आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखासदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.19/Chny/2024
निर्धारण वर्ष /Assessment Year: 2009-10

The Joint Commissioner of Income Tax (OSD), Corporate Circle-1(1), Chennai.	**Vs.**	**IDFC Limited,** 4th Floor Capitale Tower, 555, Anna Salai, Thiru Vi Ka Kudiyiruppu, Teynampet, Chennai – 600 018. [PAN: AAACI 2663N]
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Shri M. Murali, CIT
प्रत्यर्थी की ओर से /Respondent by	:	Shri Niraj Sheth, Advocate
सुनवाई की तारीख/Date of Hearing	:	06.06.2024
घोषणा की तारीख /Date of Pronouncement	:	24.07.2024

आदेश / **O R D E R**

PER JAGADISH, A.M :

Aforesaid appeal filed by the Revenue is against the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 21.09.2023 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter "the Act") on 30.03.2014.

2. The brief facts of the case are that the assessee-company is engaged in the business of financing of infrastructure projects. The assessee has filed its return of income showing income of Rs. 729,46,72,177/- on 31.03.2011. The assessment was completed u/s. 143(3) of the Act a total income of Rs. 886,93,63,927/-. During the assessment proceedings, the A.O has restricted the claim of disallowance u/s. 36(1)(viia)(c) of the Act at Rs. 28,95,57,768/- against the claim of Rs. 44,15,15,215/-. Subsequently, the A.O has reopened the assessment regarding following reasons and made addition of the same:

> *"On verification of details, it was found that assessee had created provision/reserve for bad and doubtful debts for only Rs. I.71.662/- and nil represents provision for NPA. It was also noticed that provision of Rs. 156,35,00,000/- was contingent provision against standard arrears and not against bad/doubtful debts. As per the provisions of Sec.36(1)(viia)(c), assessee is eligible for deduction only to the extent of provision made against bad and doubtful debts . Hence, the assessee is not eligible to claim said deduction u/s 36 (i)(viia)(c).*
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> *It was also noticed that assessee had reduced the reversal of provision for bad and doubtful debts of Rs.20.17 Crores while computing business income. The reversal of provision was adjusted against bad debts/loss written off Rs 20.19 Crores. However, this bad debts written off of Rs.20.19 Crores was not disclosed as there was credit balance under the provision for bad debts which was allowed as deduction u/s 36(1)) (via)©. The deduction of bad debts is only allowable when there is no credit balance in the provisional account. Hence, assessee is not eligible to claim bad debts of Rs.20.19 Crores."*

3. The AO in the reopening assessment restricted the claim u/s. 36(1)(viiia)(c) of the Act to Rs. 1,71,662/- thus making addition of Rs.

28,93,86,186/-. The AO further held that deduction of bad debt is not allowable u/s. 36(1)(viia) of the Act as there is credit balance in the provision for bad and doubtful debt. The Ld. CIT(A) has quashed assessment order as the reopening was change of opinion and invalid *ab-initio*. The finding of the Ld. CIT(A) is as under:

> *"4.3 I have perused the order u/s. 147, order u/s. 143(3), reasons for reopening as reproduced in 147 order, submissions of the appellant and the facts of the case. The reason for reopening related to computation of deduction u/s. 36(1)(viia) of the Act. It is observed that the reason to believe of the AO has been culled out from the annual accounts, commutations and various submissions made by the appellant at the time of 143(3) proceedings. In fact, the AO at the time of 143(3) proceedings has discussed the issue of disallowance of deduction claimed u/s. 36(1)via) and has made addition under the said section. The submissions made by the appellant as reproduced in para 4.2 above regarding furnishing of the detailed replies at the time of 143(3) is found to be correct. Thus, no new material tact came to the knowledge of the AO at the time of issuance of notice u/s 148 which was not available at the time of regular assessment, Since the case of the appellant was scrutinized under section 143(3) earlier, and the additions as deemed fit by the AO had been made by due application of mind, in my view, the reasons recorded for reopening fall in the category of change of opinion on the part of the AO."*

4. The ld. CIT(A) relying on the decision of Hon'ble Supreme Court in the case of *CIT vs. Kelvinator of India [2010] 320 ITR 561 (SC), ACIT vs. Rajesh Jhaveri [2006] 291 ITR 500 (SC)* and *J. Pharmaceuticals Ltd. vs. CIT [2008] 297 ITR 119 (Bom.)* has quashed the assessment order holding the reopening as change of opinion. The Revenue is in appeal against the quashing of assessment on the ground that the issue considered as reopening were not scrutinized by the A.O and therefore, there was no change of opinion.

5. The Ld. D.R relied on the assessment order and argued that there was not change of opinion as the A.O in earlier assessments has neither applied his mind nor formed opinion on the subject matter of reopening assessment and that the Ld. CIT(A) has wrongly relied on the decision of Hon'ble Supreme Court in the case of *CIT vs. Kelvinator of India*, supra.

6. The Ld. A.R, on the other hand, took us through to the reasons recorded and copy of annual account submitted before the A.O and the details submitted before the A.O in response to notice u/s. 142(1) of the Act in respect of claim u/s. 36(1)(viia)(c) of the Act. The Ld. A.R has submitted that the details of provisions of contingency which included provision against standard asset of Rs. 1,563,500,000. The Ld. A.R further has submitted that the Hon'ble Tribunal in assessee's case for A.Y 2007/08 in ITA Nos.751/Chny/2018 & 676/Chny/2020, has held that provision for standard assets are allowable u/s. 36(1)(viia)(c) of the Act. The Ld. A.R has submitted that the A.O has accordingly restricted the claim of Section 36(1)(viia)(c) of the Act to Rs. 28,95,57,768/- against the claim of Rs. 44,15,15,215/- after due application of mind.

7. We have heard the rival contentions, and perused the materials available on record. The A.O has allowed the claim u/s. 36(1)(viia)(c)

of the Act after due verification. The assessee in response to notice u/s. 142(1) of the Act dated 19.08.2010 has submitted before the A.O the details of provisions and contingency of Rs. 1,563,500,000/- mentioned in the detailed notes. The Tribunal in the assessee's own case has held that the provisions against standard assets are allowable u/s. 36(1)(viia)(c) of the Act. Therefore, the A.O has disallowed the claim after due verification. The Hon'ble Apex Court while confirming the decision of Hon'ble Delhi High Court in the case of *CIT vs. Kelvinator of India* has observed as under:

> *"....., we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.*
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> *7. 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 an 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 live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe"*

but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words 17 ITA no.4033/Del./2011 "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer.

8. We quote hereinbelow the relevant portion of Circular No. 549 dated October 31, 1989 ([1990] 182 ITR (St.) 1, 29), which reads as follows:

> *"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in section 147.-A number of representations were received against the omission of the words `reason to believe' from section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."*

8. We, therefore concur with the findings of the Ld. CIT(A) that this is a case of change in opinion, which is permissible as per law. In view of the above, the appeal filed by the Revenue is dismissed.

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

Order pronounced on 24th July, 2024.

Sd/-	**Sd/-**
(महवीर सिंह)	**(जगदीश)**
(Mahavir Singh)	**(Jagadish)**
उपध्यक्ष / Vice President	**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 24th July, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF