

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
(समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)  
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. No. 2146/Kol/2016**  
**Assessment Year: 2008-09**

Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.	Vs.	Bharat Bhari Udyog Nigam Ltd. (PAN: AABCB1891J)
Appellant		Respondent

Date of Hearing	12.06.2018
Date of Pronouncement	27.06.2018
For the Appellant	Shri Sallong Yaden, Add. CIT
For the Respondent	Shri Ravi Tulsian, FCA

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal preferred by the Revenue is against the order of the Ld. CIT(A)-4, Kolkata dated 22.08.2016 for assessment year 2008-09.

2. The sole ground of appeal of Revenue is directed against the action of Ld. CIT(A) in annulling proceedings of AO u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. Briefly stated the facts are that in this case order u/s. 143(3) of the Act was passed on 29.12.2010 on an assessed total income of Rs.7,96,120/-. Subsequently, the case was reopened u/s. 147 of the Act and assessment was completed by the AO by making an addition of an amount of Rs.1,16,07,168/- u/s. 143(3)/147 of the Act dated 30.03.2014 on the ground that disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the “Rules”) has not been made in the original assessment. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who, held that the initiation of reassessment proceedings by the AO itself is bad in law and accordingly, he

annulled the notice issued u/s. 148 of the Act as ultra-vires. Aggrieved, revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the original assessment in assessee's case was completed u/s. 143(3) of the Act on 29.12.2010. Thereafter, the AO sought to reopen the assessment on the ground that disallowance under section 14A read with Rule 8D has not been made in the original assessment and thereafter notice u/s. 148 of the Act was issued proposing to reopen the assessment and thereafter has made the impugned reassessment. On appeal, the assessee brought to the notice of the Ld. CIT(A) that the AO himself has acknowledged the fact that the assessee voluntarily offered a sum of Rs.25,700/- as expenses attributable to earning dividend income in the return of income and, therefore, the AO after going through the return of income and computation of income has accepted the claim of the assessee. Therefore, according to assessee, without any tangible material to suggest escapement of income, the AO's action is akin to change of opinion which is not permissible in law because AO does not enjoy power to review his own order. We note that the assessee in its audit report had clearly shown Rs.25,700/- as amount of deduction inadmissible in terms of section 14A of the Act in respect of the expenditure incurred in relation to income which does not form part of the total income. The AO during scrutiny assessment has taken note of the claim of the assessee and has accepted the fact that the assessee had suo-moto disallowed Rs.25,700/- as expenses attributable to earning the exempt dividend income. Therefore, we note that the purpose of reopening was to make disallowance as per Rule 8D is, therefore, akin to review of his own action which not permissible as per law because AO does not have power to review his own order. In the aforesaid facts and circumstances, the action of the AO is nothing but change of opinion which is not permissible as held by the Hon'ble Supreme Court in CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) wherein Hon'ble Apex Court has held as under:

*“The concept of “change of opinion” on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of section 147 of the Income-tax Act, 1961, by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment,*

*the Assessing Officer has to have reason to believe that income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of "change of opinion" must be treated as an in-built test to check the abuse of power. Hence after April 1, 1989, the Assessing Officer has power to reopen an assessment, provided there is "tangible material" to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief."*

We note that the Ld. CIT(A) taking note of the aforesaid judicial precedent have given relief to the assessee, so, we are not inclined to interfere in the order passed by the Ld. CIT(A) and the same is hereby upheld. Therefore, the appeal of revenue is dismissed.

5. In the result, the appeal of Revenue is dismissed.

Order is pronounced in the open court on 27.06.2018

Sd/-  
(Dr. A.L. Saini)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated :27<sup>th</sup> June, 2018

JD(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-11(1), Kolkata.
2. Respondent – Bharat Bhari Udyog Nigam Ltd., 26, Raja Santosh Road, Kolkata-700 027.
3. The CIT(A) - 4, Kolkata (e-mailed)
4. CIT , Kolkata
5. DR, ITAT, Kolkata. (e-mailed)

/True Copy,

By order,

Sr. Pvt. Secretary