022, *interalia*, asking for various details and documents on loss claimed due to capital reduction. The reply filed by the assessee in this respect is available on Paper Book page 63 to 90.

3.4 In view of the above notices and their reply referred by the Ld. counsel, he submitted that necessary inquiry which ought to have been made in the case of the assessee, had already been carried out by the Assessing Officer and a point-wise reply on all the three issues raised by the Ld. PCIT was already examined by the Assessing Officer. The Ld. counsel for the assessee accordingly submitted that the assessment order cannot be held as deemed to be erroneous in so far as prejudicial to the interest of the Revenue invoking Explanation 2 to Section 263 of the Act. In support thereof the Ld. counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of PCIT v. V-Con Integrated Solutions Pvt. Ltd. 476 ITR 526 (SC) wherein the Hon'ble Supreme Court held that *the assessee does not control over the pen of the Assessing Officer and once the Assessing Officer carries out the investigation but does not make any addition, it can be taken that he accepts the plea and stand of the assessee*. The Hon'ble Supreme Court further held that *there may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify remit, albeit, the Commissioner of Income-tax must record abject failure and lapse on the part of the Assessing Officer to establish both the error and the*



prejudice cause to the Revenue. The Ld. counsel for the assessee submitted that in the case, the Assessing Officer has issued a series of notices to inquire into the claim of the assessee and therefore, the case does not fall in the category of no inquiry made. The Ld. counsel for the assessee relied on the decision of the Hon'ble Kolkata High Court in the case of PCIT v. Singhal Enterprises Pvt. Ltd. ITA No. 103/2022 wherein *it is held that in assessment order passed after proper inquiry, proper application of the mind cannot be term as erroneous and prejudicial to the interest of the Revenue.*

3.5 On the issue of the merit of the additions, the Ld. counsel for the assessee relied on the submissions made before the Ld. PCIT. He submitted that as far as issue on loss on capital reduction in share capital of 'Kamani' is concerned, the Assessing Officer has relied on the decision of the Hon'ble Supreme Court in the case of PCIT v. Jupiter Capital Pvt. Ltd. wherein *the due to reduction in share capital of the subsidiary company and subsequent proportionate reduction in the share holding of the assessee was held to be within the ambit of the expression sale, exchange or relinquishment if the asset used in section 2 (14) of the Act.* The Ld. counsel submitted that the Ld. PCIT has on the contrary relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Grace Collies (supra) wherein *it is clarified that extinguishment in the rights in shares, without a conveyance, does not attract capital gain/loss.* The Ld. counsel submitted that out of two decisions of



Hon'ble Supreme Court, the Assessing Officer has followed one decision and therefore, following of one of the opinion available out of two opinions, the assessment order cannot be held to be erroneous in so far as prejudicial to the interest of the Revenue, in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Max India Ltd. 295 ITR 282 (SC). Similarly, regarding the claim of loss on account of waiver of right of receiving the loan is also approved by the Hon'ble Bombay High Court in the case of CIT vs. Siemens Nixdorf Information System GmbH [2020] 114 Taxmann.com 531 (Bombay) and PCIT v. Reliance Natural Resources Ltd. [2019] 111 Taxmann.com 413 (Bombay), wherein the Hon'ble jurisdictional High Court held *that loan given by the assessee to its subsidiary company would be covered by the meaning of 'capital asset' u/s 2(14) of the Act*. It was contended that the learned PCIT's general proposition — that loans or receivables are excluded from the definition of capital asset unless held as stock-in-trade by a money-lending concern — proceeds from an incomplete appreciation of the factual matrix and is inconsistent with the precedents of the jurisdictional High Court relied upon by the assessee. Regarding the third issue of bad debt written off of interest, the Ld. counsel for the assessee submitted that when the said interest was already offered to tax by the assessee for tax, then there is no reason to disallow the bad debt written off as expenditure in the hands of the assessee.



4. The Ld. Departmental Representative (DR) relied on the order of Ld. PCIT.

5. We have heard rival submissions of the parties and perused the relevant materials on record. In the case, the Ld. PCIT has invoked provisions of section 263 of the Act on two grounds. **Firstly**, the assessment order is deemed to be erroneous in so far as prejudicial to the interest of the Revenue in view of clause(a) of Explanation 2 to section 263 of the Act as the Assessing Officer had not carried out the inquiry which ought to have been carried out in the facts and circumstances of the case. The **second** issue is on merit of the issues raised. The Explanation submitted by the assessee are not found in order by the PCIT and therefore, the he held the finding of the Assessing Officer as erroneous in so far as prejudicial to the interest of the Revenue.

5.1 As far as first reason for proceeding u/s 263 is concerned before us, the Ld. counsel for the assessee has referred to notices issued by the Assessing Officer on various dates, *interalia*, issued on 29.06.2021; 14.11.2021; 12.12.2021; 07.12.2022; 02.03.2022; 15.03.2022; and 19.03.2022. The assessee has filed reply of all notices issued by the Assessing Officer. In those notices, the Assessing Officer inquired about the claim of capital reduction of share capital of 'Kamani' , waiver of right to receiving of loan given to Kamani and reduction of bad debt receivable from Chinmaya. The Assessing Officer has examined the reply of the assessee and



analyzed the decisions relied upon and thereafter, chosen not to make any addition on those grounds, particularly, when the case was selected for scrutinizing on those issues. We notice that specific questions have been asked by the Assessing Officer on those issues and replied by the assessee with documentary evidences, which means that Assessing Officer after verification of the allowability of the claim considered not to make any additions on all these issues. Therefore, in our opinion, it cannot be held that Assessing Officer had not carried out inquiry which ought to have been carried out. In the facts and circumstances, accordingly, invoking of Explanation 2 to section 263 of the Act by the Ld. PCIT is unwarranted and hence, rejected.

5.2 As far as issue on merit is concerned, the first issue is of loss on capital reduction on share capital of 'Kamani' pursuant to the order of NCLT. The company 'Kamani' reduced shares held by all share holders *inter alia* the shares held by the assessee from 1,43,83,060 number of equity shares to 1,04,160 equity shares, whereby the 'Kamani' cancelled and extinguished 1,42,78,900 equity shares and in consideration, paid Rs.050 per equity shares aggregating to Rs.71,39,450/-. Thus, the shares have been extinguished in favour of the assessee company. In such circumstances, the Ld. PCIT was of the opinion that shares have been extinguished without any conveyance and therefore, in view of decision of the Hon'ble Supreme Court in CIT vs. Grace Collies



(supra) the transaction does not attract capital/loss. Whereas, in our opinion, the Ld. PCIT has not examined the facts of the case properly. The case squarely falls within the ratio of the Hon'ble Supreme Court in the case of PCIT vs. Jupiter Capital Pvt. Ltd. (supra), wherein the proportion in the share holding of the shareholder due to reduction of share capital of investee company held to be squarely covered within ambit of Explanation sale, or exchange, relinquishment of the word 'assets' used in section 2(14) of the Act. Thus, even if it is considered that Ld. PCIT is correct in holding that Assessing Officer should have followed the decision in the case of CIT v. Grace Collis (supra), the two opinions exists on the issue in dispute and the Assessing Officer has followed one of the opinion on law. The Assessing Officer cannot be held to be erroneous or prejudicial to the interest of the Revenue in view of decision of the Hon'ble Supreme Court in the case of CIT v. Max India Ltd. (supra), wherein the Hon'ble Supreme Court held that *every loss or revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the Revenue, for example when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree it cannot be treated as erroneous or prejudicial to the interest of the Revenue, unless the view taken by the Income-tax Officer is sustainable in law.*



5.3 Identical view has been taken by the Hon'ble Bombay High Court in the case of CIT vs. Future Corporate Resources Ltd. [2021] 132 taxmann.com 173 (Bombay) wherein it is held that para 6 of the decision:

“6. Mr. Tejveer Singh in fairness agreed that the law is very clear and inasmuch as if there are two possible views and the Assessing Officer has chosen one of the possible views then there is no reason to exercise power of revision and revisional powers cannot be exercised for directing a full inquiry to find out if that view taken after an inquiry is erroneous. Moreover, the power of revision can only be exercised where no inquiry as required under the law is carried out and even in case of inadequate inquiry by the Assessing Officer, the order of the Assessing Officer could not be reviewed.”

5.4 As far as second issue of capital loss of right of waiver to receive the loan is concerned, the assessee signed a deed of settlement with 'Kamani' whereby he agreed to waive or settle his loan of Rs.30 cores for an amount of Rs. 9 lakhs and claimed a loss of Rs.29.5 crores as short term capital loss. The Id PCIT is of the view that such loan was not a capital asset in the hand of the assessee because accordingly capital asset has been defined in section 2(14) of the Act, according to which, the loan or receivables are excluded from the definition of the capital asset unless held as stock in trade in a money lending business. For ready reference, section 2(14) of the Act is reproduced as under:

“(14) ⁵³[“capital asset” ⁵⁴ means-

- (a) property ⁵⁴ of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made



under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

Following sub-clause (b) shall be substituted for existing sub-clause (b) of clause (14) of section 2 by the Finance Act, 2025, w.e.f. 1-4-2026:

(b) any securities held by-

- (i) a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992); or
- (ii) an investment fund specified in clause (a) of Explanation 1 to section 115UB which has invested such securities in accordance with the provisions of the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or under the International Financial Services Centres Authority Act, 2019 (50 of 2019);

⁵⁵[(c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply ^{55a}[on account of the applicability of the fourth and fifth provisos thereof],]

but does not include-

(i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession ;

⁵⁶[(ii) personal effects ⁵⁷, that is to say, movable property (including wearing apparel and furniture) held ⁵⁷ for personal use ⁵⁷ by the assessee or any member of his family dependent on him, but excludes-

- (a) jewellery;
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Explanation.-For the purposes of this sub-clause, "jewellery" includes-

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any



wearing apparel;]

[58](#)[(iii) agricultural land [59](#) in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality [59](#) (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population [60](#) of not less than ten thousand [61](#)[***] ; or

[62](#)[(b) in any area within the distance, measured aurally,-

- (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
- (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or
- (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.-For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]

[63](#)[(iv) 6½ per cent Gold Bonds, 1977, [64](#)[or 7 per cent Gold Bonds, 1980,] [65](#)[or National Defence Gold Bonds, 1980,] issued by the Central Government;]

[66](#)[(v) Special Bearer Bonds, 1991, issued by the Central Government ;]

[67](#)[(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 [68](#)[or deposit certificates issued under the Gold Monetisation Scheme, 2015] notified by the Central Government.]

[69](#) [[70](#)[Explanation 1.-For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.]

[71](#)[Explanation 2.-For the purposes of this clause-

- (a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to [section 115AD](#);
- (b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) [72](#);]"



5.5 In view of plain language of section, it is clear that any kind of property whether it is connected with the business or profession it is held to be capital asset. The properties which have been excluded from the definition of capital asset are as stock-in-trade, personal effect etc. Thus the loans does not fall into the excluding definition. The assessee in support thereof relied on the decision of the Hon'ble Bombay High Court Nixdorf Information System GmbH (supra) and Reliance Natural Resources (supra) wherein it is squarely held that loan given by assessee to its subsidiary company would be covered by section 2(14) of the Act. Thus, the finding of the Ld. PCIT on merit is not in accordance with law.

5.6 Further, as far as issue of the claim of bad debt written off for interest receivable from M/s Chinmaya Associates of Rs.3,42,57,549/- is concerned, the Ld. PCIT has merely relied on presumption and assumption. The contention of the PCIT is that firm continue to exist and it could revive as well and hence there was no evidence that said debt had become fully irrecoverable. In this regard we may like to refer to the decision of the Hon'ble Supreme Court in the case of T.R.F. Ltd. v. CIT [2010] 90 Taxman 391/323 ITR 397, wherein it is held that *bad debts need not be proven to be irrecoverable u/s 36(1)(vii) and it is sufficient if they are written off*. In the case, the assessee has discharged its burden of written off of debt in books of accounts and therefore, the finding of the Ld. CIT(A) is not in accordance with law.



5.7 In view of above discussion, the order of the Ld. PCIT is not sustainable in law both on Explanation-2 to section 263 as well as on merit. Accordingly, we set aside the order of the Ld. PCIT and restore the order of the Assessing Officer.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26/09/2025.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/09/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai