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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.5544/Mum/2017

(**निर्धारण वर्ष** / Assessment Years: 2010-11)

ACIT-6(2)(1) R. No. 504, 5th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	**बनाम** / Vs.	M/s. Charak Pharma Pvt. Ltd. 21, 2nd Floor, Evergreen Indl. Estate, Shakti Mills Lane, Dr. Moses Road, Mahalaxmi, Mumbai-400011.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC4014A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Krupa Gandhi
Revenue by:	Shri Hiren Bhatt (DR)

सुनवाई की तारीख / Date of Hearing: 01/11/2022

घोषणा की तारीख /Date of Pronouncement: 17/01/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-12, Mumbai dated 16.06.2017 for the assessment year 2010-11.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) holding the AO's action of re-opening the assessment for AY 2010-11 was bad in law, since it was based on *change of opinion*.

3. Brief facts are that the assessee had filed its return of income for AY. 2010-11 on 27.09.2010 admitting total income of nil under normal provisions of the Act and Book Profit of Rs.9,47,09,976/-. Later, the return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") on 13.05.2011 raising demand of

Rs.13,80,780/-. Subsequently, the case of the assessee was selected for scrutiny under CASS. And thereafter, the AO noted that the assessee has shown gross business of income of Rs.8,69,16,263/- and had claimed the same as deduction under Chapter VIA of the Act; and after verification of the details, the AO accepted the total income of the assessee at Nil and since the book profit was to the tune of Rs.9,47,09,976/-, hence assessment was completed on income u/s 115JB at Rs.9,47,09,976/- by assessment order u/s 143(3) of the Act dated 28.01.2013. Later, the case of assessee was reopened u/s 147 of the Act and the AO vide order dated 28.03.2016 assessed the total income at Rs. 3,73,82,706/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein it challenged the legality/validity of the reopening made by AO u/s 147 of the Act (change of opinion to reopen). The Ld. CIT(A) has allowed the legal ground raised by the assessee after taking note that all the three (3) issues raised by the AO for reopening the assessment were inquired by the AO in the original assessment dated 28.01.2013 and therefore the action of the AO to re-open the assessment tantamount to review (by AO) which is not permissible by law and the impugned action of the AO is nothing but change of opinion. And therefore the Ld. CIT(A) held the action of AO to re-open the assessment itself as bad in law by holding as under: -

> "6.2 I have carefully perused the assessment order and the submission of the appellant.
>
> The fact of the case reveals that the appellant had claimed a deduction of Rs.14,07,18,475/- in respect of the profit earned of Rs.6,86,33,106/-

by its unit located at Silvassa and Rs.7,20,85,369/- by its unit located at baddi totaling to Rs.14,07,18,475/- which are eligible for deduction u/s 80IB and u/s 80IC of the Act respectively. The appellant had computed the said profits by charging direct expense to the respective units and apportioning the common expenses to the eligible units and non -eligible units on turnover basis. The AO after verification of all the details has completed the assessment u/s 143(3) on 28.01.2013. Subsequently, AO has opinion that the expenditure of Rs 2,53,85,585/- on research and development was required to be allocated to eligible and non-eligible unit on the ground that it would amount to double deduction because of inflated profit of eligible business to the extent corresponding R & D expenses. It is found from the reason for reopening with respect to R & D expenditure, that the AO has not noted as to why R & D expenditure will amount to double deduction with respect to eligible units. The AO has not referred to any material which will indicate that the product manufactured at any particular eligible unit / non eligible unit is developed by the appellant's Research and Development facility. Normally, research and development activity carried out by the asssessee is for the new product launch, to be launched in future. The assessee may be successful or not, or it may get patent right and subsequently get income by giving it on licences. The AO has no material on record to show that the new product launched, if any has been manufactured at eligible unit. Therefore, the reason recorded is only on presumption that the new product was manufactured at eligible units. Therefore, it can be very well be concluded that the AO at the time of original assessment has applied his mind properly and subsequently merely on the basis of change in opinion the AO has recorded the reason for reopening without any material on records and on the basis of assumption and presumption.

Secondly, the AO has recorded the reason that in view of section 80AB rws 80B(5) of the Act, the deduction u/s 80IC or 80IB of the Income Tax Act is to be computed with respect to net income as computed in accordance with the provision of the Act before making any deduction under chapter VIA included in the gross total income and not with respect to the gross income of the units eligible for deduction . It is found that the same fact was available with the AO at the time of original assessment and hence this was a change in opinion of the AO. The AO has not noted as to what was the appellant's note to disclose a true and correct fact at the time of original assessment.

Further, it is found from the computation of income that the appellant had claimed deduction under chapter VA u/s 80IB of Rs 2,03,38,088/- and u/s 80IC of Rs 6,92,92,528/- aggregating deduction under chapter VA of Rs 8,69,16,263/-. The appellant has not claimed any loss for future set off. The AO, in the assessment order u/s 143(3) dated 28.01.2013 has restricted the chapter VA deduction to the gross total income and no loss was allowed to carry forward. Therefore, condition as stipulated in section 81AB rws 80B(5) of the Act was fulfilled. Further, the AO has not given any reason as to why the loss of Samalkha unit was distributed between the eligible unit on the basis of sale ratio. What the AO has not looked into or not applied his mind is on the facts of the case to distribute the loss of Samlakha Unit to the eligible units. The AO has not mentioned any material / documents which would indicate that the loss of Samalkha Unit has to be distributed amongst the eligible unit. Therefore, this action of the AO is found to be only a change in opinion to rework the gross total income as per his will. Therefore, there is no reason found on merit to form a belief that the income has escaped to tax.

The third reason found for reopening is purely a guess work of the AO that there appears that no tax has been deducted on the commission

> paid to the related concern and there might be an excessive or unreasonable expense which is to be disallowed. The AO, during reassessment proceedings has made the addition on the presumption that what is reasonable which itself indicates that there was no belief of the AO to the escapement of income and further it is seen that the appellant, has furnished all the relevant material at the time of original assessment and disclosed all the facts correctly.
>
> In view of this, I do not find any force in reopening of the assessment and also in the A.Os recording of the reason. The reason recorded for reopening is found to be on the basis of change in opinion and it is seen that there was no material in possession of AO to believe that the income has escaped to tax. Accordingly, ground no 1 of the appeal is allowed."

4. Aggrieved by the aforesaid action of the Ld. CIT(A), the revenue is before us challenging the action of the Ld. CIT(A) to hold the re-opening of assessment for AY 2010-11 by AO itself bad in law.

Since the Revenue has challenged the Ld.CIT(A)′s impugned action of holding the re-opening of assessment bad in law, let us look into the settled position of law regarding the power of AO to re-open the assessment u/s 147 of the Act. The concept of assessment is governed by the time- barring rule; and an assessee acquires a right as to the finality of proceedings. Quietus of the completed assessments can be disturbed only when there is information or evidence regarding undisclosed income or AO has information in his possession showing escapement of income as stipulated u/s 147 of the Act. As per Section

147 of the Act, if the AO intends to re-open the assessment, then AO has to record the reason to reopen the assessment, wherein he should record the *"reason to believe, escapement of income"*. It is settled principle of law that *"reason to believe"* postulates a foundation based on information and belief based on reason. After a foundation based on information is there, still, there must be some reason which should warrant the holding of a belief that income chargeable to tax has escaped assessment. In other words, before the AO issues notice u/s 148 of the Act, he must have recorded the *reason to believe escapement of income*. It is no doubt true that this Tribunal cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the AO on the point as to whether action should be initiated for re-opening the assessment. At the same time, we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant or remote and far-fetched, which would warrant the formation of belief relating to escapement of income. It is well settled in law that reasons as recorded by AO for re-opening the assessment, are to be examined on a stand-alone basis. Neither anything can be added to the reasons so recorded, nor can anything be deleted from the reason so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (2004) 268 ITR 332 (Bom) has inter alia observed that *".....it is needless to mention that the reasons are required to be read as they were recorded by the AO. No*

substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons". Their Lordship added "*The reasons recorded should be self-explanatory and should not keep the assessee guessing for reason. Reason provide link between conclusion and the evidence...*". And it should be borne in mind that if AO has enquired upon an issue in a scrutiny assessment, then later AO cannot be allowed to re-open the assessment to again look in to the same issue because it would tantamount to review of his own order, which power AO is not vested with. The Hon'ble Supreme Court in the case of CIT vs Kelvinator of India [320ITR561] observed '……..One must treat the concept of '*change of opinion*' as an in-built test to check abuse of power by AO. Hence after 1.4.1989, the AO has power to re-open, provided there is '*tangible material'* to come to a conclusion that there is escapement of income from assessment……*'*

5. Keeping the aforesaid principles in mind let us examine the impugned action of Ld. CIT(A) allowing the legal ground raised by assessee holding that the AO's action to re-open the original scrutiny assessment itself bad in law because the issues raised by the AO to re-open had undergone enquiry during original assessment and therefore the action of AO to re-open the assessment was nothing but change of opinion. For examining whether Ld CIT(A) is right or wrong, let us

first look into the reasons recorded by the AO for reopening the assessment (reproduced page 133-134 of PB) which reads as under: -

> **Reasons for reopening of assessment u/s 147 of the IT Act, 1961**
>
> 1, The assessee e-filed the return of income on 27.09.2010 declaring total income at Rs.Nil under normal provisions of the Act and Book profit of Rs.94,70,99,076/ - under MAT provisions. Assessment, after scrutiny, was completed on 28.01.2013 accepting the returned income. On perusal of records following discrepancies were noticed.
>
> 2. On verification of the records it is found that the assessee had claimed deduction of Rs,6,92,92,528/-u/s 80IC and Rs.2,03,38,088/- u/s 80IB and the was allowed. The assessee was also allowed deduction u/s 35(AB) in respect of research and development activities amounting to Rs.3,16,56,495/-. The assessee Was having three units at Baddi, Silvassa and Samalkha of which Baddi unit was eligible for deduction u/s 80IC and Silvassa unit u/s 8OIB. The profit of Samalkha unit was not eligible for any deduction under chapter VI.
>
> The unit wise P & L and computation of income under income Tan Act was not furnished by the assessee company at the time of assessment proceedings. Un perusal from form 1OCCB in respect of Baddi and Silvassa units, the assessee company had shown profits derived at Rs.7,20,85,369/- and Rs.6,86,33,106/- respectively and had claimed deduction with respect to this gross profits as against the net income included in the gross total income as discussed hereunder. The profit on these two eligible units works out to Rs.14,07,18,475/- whereas the net profit as per consolidated book account was at Rs.11,53,32,890/- (excluding R & D expenses of Rs 20504723/- It is clearly shows that there was a loss

Rs,2,53,85,985/- from non-eligible business of Samalkha unit. The loss so derived from non-eligible business was rec to be set off against profit of eligible business before allowing deduction under chapter VI "As per provision of section 80AB rws 80B(5) of the Income Tax Act, 1961 deduction u/s 8OIC or 80IB is to be computed with respect to net income as computed in accordance with the provisions of the Act before making any deduction under chapter VI-A included in the gross total income and not with respect to gross income of the units eligible for deductions.

It was also noticed that the weighted deduction allowed u/s 35(2AB) at Rs.3,16,56,495/- in respect of R & D expenses of Rs.2,53,85,553/- was required to be allocated to eligible and non-eligible business, otherwise it would amount to double deduction because of inflated profit of eligible business to the extent corresponding R & D expenses.

Considering the issues discussed above the deduction u/s 80IC and 80IC works out to Rs.5,99,51,476/-.

Particulars	Total	Baddi (80IC unit)	Silvassa (80IB Unit)	Samalkha (non eligible
Sales	109,05,66,222	37,72,97,633	58,53,13,302	12,79,55,287
Sales Ratio %	100	34.60	53,67	11.73
Profit (as sown)	11,53,32,890	7,20,85,369/-	6,86,33,106	(-) 12,53,85,585
Less R & D 35 (2AB)	3,16,56,495	1,09,53,147	1,69,90,040	37,13,306
Loss of Samalkha unit (39.61)	2,90,98893	2,13,48,568	1,77,50,325	
Net profit		4,97,83,654	3,38,92,741	
Deduction	5,99,51,476	4,97,83,654 (100%)	1,01,67,822 (30%)	

In view of the above excess deductions of Rs.2,69,64 787/- allowed needs to be withdrawn and brought to tax. Therefore, I have reason to believe that the taxable income to that extant has escaped income.

3. On perusal of records revealed that the assessee had paid commission of Rs.949.32 lakh to related firm M/s Ayurveda Agencies (Notes to Accounts and para 18 of form 3CD). The said firm is a Partnership firm in which partners are related to

Directors and Shareholders of the assessee Company. As per submission the commission was paid for sales promotion services rendered. The justification in respect of the said expenditure has been furnished during, the course of assessment proceedings to show that reasonableness and genuineness of the commission expenditure. Therefore the diversion of profits from the assessee company cannot be ruled out. Without prejudice to this it is observed that on the said Commission the assessee had deducted tax of Rs.13,37,419/- only. As per provision of section 194H tax was required to be deducted @ 10 percent which works out to Rs.94.93 lakh. In terms and conditions as per provision of section 40A (2a) of the Income 'Tax Act,1961, where the assessee incurs any expenditure in respect of which payment has or is to be made to any related person then the excessive or unreasonable expenses shall not be allowed as deduction. Further, as per provisions of section 40a(ia) of the Act, if the TDS is not deducted on any interest, commission or brokerage etc or after deduction has not been paid on or before the due date of filing return then the amount of expenditure is not allowable. In view of the above, the proportionate expense on account of Commission amounting to Rs.8,15,57419/- needs to be disallowed in the hands of the assessee, in accordance with the provision of section 40a(ia) of the Act. As there is failure on the parts of the assessee to disclose true and correct facts before the A.O. Proportionate disallowances in this respect has to be made.

4. In view of the above facts, I am satisfied that the assesses has not disclosed truly all material facts for determination of its true income and therefore income chargeable to tax has escaped to the extent as above. I have reason to believe that income

> chargeable to tax in excess of Rs.1,00,000/- has escaped assessment due to failure on part of the assessee to disclose truly all material facts necessary for assessment has escaped assessment.
>
> 3. Considering the above facts which the assessee had filed to disclose fully and truly all the material facts, I have reason to believe that income to that extent chargeable to tax has escaped assessment for such assessment year. 1 am satisfied that this is a fit case for issue of notice u/s.148 of the LT. Act, 1961. Issue notice u/s.148 of the IT Act, 1961."

6. After going through the reasons recorded, we note that the AO has raised three (3) issues which according to him has necessitated the reopening of the assessment. The first issue according to the AO was on account of non-allocation of Research & Development (R& D) expenses to the tune of Rs.2,53,85,585/-. According to him, the expenditure of Rs.2,53,85,585/- (R & D) was required to be allocated to both eligible and non-eligible unit. The Ld. AR brought to our notice that this issue was inquired during the original assessment proceedings before passing order u/s 143(3) of the Act on 28.01.2013 and drew our attention to notice u/s 142(1) of the Act dated 25.10.2012 page no. 79 of PB question no. 45 which reads as under: -

> "Furnish the details of expenses debited under the head research and development, giving details of the nature of research facility, section under which such expense has been claimed, certificate from DSIR."

7. And the assessee has replied vide letter dated 22.11.2012 (refer page no. 84 of PB) as under: -

> "Certificate from DSIR dated 16.06.2009 (valid upto 31.03.2012) with regard to Renewal of Recognition of In-House R & D Unit(s) is enclosed. Further, Auditor's Certificate for audit of in-house Research & Development (R&D) Centre of the assessee company is enclosed (Page nos. 237-239)."

8. The Ld. AR also drew our attention to page no. 107 to 108 wherein the Renewal of Recognition of In-House R & D Unit issued by the Government of India Ministry of Science & Technology dated 16.06.2009 is found placed therein; and page no. 108, the auditor's certificate in respect of expenditure of Rs.2,11,04,330/- is found placed therein. The Ld. AR also drew our attention to page no. 87 of PB wherein auditor's report for claiming deduction u/s 80IB of the Act for the Silvassa Unit is found placed in Form 10CCB (audit report for claiming deduction u/s 80-IB as per the (Rule 18BBB) is found and the relevant portion is reproduced as under: -

> "Based on an opinion obtained by the company, the Research & Development Expenditure incurred during the year at the Company's Head Office has been excluded while arriving at the Profit of the eligible business at Silvassa Unit for the year ended 31st March 2010 as such Research & Development Expenditure do not relate to the products manufactured by the company at such eligible business at Silvassa Unit or are related to products under development and yet to be manufactured by the Company."

9. Drawing our attention to the aforesaid portion of the declaration of the auditor, the Ld. AR pointed out that the expenditure incurred for R & D during the year at the company's head office has been excluded while arriving at the profits of the eligible business at Silvassa Unit.

10. Further, The Ld. AR also drew our attention to page no. 91-94 of the PB wherein auditors certificate regarding the Baddi Unit is found placed therein wherein the profit of Baddi unit claimed deduction u/s 80IC of the Act and the relevant observation regarding R & expenses is given as under: -

> "Based on an opinion obtained by the company the Research & Development Expenditure incurred during the year at the company's Head Office has been excluded while arriving at the profits of the eligible undertaking at Baddi Unit for the year ended 31st March 2010 as such Research & Development Expenditure do not relate to the products manufactured by the company at such eligible undertaking at Baddi Unit or are related to products under development and yet to be manufactured by the company."

11. Thus it was brought to our notice that R & D expenses of the Head Office was excluded while arriving at the profit of the eligible business at Baddi Unit also. Therefore, in the light of the aforesaid facts, according to the Ld. AR it can be seen that the AO during the original scrutiny assessment proceedings, after enquiry about the R & D expenses and after considering the details filed by the assessee regarding the R & D expenses (wherein the expenses related to R & D has been excluded for computation of profits of both Silvassa & Baddi

Unit) had accepted the claim of assessee and therefore, the action of AO to re-open the assessment on this issue is nothing but review or it can be termed as "*change of opinion*" And therefore, on the undisputed facts as noted supra, we find that the Ld. CIT(A), has rightly held that the AO's impugned action to re-open the scrutiny assessment completed u/s 143(3) of the Act dated 28.01.2013 on this issue could not have been the done since it is akin to review of his own order which he cannot do; or at any rate is nothing but "*change of opinion*" and so we confirm this action of the Ld. CIT(A).

12. Further, according to AO, (in the reasons recorded) as per Section 80AB read with Section 80B(5) of the Act, deduction u/s 80IC or 80IB is to be computed with respect to net income before making any deduction under Chapter VI-A included in gross total income and not with respect to the gross income of the units eligible for deduction. On this issue, as rightly taken note by the Ld. CIT(A), very same facts were available with the AO during the original assessment u/s 143(3) of the Act, so this observation of AO in the reasons recorded to re-open can also be termed as "*change of opinion*" because the AO in the reasons recorded to re-open didn't spell out what facts assessee did not disclose correctly; and therefore, the impugned finding of Ld. CIT(A) cannot be held to be perverse and so we concur with it.

13. Further, we note that in the original assessment order dated 28.01.2013, the AO has restricted the Chapter VA deduction to the gross total income and no loss was allowed to be carry forwarded. Therefore, it cannot be said that condition as stipulated u/s 80AB read

with section 80B(5) of the Act were not fulfilled. [Computation of income of assessee shows that it had claimed deduction under Chapter VA u/s 80IB of Rs.2,03,38,088/- and u/s 80IC of Rs.6,92,92,528/- aggregating deduction under Chapter VA of Rs.8,69,16,263/- and thus assessee has not claimed any loss for future set off] As rightly noted by Ld. CIT(A), AO has not given any reason as why the loss of Samlkha Unit need to be distributed between eligible units based on sale ratio. The AO has not mentioned in the reasons recorded any material/tangible material which would indicate such a course of apportionment of loss. Therefore, the apportionment of losses (as in chart) is whimsical/arbitrary exercise of power and any way as noted supra this observation of AO is nothing but change of opinion and so we do not find any infirmity in the action of Ld. CIT(A) on this score.

14. Next issue on which the AO has reopened was in respect of the payment made by the assessee as commission to the tune of Rs.949.32 lakhs to related firm M/s. Ayurveda Agencies which fact according to the AO itself is emanating from the notes to accounts, para 18 of Form 3CD. According to the AO, the Ayurveda Agencies is a partnership firm in which partners are related to the Directors and Shareholders of the assessee company. And as per the assessee's submission during original assessment which culminated in framing of assessment order u/s 143(3) of the Act dated 28.03.2016, the said commission was paid for sales promotion. The AO in the reasons recorded acknowledges that assessee had filed justification in respect of the said expenditure during the course of the original assessment proceedings to show that

expenditure (commission) paid was reasonable and genuine. However, the only fault which the present incumbent AO find is *' diversion of profit from the assessee company cannot be ruled out'*. Further according to AO, the assessee had only deducted tax at source of Rs.13,37,419/- (commission). However, according to him, as per provision of Section 194H of the Act, tax was required to be deducted @ 10% which works out to Rs.94.93 Lakhs. And therefore, as per the Section 40A(2a) of the Act, since TDS has not been deducted on the commission then the amount of expenditure is not allowable. And therefore, according to AO proportionate expenses on account of commission amounting to Rs.8,15,57,419/- needs to be disallowed. In this respect, the Ld. AR submitted that AO during original assessment proceedings have inquired in to the issue and drew our attention to page no. 76 of PB wherein the question no. 17 which is reproduced as under: -

> "17. Please furnish Name, Address PAN and Assessment details of the persons who are registered and beneficial owners of the Equity Shares of the company holding not less than 10% of the voting power at any time of the previous year. Also submit the ledger a/c. of each of such persons as appearing in the books of accounts of the company.
>
> a. …….
>
> b. Submit evidence of the TDS done & deposited in the Government on the Interest credited to the Directors and their relatives & Their concerns as also on the security deposits from the C & F Agents."

15. As well as question no. 44 at page no. 79 of PB which is as under: -

> "44. Submit complete and exhaustive details of all items included in schedule 17 and also submit evidence that necessary TDS wherever applicable was made and paid into Government treasury."

16. As well as question no. 48 at page no. 80 of PB which reads as under: -

> "Copies of account of the parties in respect of payments to persons specified u/s 40A(2)(b) of the Act along with copies P & L A/c and balance sheet with Annexure and justification for such payments giving the comparative instances."

17. As well as he drew our attention to page no. 80, question no. 55 which is as under: -

55. Furnish the details of Commission/brokerage paid in the following proforms

Sr. No.	Name and address & PAN of the broker	Description of shop/flat	Sale consideration	Amount of commission	Amount outstanding at the year end	Basis of payment

18. Thereafter, he drew our attention to the answer given by the assessee at page no. 122 of PB wherein the assessee has given the complete details of the commission paid to M/s. Ayurveda Agencies (item no. 28) to the tune of Rs.9,49,31,609/- wherein it is also recorded that Rs.77,40,905/- is for sales promotion services rendered. As acknowledged by the AO (in the reasons recorded) itself that assessee has filed the justification in respect of the said expenditure has been furnished during the course of assessment proceedings to show that expenditure incurred was reasonable and genuine. The Ld. AR drew our attention to page no. 63 of PB which is Exhibit "F" which is in respect of para18 of Form 3CD [details of payment made to persons specified under section 40A(2)(b) of the Act] wherein we note that the assessee has shown commission given to M/s Ayurveda

Agency to the tune of Rs.9,49,31,609/-. Thus, we note that the AO had during original assessment proceedings u/s 143(3) of the Act had looked into the issue which the present/incumbent AO has racked up as an issue for reopening which is nothing but review of the order of the AO which is not permissible and the Ld. CIT(A) has rightly held it to be change of opinion. And therefore the AO could not have reopened the assessment on this ground also. Thus, we note that the Ld. CIT(A) has rightly noted that this action of the AO for reopening tantamount to review of his own order or at any rate it was "change of opinion". Therefore, the Ld. CIT(A) has rightly held that the issues on which the AO has based his belief of escapement of income has already been looked into/inquired into by the AO in the original assessment u/s 143(3) of the Act dated 28.01.2013. Therefore, we completely agree with the view of the Ld. CIT(A) in allowing the legal issue, which action we uphold. Therefore, we dismiss the appeal of the revenue.

19. In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 17/01/2023.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 17/01/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**