

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'SMC', KOLKATA  
[Before Shri P.M. Jagtap, AM]**

**I.T.A. No. 2337/Kol/2017**  
Assessment Year: 2006-07

***M/s. Best Luck Developers Pvt. Ltd.....Appellant***  
***5, Middleton Street,***  
***Kolkata - 700 071.***  
***[PAN: AABCB 2930 JJ]***

***I.T.O. Ward 8(1) Kolkata.....Respondent***  
***P-7, Chowringhee Square,***  
***Kolkata - 700 069***

**Appearances by:**

*Shri Soumitra Choudhury, Advocate appearing on behalf of the Assessee.*  
*Md. Ghayas Uddin, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : March 22, 2018

Date of pronouncing the order : April 04, 2018

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 3, Kolkata dated 22.08.2017.

2. The assessee in the present case is a company which derives income from house property and other sources. The return of income for the year under consideration was filed by it on 15.11.2006 declaring a total income of Rs. 97,275/-. In the assessment originally completed under section 143(3) vide an order dated 15.09.2008, the total income of the assessee was determined by the Assessing Officer at Rs. 97,280/-. Thereafter it was noticed by the A.O. that the assessee had claimed excess inadmissible deduction from its income chargeable to tax and there was an escapement of income of the assessee to the extent the said deduction was allowed in the

assessment completed under section 143(3). He, therefore, reopened the assessment and issued a notice under section 148 on 22.03.2013 after recording the reasons. In reply, a letter dated 22.04.2013 was filed by the assessee stating therein that the return originally filed by it on 15.11.2006 may be treated as the return filed in response to the notice under section 148. Thereafter the assessment was completed by the A.O. under section 147/143(3) of the Act vide an order dated 21.03.2014 wherein he made an addition of Rs. 47,701/- to the total income of the assessee by way of disallowance of assessee's claim for deduction on account of business expenditure to that extent.

3. Against the order passed by the A.O. under section 147/143(3), an appeal was preferred by the assessee before the Ld. CIT(A) challenging therein the validity of the said assessment as well as disputing the addition made therein on account of disallowance of business expenses. After considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) rejected the objection of the assessee regarding the validity of assessment and upheld the order passed by the A.O. under section 147/143(3). He also confirmed the addition of Rs. 47,701/- made by the Assessing Officer on account of disallowance of business expenses. The appeal filed by the assessee before him thus was dismissed by the Ld. CIT(A) and aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal raising the preliminary issue relating to the validity of the assessment made by the assessee under section 147/143(3) as well as disputing

the addition of Rs. 47,701/- made to its total income on account of disallowance of business expenses.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee company in its appeal challenging the validity of assessment made by the A.O. under section 147/143(3), the learned counsel for the assessee has submitted that the assessment originally completed under section 143(3) was reopened by the A.O. on the basis of same material and the said reopening thus was bad in law as the same was made on the basis of change of opinion. In support of this contention, he has relied inter alia on the decision of Hon'ble Supreme Court in the case of CIT vs Kelvinator of India Ltd. 320 ITR 561. He has also placed on record a copy of reasons recorded by the A.O. which read as under:

*"In the instant case, the return of income for A.Y. 2006-07 was filed declaring a total income of Rs. 97,980/-. The assessment was completed u/s 143(3) on accepting the returned income as filed by the assessee-company. Later on perusal of the records reveals that the assessee had claimed excess inadmissible deduction from its income chargeable to tax.*

*I have therefore reason to believe that the income chargeable to tax had escaped assessment and this is a fit case for action u/s 147 of the Act.*

*Since more than four years from the end of the relevant assessment year has already elapsed, a pro forma report is being sent for CIT's perusal and kind approval for issue of the notice u/s 148 of the Income Tax Act, 1961. The time limit for service of notice u/s 148 of the I.T. Act, 1961 on the assessee company will expire on 28.03.2013 (29, 30 & 31<sup>st</sup> being holiday.)*

*Income tax assessment records for A.Y. 2006-07 is also forwarded herewith for kind perusal.*

*Put up for kind approval of Ld. CIT, Kolkata III, Kolkata.”*

5. A perusal of the reasons recorded by the A.O. as above clearly shows that the assessment completed under section 143(3) was reopened by him on the basis of same set of facts and material as available before him while completing the assessment u/s 143(3) without there being any new tangible material coming to his possession and even the learned DR has not been able to rebut or controvert this position clearly evident from the reasons recorded by the A.O. It is thus clear that the assessment originally u/s 143(3) was reopened by the Assessing Officer merely on the basis of change of opinion, which is not permissible in law as held inter alia by the Hon'ble Supreme Court in the case of CIT vs Kelvinator of India Ltd. (supra) I, therefore, hold that the reopening of assessment by the A.O. in this case was invalid and the assessment completed by him u/s 147/143(3) in pursuance of such improper and invalid initiation is liable to be cancelled being bad in law. I order accordingly and allow this appeal of the assessee.

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

Order Pronounced in the Open Court on 4<sup>th</sup> April, 2018.

Sd/-

(P.M. Jagtap)

ACCOUNTANT MEMBER

**Dated: 04/04/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Best Luck Developers Pvt. Ltd., 5, Middleton Street, Kolkata – 700 071.
2. ITO Ward 8(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata