आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./**I.T.A. No.704/Chny/2020**
निर्धारण वर्ष/Assessment Year: 2008-09

The Deputy Commissioner of Income Tax, Corporate Circle – 3(2), Chennai – 600 034.	Vs.	M/s. Venture Lighting India Ltd., Plot No. A-30, D-5, Phase II, Zone-B, MEPZ, Tambaram, Chennai 600 045. **[PAN: AAACA9284H]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri P. Sajit Kumar, JCIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing	:	19.10.2022
घोषणा की तारीख /Date of Pronouncement	:	18.11.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-7, Chennai, dated 09.03.2020 for the assessment year 2008-09.

2. The appeal filed by the Revenue is delayed by 78 days in filing the appeal due to outbreak of COVID-19 pandemic and hence, the delay in filing the appeal is condoned and admitted the appeal for

adjudication.

3. Facts are, in brief that the assessee company filed its return of income for the assessment year 2008-09 originally on 23.09.2008 with a returned income of ₹.3,85,36,870/-. The assessee has also filed a revised return of income on 24.09.2009 admitting an income of ₹.11,33,84,760/-. The return filed by the assessee was selected for scrutiny under CASS and notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] was issued on 23.08.2010. The assessment under section 143(3) r.w.s. 144C of the Act was completed on 09.12.2011. Subsequently, the Assessing Officer has issued notice under section 148 of the Act for reopening the assessment by observing that on perusal of the records, the assessee company has not paid the self assessment tax payable as per the original return of income for the assessment year till the revised return of income was filed. The assessee company has also raised the provision for expenses and bad debt in the balance sheet and the same has not been added while computing the total income and there is short levy of interest under section 234C of the Act in the said order dated 09.12.2011. In addition to the above, the assessee company has not added the foreign exchange loss reduced from the income for the

assessment year 2007-08 to the income for the assessment year 2008-09. Accordingly, the assessment was reopened under section 147 of the Act and notice under section 148 of the Act dated 12.03.2013 has been issued to the assessee. Further, the reasons for reopening has also been provided to the assessee vide letter dated 16.09.2013. The assessee has also filed its reply dated 09.11.2013. After considering the submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 12.03.2014.

4. The assessee carried the matter in appeal before the ld. CIT(A) and challenged reopening of assessment on the ground that there is no tangible material available with the Assessing Officer while reopening the assessment. Only on the basis of materials already available on record, the Assessing Officer has reopened the assessment and therefore, it is change of opinion, which is not permissible in view of the judgement of the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd. 320 ITR 561. By considering the submissions of the assessee, the ld. CIT(A) has observed that by verifying the records which are already available with the Department during the course of scrutiny assessment, the Assessing Officer has reopened the

assessment, is contrary to the above judgement of the Hon'ble Supreme Court and accordingly quashed the assessment order passed under section 143(3) r.w.s. 147 of the Act dated 12.03.2014.

5. Aggrieved, the Revenue is in appeal before the Tribunal. The ld. DR strongly supported the order passed by the Assessing Officer.

6. On the other hand, the ld. Counsel for the assessee has supported the order passed by the ld. CIT(A) and heavily relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd. (supra).

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The only issue involved in this appeal of the Revenue is whether the reopening of assessment is valid or not and whether any new or tangible material came to the notice of the Assessing Officer to verify the same or not. The Assessing Officer has noted in the assessment order dated 12.03.2014 that the assessee company has not paid the self assessment tax payable as per the original return of income for the assessment year till the revised return of income was filed. The assessee company has also raised the provision for expenses and bad

debt in the balance sheet and the same has not been added while computing the total income and there is short levy of interest under section 234C of the Act in the said order dated 09.12.2011. In addition to the above, the assessee company has not added the foreign exchange loss reduced from the income for the assessment year 2007-08 to the income for the assessment year 2008-09 and therefore, the Assessing Officer reopened the assessment under section 147 of the Act. From the above, it is very clear that no new or tangible material brought on record by the Assessing Officer to reopen the assessment. The Assessing Officer, only based on the material available on record re-examined and formed a different conclusion that there is an escapement of income chargeable to tax. The same records were already verified by the Assessing Officer and passed a detailed assessment order under section 143(3) r.w.s. 144C of the Act dated 09.12.2011. Therefore, subsequent reopening of assessment under section 147 of the Act was not based on any new or tangible material brought on record. It was only based on the material already available on record. Therefore, it can be concluded that the reopening is only change of opinion, which is not permissible as per the law laid down by the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd.

(supra).

8. In similar circumstances, the Hon'ble Madras High Court in the case of TANMAC India v. DCIT [2017] 78 Taxmann.com 155 (Madras) [TCA No. 1426 of 2007] has considered an identical issue and by following the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd. (supra), the Hon'ble Jurisdictional High Court has held that "what is sought to be done by the re-assessment, ought to have been achieved by scrutiny assessment proceedings. Having not done so, the Department cannot be permitted to avail of the extended time limit in the absence of any new or tangible material". The relevant portions of the judgement of the Hon'ble Madras High Court are reproduced as under:

> *"10. Let us now see the sequence of events that have transpired in this case. The Assessee filed a return of income pursuant to which, an intimation dated 01.12.1998 under section 143(1) (a) of the Act was issued. The provisions of Section 143(2) require that if the Assessing Officer considered it necessary or expedient to ensure that the Assessee has not understated income, claimed excessive loss or underpaid tax in any manner, the assessment is to be subject to further scrutiny, a notice under section 143(2) is liable to be issued and the assessment completed on or before 31.03.2001. This was not done in the present case. Subsequently, a notice under section 148 has been issued on 09.12.2002 under section 148 of the Income Tax Act taking advantage of the now extended limitation of four years to re-assess income on the basis of the same materials that were available with the authority as part of the record.*
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> *11. The phrase 'reason to believe' in Section 147 relates to such other new or tangible material as may have come to the knowledge of the Assessing Officer pursuant to the original proceedings for assessment. The Supreme Court in the case of Commissioner of Income Tax Vs. Kelvinator of India*

[2010] 320 ITR 561 / 1867 Taxmann 312 states thus in the context of the 'belief' that should form the basis for a re-assessment.

> *'We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review, he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of 'change of opinion' is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to the conclusion that there is escapement of income from assessment. Reasons must have a link with the formation of the belief.'*

12. If the Assessing Officer, after issuing intimation u/s. section 143(1) does not to issue a notice u/s.143(2) of the Act to initiate proceedings for scrutiny of the return of income, the obvious conclusion is that he does not consider it necessary or expedient to do so, the inference being that the Return of Income filed in order. It is this opinion that cannot be arbitrarily changed by the Assessing Officer, to re-assess income on the basis of stale material, already on record. If, we thus keep in the mind, the above fundamental requirement of Section 147, it would be apparent that the exercise undertaken by the Revenue in this case is not one of the re-assessment, but of review. The reasons make it abundantly clearly that the reassessment is sought to be initiated on the basis of the return of income and the enclosures which were available with the Assessing Officer since 02.11.2018 andf which ought to have prompted him to issue a notice under section 143(2) of the Act to conduct the proceedings under scrutiny. What is sought to be done by the re-assessment ought to have been achieved by scrutiny assessment proceedings. Having missed the bus earlier, the Department cannot be permitted to avail of the extended time limit in the absence of any new or tangible material, when the time for scrutiny assessment has elapsed on 31.03.2001, prior to issue of notice u/s.148. The notice under section 148 dated 09.12.2002 is thus an arbitrary exercise of power and a review of proceedings impermissible in law."

9. Considering the landmark judgement of the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd. (supra), the ld. CIT(A) has held that the reopening is bad in law and quashed the

reassessment order passed by the Assessing Officer. In view of the judgement of the Hon'ble Supreme Court in the case of CIT v. Kelvinator India Ltd. (supra) as well as the judgement of the Hon'ble Jurisdictional High Court in the case of TANMAC India v. DCIT (supra), we find no reason to interfere with the order passed by the ld. CIT(A). Accordingly, the ground raised by the Revenue is dismissed.

10. In the result, the appeal filed by the Revenue is dismissed

Order pronounced on 18th November, 2022 at Chennai.

Sd/-	Sd/-
(G. MANJUNATHA)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 18.11.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.