

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.654/Kol/2022
Assessment Year: 2015-16**

Manish Parasrampur C/o, Bhandari B. C. & Co. 1/1A, BiplabiAnukul Chandra Street, Princep Street, Kolkata-700072. (PAN: AFXPP4472M)	Vs.	A.O. NFAC/DCIT, Circle-43, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddarth Agarwal, Advocate
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 10.01.2023
Date of Pronouncement : 23.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1045766823(1) dated 21.09.2022 against the assessment order by DCIT,NFAC, Delhi u/s. 147/144B of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 30.03.2022.

2. Grounds raised by the assessee are reproduced as under:

"1. For that the Ld. CIT(A) ought to have quashed the order passed by the Ld. A.O. u/s. 147 r.w. sec. 144B since the same is bad in law.

2. For that the Ld. CIT(A) ought to have considered that the re-assessment order dated 30.03.2022 framed u/s. 147/144B is void and nullity before the eyes of law as the recorded reasons are invalid and improper.

3. For that the Ld. CIT(A) ought to have quashed the entire reassessment considered that the re-assessment order is vitiated in law on the ground of change of opinion since normal scrutiny u/s 143(3) was done by the A.O on 07.11.2017 for the same year.

4. For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the action of the A.O. in treating the Short Term Capital Gain of Rs.39,41,595/- as unexplained cash credit u/s. 68 of the Act.

5. For that the Ld. CIT(A) ought to have considered that the claim of Short Term Capital Gain of Rs.39,41,595/- is genuine and bonafide transaction, as such, the same is liable to be taxed at Special Rate u/s. 111A of the Act.”

3. At the outset, Ld. Counsel for the assessee submitted that he is not pressing ground nos. 4 and 5 which deal with merit of the case and that he is restricting his arguments in the appeal only on the legal issues vide ground nos. 1, 2 and 3 relating to reopening of the assessment u/s. 147/148 read with section 144B of the Act.

4. Brief facts of the case are that assessee filed his original return of income on 31.10.2015 reporting total income at Rs.88,78,880/-. Case was selected for scrutiny assessment u/s. 143(3) of the Act for which statutory notices were issued and served on the assessee and were duly complied with. Total income reported by the assessee in the original return included income under the head Short Term Capital Gain (STCG) u/s. 111A of the Act comprising of STCG on sale of scrips of Larsen & Toubro Ltd., Gruh Finance Ltd., Sulabh Engineering, Mathew Easow Research Securities Ltd. and Appu Marketing & Manufacturing Ltd.

totalling to STCG of Rs.47,90,975/-. Assessee also earned and reported Long Term Capital Gain (LTCG) of Rs.6,00,549/- on sale of scrips of Sulabh Engineering claimed as exempt u/s. 10(38) of the Act. The income reported by the assessee under different heads of income for the computation of total income as tabulated in the original assessment order is extracted below:

A.	Income from Salary		26,40,000/-
B.	Income from House Property	(-)	65,710/-
C.	Income from business ; income from firm & speculation income		14,32,860/-
D.	Income from Capital Gain		
	Exempted LTCG	6,00,549/-	Nil
	STCG u/s 111A		47,90,975/-
E.	Income from Other Sources- as per Computation		2,55,752/-
F.	Gross Total Income		
	Less: i) Deduction u/s 80C	1,50,000/-	
	ii) U/s 80D	15,000/-	
	ii) Deduction u/s 80TTA	10,000/-	1,75,000/-
G.	Assessed Total Income		88,78,877/-
	STCG	47,90,975/-	
	Other Income	40,87,915/-	88,78,890/-

4.1. In the course of original assessment proceeding, Ld. AO enquired about the LTCG and STCG earned by the assessee and reported in the return, for which he observed as under:

“3. On perusal of the records it is seen that the assessee claimed tax free LTCG of Rs.6,00,549/- (sale value: Rs.7,31,417/-) and also claimed STCG of Rs.4,26,542/- (out of total LTCG of Rs.47,90,975/-) u/s. 111A of the I. T. Act, 1961 from sale of shares of Sulabh Engineers & Services Ltd. (ISINNo.INE673M01029). The assessee was requested to furnish details and evidences in support of claim of income from capital gain as mentioned above vide notice issued u/s. 142(1) on 09.05.2017. But the assessee failed to comply with the notice issued and also failed to furnish complete details in respect of the

share transactions in relation to the scrip of Sulabh Engineers & Services Ltd.

It may be mentioned here that the case was selected mainly based on the reason "suspicious sale transaction in shares (penny stock tab in ITS)".

.....

Considering the above and failure on the part of the assessee to furnish complete details and documents with respect to the said share transactions, the assessee was requested to explain/furnish the following vide notice issued u/s. 142(1) Dated 19.09.2017.

- i) The reasons for investment in such a penny stock particularly where there was no regular share transaction in other scrips.*
- ii)*
- iii)*
- iv)*
- v)*
- vi) Based on the findings and surrounding circumstances and considering the aspect of human probability in investing in such a scrip, you are, hereby, requested to explain why the LTCG claimed by you shall not be treated as a bogus or sham transaction which is nothing but a colourable device to defraud the revenue and to channelize the fund from undisclosed sources to a legitimate form of income. You are also requested to show cause as to why the entire sale consideration of Rs.7,31,417/- (as available from the Annexure to Profit and Loss A/c) shall not be treated as Unexplained Cash Credit u/s. 68 of the Act and added back to your total income.*
- vii) And also explain why the tax treatment of the Rs.7,31,417/- and STCG of Rs.4,26,541/- shall not be given as per section 115BBE of the Act at the higher rate."*

4.2. In this respect, assessee made his submissions explaining the claim which did not find favour with the Ld. AO who concluded the assessment by making an addition of Rs.7,31,417/- in respect of sale consideration shown as LTCG for scrip of Sulabh Engineers, by treating it as unexplained cash credit u/s. 68 of the Act. Conclusion drawn by Ld. AO in the original assessment is extracted below:

“7.1 From the facts and circumstances of the case, as narrated in the preceding paragraphs, it is quite evident that the entire transaction was a pre-meditated scheme on the part of the assessee to launder her unaccounted money in the garb of bogus Long Term Gain or Short Term Capital Gain in disguise of transacting in the shares of M/s Sulabh Engineers and Services Ltd. Hence, based on the findings and surrounding circumstances and considering the aspect of human probability in transacting in such a script, the LTCG&STCG claimed by the assessee has been treated as a bogus or Sham transaction which is nothing but a colourable device to defraud the revenue and to channelize the fund from undisclosed sources to a legitimate form of income.

7.1.1 In view of above, the entire sale consideration (net) of Rs.7,31,417/- (Sale consideration shown under LTCG as enumerated above) is treated as Unexplained Cash Credit u/s 68 of the I. T. Act, 1961 and added back to total income of the assessee for the previous year relevant to A.Y.2015-16 and tax has been computed as per provisions of section 115 BBE of the Act at the higher rate.”

4.3. Subsequently, case of the assessee was reopened u/s. 147 of the Act by recording the reasons to believe that based on information received through the Income Tax Business Application (ITBA) module assessee had sold shares of penny stock having scrips named Appu Marketing & Manufacturing Ltd. (AMML), currently known as Ejecta Marketing Ltd. (EML) and raising a fund of Rs.40,15,450/- thereon which has escaped assessment. In the reasons recorded by the Ld. AO, certain factual observations are made in respect of sale transaction of shares of AMML which are extracted below:

“3. Appu Marketing & Manufacturing Limited currently known as M/s. Ejecta Marketing Limited having Scrip AMML TO & EML, Scrip code-538653 was incorporated on 19th February, 1983 in the name and style of Appu Marketing & Manufacturing Ltd, hereinafter refer as AMMLTD/EML. The Company's Shares are listed in the Calcutta Stock Exchange Association Limited. Subsequently, company's share of face value Rs. 10 got listed on BSE Ltd. at Rs. 295/- on 19th September, 2014. The price AMML TD/EML surged more than double within one month as the price surged to Rs. 645/- on 16 October, 2014, Rs .. Thereafter stock traded in range-band Rs to upto 2016 but thereafter the price of stock fall suddenly to Rs. The stock was traded in very low volume. There was no any media news or positive business prospective of AMML TD/EML in F. Y. 2014-15 The Financial status of AMML TD/EML is (was) also very meagre which is given as below:

.....

4. The Financial status of Counter parties (Purchasers) namely Misrilall Mines Pvt Ltd, Gangeshwari Traders Private Limited, SKB Securities Limited, Anurodh Infrastructure Pvt Ltd, Sanshipt Broking Consultancy Pvt Ltd., Quest FinancialServices Limited, Ritudhara Retailers Pvt.Ltd, Rudramukhi Infrastructure Private Limited negligible and currently have been stuck-off. Further, all purchaser/counter parties had stopped filing its balance beforeMCA/ROC.

5. From perusal of return filed, it is seen that the "Return of Income" of assessee for AY 2015-16 was assessed under u/s. 143(3) of the income tax Act, 1961 at Rs.96,97,960/- Which doesn't includes income against selling of penny stock of Rs.40,15,450/-.”

4.4. Based on these observations, Ld. AO noted in the reasons to believe that income of Rs.40,50,450/- has escaped assessment for AY 2015-16 in the hands of the assessee for which the relevant extracts from the reasons to believe are reproduced below:

8. *In view of the foregoing facts, it is sufficiently clear that the assessee has brought back their unaccounted funds of Rs. 40,15,450/- by selling their bookish investment in the form of "investment in share of Penny stock namely AMMLTD & EML" to paper companies which are currently strike-off- and shown in his ITR as exempt income as LTCG (Long Term Capital". Hence, the exempt income of Rs. 40,15,450/- shown by the assessee is not true and need to be brought under taxable income. This has resulted in income amounting to Rs. 40,15,450/- escaping assessment. Thus, the assessee has failed to disclose truly and fully all material facts concerning its income for the assessment year under consideration. I, therefore, have reasons to believe that income of Rs. 40,15,450/- has escaped assessment for the AY 2015-16 in the hands of Manish Parasrampur.*
9. *The discrepancy failure on part of the assessee to prepare and submit a return of income offering his /her true and complete income to tax for the assessment year under consideration. The discrepancy gives a substantial basis for the formation of a reason to believe to initiate reassessment u/s 147 of the Act., 1961. Thus, there is clear failure on part of the assessee to make full and true disclosure while filing return of income. Hence, I have reason to believe that income amounting to Rs. 40,15,450/- has escaped assessment under section 147 of the Income Tax Act, for the assessment year 2015-16.*
10. *It is proved that the assessee had not disclosed full and truly all material facts necessary for his assessment or that the facts of the case are covered by the Explanation 1 to Section 147 of the Act. The scrutiny assessment has been made and four years from the end of the relevant year had expired. The assessee has not disclosed to the tune of Rs. 40,15,450/- at the time of filing of his/her return of income for the assessment year 2015-16.*
11. *It is a case of escapement of income to the tune of Rs 40,15,450/- during the financial year 2014-15 relevant to the assessment year 2015-16 . I have reason to believe that the assessee has escaped his/her income of Rs. 40,15,450/- for the assessment year 2015-16 as per provision of section 147 of the Income Tax Act, 1961 . Since, four years from the end of the relevant period has expired in this case, sanction for issue of notice u/s 148 of the Income Tax Act, 1961 is required to obtain approval from the Principal Commissioner of Income -tax -13, Kolkata as per provisions of section 151 of the Income Tax Act, 1961."*

4.5. Assessee filed his return of income in response to notice u/s. 148 of the Act, reporting total income of Rs.96,97,950/- which included STCG of Rs.43,64,433/- and also addition already made u/s. 68 towards LTCG of Rs.7,31,417/- and towards STCG of Rs.4,26,542/- as well as addition u/s. 69C for Rs.3,657/-.

4.6. In the reassessment proceedings, Ld. AO sought details in respect of transaction of sale of shares of AMML for which assessee submitted the relevant documents and details. Assessee objected to the reopening proceeding before the Ld. AO by asserting on the fact that assessee had already declared Rs.39,41,595/- as STCG on transactions in the shares of AMML and also other STCGs which were subjected to tax at special rate u/s. 111A @ 15% plus surcharge. Assessee paid the due taxes on this income which was duly reported in the return of income. Assessee submitted that the said STCG has already been assessed to tax by the Department for which he made proper disclosure and paid taxes thereon. Ld. AO in the reassessment proceeding, after discussing the *modus operandi* of transactions relating to penny stock held that the entire STCG relating to transactions in scrip of AMML are accommodation entries for his unaccounted cash. Ld. AO thus, deemed this as income from unaccounted cash u/s. 68 of the Act and completed the assessment. Aggrieved, assessee went in appeal before the Ld. CIT(A) before whom assessee challenged the legality of the reopening of reassessment proceeding. Ld. CIT(A) while dealing with the merit of the case relied on the decision of Hon'ble High Court of Calcutta in the case of *PCIT Vs. Swati Bajaj (2020) 139 taxmann.com 352 (Cal)* and dismissed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal and contesting primarily on the legality of the reopening of reassessment proceeding vide ground nos. 1, 2 and 3 stated above.

4.7. Before us, Ld. Counsel for the assessee submitted that the subject matter of reason to believe recorded at by the Ld.

AO for invoking the provisions of section 148 read with section 147 of the Act have already been elaborately and exhaustively dealt with by the Ld. AO in the original assessment proceeding completed u/s. 143(3) of the Act vide order dated 07.11.2017. To this effect, Ld. Counsel pointed to the computation of total income assessed by the Ld. AO u/s. 143(3) placed at page 25 of the paper book to demonstrate that addition of Rs.7,31,417/- and Rs.4,26,542/- has already been made in respect of STCG u/s. 111A along with addition of Rs.3,657/- on account of unexplained expenditure on the said transactions for earning aforesaid STCG. Ld. Counsel also referred to the computation of income in respect of original return filed by the assessee which is placed at page 3 of the paper book to demonstrate that STCG u/s. 111A, totalling to Rs.47,90,975/- has been duly included in the total income reported by the assessee. Details of profit on sale of shares towards STCG and LTCG reported in the original return of income as pointed out by the Ld. Counsel is extracted below:

ANNEXURE-A: PROFIT ON SALE OF SHARES							
A--> Long Term Capital Gains exempt u/s 10(38)							
Script Name	Qty	Purchase date	Amount	Sale date	Qty	Amount	Profit
Sulabh Engineering	3000	09.01.13	130868.00	03.07.14	3000	731417.00	600549.00
							600549.00
B--> Short Term Capital Gain u/s 111A							
Script Name	Qty	Purchase date	Amount	Sale date	Qty	Amount	Profit
Larsen & Toubro Ltd	57	02.04.14	73750.77	2.04.14	57	73447.35	-303.42
Gruh Finance Limited	500	26.03.14	144447.00	02.05.14	500	156593.30	12146.30
Sulabh Engineering	800	07.08.13	89100.63	09.05.14	800	190473.24	101372.61
Sulabh Engineering	800	07.08.13	89100.63	16.05.14	800	198924.01	109823.38
Sulabh Engineering	200	07.08.13	140875.25	23.05.14	1000	247509.75	106634.50
Sulabh Engineering	800	12.09.13					
Sulabh Engineering	1400	12.09.13	224758.18	16.09.14	1400	333468.62	108710.44
Mathew Easow Research Securities Ltd.	7000	11.08.14	783159.18	18.09.14	7000	1015056.87	231897.69
Mathew Easow Research Securities Ltd.	2002	12.08.14	221461.24	10.10.14	2002	287513.57	66052.33
Mathew Easow Research Securities Ltd.	2570	12.08.14	284293.40	14.10.14	2570	380713.80	96420.40
Mathew Easow Research Securities Ltd.	428	12.08.14	47345.36	16.10.14	428	63970.43	16625.07
Appu Marketing & Manufacturing Ltd.	1700	30.01.14	17000.00	17.11.14	1700	1114988.21	1097988.21
Appu Marketing & Manufacturing Ltd.	1400	30.01.14	14000.00	01.12.14	1400	926039.46	912039.46
Appu Marketing & Manufacturing Ltd.	1000	30.01.14	10000.00	04.12.14	1000	665243.00	655243.00
Appu Marketing & Manufacturing Ltd.	2000	30.01.14	20000.00	12.01.15	2000	1296325.00	1276325.00
						2159291.64	4790974.97
						6950266.61	5391523.97
Profit on Sale of shares (A+B)							5391523.97

4.8. Ld. Counsel thus strongly contended that the reopening proceeding initiated by the Ld. AO are nothing but 'change of opinion' vis-à-vis the original assessment completed u/s. 143(3) of the Act. He further pointed to the reasons to believe recorded in respect of income against selling of shares of AMML which are grossly incorrect. He submitted that in para 5 of the reasons to believe, Ld. AO has noted that return of income of the assessee does not include income against selling of penny stock of Rs.40,15,450/- which is grossly incorrect as can be verified from the computation of income wherein all the transactions relating to AMML have been reported under the head STCG and which have been subjected to tax at special rate u/s. 111A of the Act. Ld. Counsel also referred to para 3 of the reasons to believe to point out that Ld. AO has vaguely recorded the said reasons without putting any numbers against the 'range band' for the price of stock of AMML and left it blank.

4.9. Further, Ld. Counsel submitted that there is no failure on the part of the assessee to fully and truly disclose all the material facts as stated in the 1st proviso to section 147 of the Act contrary to which, Ld. AO has recorded the reasons to believe in para 10 that assessee has failed to disclose fully and truly all material facts necessary for the assessment.

4.10. According to the Ld. Counsel, there is no new tangible material which justifies the reopening of the assessment already completed u/s. 143(3) of the Act as the subject matter was duly examined and accepted by the Ld. AO in the original assessment. Ld. Counsel also referred to the statement of one Mr. Prakash Jajodia which has been

relied on by the Ld. AO. Ld. Counsel submitted that Ld. AO had information in this respect at the time of original assessment itself as the statement relied on was already in existence which was signed on 26.08.2014, much prior to the assessment completed u/s. 143(3) of the Act.

4.11. Ld. Counsel also referred to the approval granted by Ld. Pr. CIT u/s. 151 of the Act to point out that the approval has been granted on an incorrect set of facts wherein it has been noted that assessee has not included the income against selling of penny stock of Rs.40,15,450/- which in fact has been included and due taxed paid thereon. Thus, the approval so granted is without application of mind by the Ld. Pr. CIT as it has been given on wrong set of facts which are verifiable from the records.

5. Per contra, Ld. DR strongly relied on the orders of the authorities below. He submitted that in the original assessment made u/s. 143(3) of the Act, STCG earned on sale of shares of AMML was not dealt with by the Ld. AO as during that time, the scrip of AMML was not identified as penny stock in the ITBA of the Department. Thus, the reasons to believe so recorded by the Ld. AO subsequent to the original assessment exhibit live nexus on the escapement of income relating to AMML which was identified as a penny stock subsequent to the original assessment. According to him, the reopening of the case and its reassessment are legally valid.

6. We have heard the rival contentions and given our thoughtful considerations on the issue in hand which relates

to “change of opinion” by the ld. AO while initiating the proceeding u/. 148 read with sec. 147 of the Act. The factual position in respect of reasons to believe recorded by the Ld. AO in respect of income escaping assessment on the sale transaction of shares of AMML is that assessee has already offered the STCG earned on the transaction of shares of AMML in the original return filed by him which was subjected to assessment u/s. 143(3) of the Act. We note that while recording the reasons to believe, Ld. AO has stated in para 5 as well as in the annexure forming part of approval u/s. 151 of the Act that assessee has not included the income against selling of shares of AMML (alleged as penny stock) of Rs.40,15,450/-. In this respect, Ld. Counsel for the assessee has evidently demonstrated from the material placed on record that this income has already been offered in the original return subjected to assessment u/s. 143(3) of the Act on which due taxes at special rate u/s. 111A of the Act have been paid.

6.1. Further, in para 9 and 10 of the reasons to believe recorded by the Ld. AO (extracted above), it is stated that assessee has not disclosed fully and truly all material facts necessary for the assessment which again is not a correct observation as demonstrated by the Ld. Counsel from the computation of income originally furnished in the assessment made u/s. 143(3) of the Act.

6.2. We also take note of the queries raised by the Ld. AO in the course of original assessment proceedings wherein Ld. AO had identified only the transaction of sale of shares of Sulabh Engineers & Services Ltd. as suspicious sale

transaction for the purpose of his enquiry. In respect of sale transaction of shares of other companies, details of which are already extracted above, the position as submitted by the assessee was accepted by the Ld. AO after due examination and verification.

6.3. We further note that in the original assessment, Ld. AO has noted that the case was selected mainly based on the reasons "*suspicious sale transaction in shares (penny stock TAB in ITS)*". In the reasons to believe recorded for the reassessment proceedings which are under challenge before us, in para 2, Ld. AO has noted that information has been received through the Income Tax Business Application (ITBA) module that the assessee has sold shares of penny stock having scrip named AMML and is in receipt of funds of Rs.40,15,450/-. From these observations of the Ld. AO, both in the original assessment and in the impugned reassessment, the basis has been information available in the electronic system of the department which suggests us that Ld. AO cannot turn around and reopen the case for the same issue on which enquiry has been made earlier and without bringing any new tangible information/material on record, which clearly amounts to 'change of opinion'. The basis of information being the same, both in the assessment and the reassessment proceedings, we note that there is no fresh tangible material with the Ld. AO at the time of recording of impugned reasons to believe.

6.4. We have also taken note of the observation and conclusion drawn by the Ld. AO from the assessment order passed u/s. 143(3) which demonstrates that Ld. AO had

examined the issue under consideration relating to transaction of sale of shares giving rise to STCG and LTCG which has been duly reported in the original return of income. It is seen from the original assessment order that Ld. AO had asked the assessee to provide all the details relating to sale transaction in shares in which he had identified shares of Sulabh Engineers & Services Ltd. as penny stock and accepted the sale transaction of shares and other companies. There has been unanimity of the hon'ble courts on the issue that in absence of fresh tangible material indicating escaped income, the AO cannot assume jurisdiction to reopen already concluded assessment. For this, a useful reference can be made to the decision of Hon'ble Supreme Court in the case of *CIT Vs. Kelvinator India Ltd. (2010) 320 ITR 561 (SC)*.

7. Whether the reasons to believe recorded by the Ld. AO for reopening of assessment is a change of opinion or not is to be decided independently in the facts and circumstances of each case. In the present case before us, the amount of income in respect of sale of shares of AMML has formed the basis of reopening for reassessment by holding it as income escaping assessment, which in fact, has already been offered by the assessee in the original assessment and has been subjected to tax and scrutiny assessment u/s. 143(3) of the Act. Thus, there is no reason for initiation of reassessment proceeding as there is complete absence of live nexus of the formation of belief with the material on record inasmuch as the income of the assessee has not escaped assessment. In this regard, we place our reliance on the following judgments:

(i) Hon'ble Delhi High Court in the case of *CIT vs. Atul Jain 299 ITR 383 (Del)* held that wherein the reasons recorded were vague and not proper, Ld. AO had not even recorded his satisfaction about the correctness of the information received by him but merely accepted the truth of the vague information in a mechanical matter, entire reassessment order was liable to be quashed.

(ii) In the case of *CIT Vs. SFIL Stock Broking Ltd. 325 ITR 285 (Del)*, the Hon'ble Delhi High Court held the reassessment order as invalid on the basis of improper reasons recorded i.e. without applying mind to the information and without independently arriving at a belief.

8. We have already observed that the factual position recorded by the Ld. AO in the reasons to believe about inclusion of income for sale of shares of AMML is factually incorrect when compared with the original return placed on record. Therefore, we find that in the instant case before us, original assessment order was passed after the examination of transaction of sale of shares and the same has been reopened for reassessment without bringing any new and fresh tangible material on record which is nothing but tantamounting to a mere change of opinion. Accordingly, this being the case of change of opinion, Ld. AO lacks the jurisdiction u/s. 147 of the Act to reopen the completed assessment u/s. 143(3) of the Act.

8.1. We further draw force from the judgment of Hon'ble Supreme Court in the case of *Indian & Eastern Newspaper*

Society Vs. CIT (1979) 2 taxmann.com 197 (SC) who had held in para 14 as under:

14. Now, in the case before us, the Income Tax officer had, when he made the original assessment, considered the provisions of sections 9 and 10. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion of material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under section 147(b). Reliance is placed on Kalyanji Mavji & Co. v. Commissioner of Income Tax, where a Bench of two learned Judges of this Court observed that a case where income had escaped assessment due to the "oversight, inadvertence or mistake" of the Income Tax officer must fall within section 34(1) (b) of the Indian Income Tax Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels farther than the statute warrants in so far as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the Income Tax officer discovers that he has committed an error in consequence of which income has escaped assessment it is open to him to reopen the assessment. In our opinion, an error discovered on a reconsideration of the same material (and not more) does not give him that power. That was the view taken by this Court in Maharaj Kamal Singh v. Commissioner of Income Tax (supra), Commissioner of Income Tax v. Raman and Company (supra) and Bankipur Club Ltd. v. Commissioner of Income Tax. and we do not believe that the law has since taken a different course. Any observations in Kalyanji Mavji & Co. v. Commissioner of Income Tax (supra) suggesting the contrary do not, we say with respect, lay down the correct law.

9. Considering the facts and circumstances of the case, discussion narrated above and in the light of judicial pronouncement (*supra*), we hold that there is no reason for initiation of reassessment proceedings u/s. 147 read with section 144B of the Act. Accordingly, the legal grounds raised by the assessee in this respect are allowed.

10. Grounds taken by the assessee on the merits of the case are dismissed as not pressed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 23rd February, 2023.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 23rd February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A), NFAC, Delhi
 4. AO, NFAC, Delhi/ DCIT, Circle-43, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata