आयकर अपीलीय अधिकरण,'बी' न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**'B' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर.रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 1055/Chny/2022**
निर्धारणवर्ष / Assessment Year: 2012-13

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|---|---|---|
| The ACIT,<br>Central Circle -3(3),<br>Chennai. | v. | M/s. Land Marvel Homes,<br>45-47, Old No. 22-23,<br>3rd Floor, 1st main Road,<br>Gandhi Nagar, Adyar,<br>Chennai – 600 020.<br>**[PAN:AABFL-4387-N]** |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

अपीलार्थीकीओरसे/Appellant by : Shri. V. Nandakumar, CIT
प्रत्यर्थीकीओरसे/Respondent by : Shri. T. Banusekar, Advocate & Shri. Yeshwanth Kumar, CA

सुनवाई की तारीख/Date of Hearing : 06.06.2024
घोषणा की तारीख/Date of Pronouncement : 26.07.2024

**आदेश /O R D E R**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter in short "the Ld.CIT(A)"), Chennai, dated 26.09.2022 for the Assessment Year (hereinafter in short "AY") 2012-13.

**2.** At the outset, the Ld.DR brought to our notice that the Ld.CIT(A) had allowed the legal issue raised by the assessee before him i.e. against the action of the AO re-opening the original assessment u/s.147 of the Income Tax Act, 1961 (hereinafter in short "the Act"). The brief facts

relating to the legal issue are that the assessee is a firm which e-filed its return of income for AY 2012-13 on 30.09.2013 declaring total income of Rs.3,27,48,130/- which was processed u/s.143(1) of the Act and later on, the case of the assessee was selected for scrutiny and accordingly notice u/s.143(2) of the Act, was issued on 02.09.2014 and notice u/s.142(1) was issued on 16.09.2014 calling for various details from the assessee and the AO having noted that the assessee had responded to the notices issued and the Ld.AR had appeared and filed the details called for by him which have been examined and after considering all the documents, the assessment was completed by accepting the returned income to the tune of Rs.3,27,48,130/- by order dated 30.03.2015 u/s.143(3) of the Act. Therefore, the AO issued notice u/s.148 of the Act on 29.03.2016 and the reasons for re-opening of assessment was issued to the assessee on 28.11.2016 and finding no response from the assessee, the AO computed the re-assessment and added Rs.12,32,92,525/-.

**3.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), wherein, the assessee raised the legal issue regarding re-opening of assessment and contended that the AO erred in re-opening of assessment without satisfying the conditions precedent for invoking jurisdiction u/s.147 of the Act. The Ld.CIT(A) allowed the legal issue by holding that the issue for which the AO had re-opened the assessment (increase in capital) had already been enquired into by the AO during the assessment proceedings and the assessee had given detailed reply vide letter dated

23/27.03.2015 and thereafter, the AO being satisfied with the reply of the assessee, has accepted the same and no adverse view was taken by him while framing the Assessment Order on 30.03.2015. The Ld.CIT(A) also found that the AO erred in assuming the facts without checking the information available on records. Thus, the Ld.CIT(A) found that the reasons recorded by the AO in order to re-open itself was on wrong assumption of facts and thereafter, explaining the correct facts has borne out from the records, the Ld.CIT(A) held that the AO erred in re-opening of assessment and allowed the legal issue raised by the assessee.

**4.** Aggrieved, the Revenue is in appeal before this Tribunal.

*The department vide letter dated 18.3.2015 had, inter-alia, sought assessee's explanation on the difference of Rs.14,94,75,671/- between the opening balance and closing balance of 'Capital a/c' of the firm.*

*The assessee had stated in his reply dated 27.3.2015 that, out of the above difference, Rs.2,66,27,747/- is the current year profit and the balance is 'Revaluation Reserve' of Rs.12,32,92,525/- created in the current year as a result of revaluation of 73.62 cents of land situated at Old Mahabalipuram Road, Tiruvanmiyur, Chennai, at Rs 17.50 crore based on Valuation Report of 'Licensed Engineer' dated 20.3.2012.*

*On cross-verification of Fixed Assets in the Balance Sheet as on 31.3.2012, it was seen that the total Fixed Assets was only Rs.5.45 crore and as per the 'Depreciation Schedule' LAND stood at just Rs.0.32 crore.*

*Thus, it is evident that the assessee firm has not carried out any Revaluation of fixed assets-LAND' and had the same been carried out, the 'Fixed Assets Land' would have been valued more by Rs.12,32,92,525/-, the amount stated to have been credited to the 'Revaluation Reserve'.*

*Therefore, as value of land stand at Rs.0.32 crore in the Balance Sheet as on 31.3.2012 and not at revalued figure as claimed by the assessee firm, the entire amount of Rs.12,32,92,525/- cannot be considered as "Revaluation Reserve' and has to be treated as business income directly carried to Capital a/c without routing through the Profit & Loss a/c. If the above is considered, income would be more by Rs.12.32,92,525/ resulting in additional tax demand of Rs.5,82,89,006/-.*

**5.** The Ld.DR assailing the action of the Ld.CIT(A) submitted that after a survey was conducted in the premise of the assessee on 07.08.2013, scrutiny assessment u/s.143(3) of the Act was passed on 30.03.2015 accepting the return of income. Thereafter the AO, noted that there was a difference in the 'Capital a/c' of the firm i.e. a difference of Rs.14,94,75,671/- between the opening balance and the closing balance of the 'Capital a/c' of the firm. According to the Ld.DR, when asked about the difference of Rs.14,94,75,671/- ('Capital a/c'), the assessee explained that Rs.2,66,27,47/- was the current year profit and the balance was 'Revaluation Reserve' of Rs.12,32,92,525/- created in the current year as a result of the revaluation of 73.62 cents of land situated at OMR, Tiruvanmiyur, Chennai, at Rs.17.50 Crs. based on the valuation report dated 20.03.2012. According to the Ld.DR, on verification of the fixed assets in the balance sheet on 31.03.2012 revealed that the total fixed assets was only Rs.5.45 Crs. and as per the depreciation schedule (land) stood at Rs.0.32 Crs. which according to the Ld.DR meant that the assessee firm hadn't carried out any revaluation of assets-land and if such an exercise was carried out fixed assets-land would have been valued by more than Rs.12,32,92,525/- which amount has been credited to the 'Revaluation Reserve'. The Ld.DR pointed out that the value of the land stands at Rs.0.32 Crs. in the balance sheet as on 31.03.2012 and not revalued figure as claimed by the assessee's firm and therefore, the AO treated the amount of Rs.12,32,92,525/- as business income directly carried out to the 'Capital a/c' without routing to the P & L a/c and he

pointed out that the assessee pursuant to the notice u/s.148 of the Act neither objected nor participated in the re-opening of assessment and he cited the decision of the Hon'ble Supreme Court in the case of A.L.A. Firm v. CIT reported in [1991] 55 Taxman 497 and prayed that the impugned action of ld.CIT(A) be reversed.

**6.** The Ld.AR pointed out that the AO had specifically asked/enquired about the issue on 18.03.2015 and after going through the reply of the assessee on 23/27.03.2015, had accepted the explanation of the assessee which is a plausible view in the light of the decision of the Hon'ble Supreme Court in the case of KikabhaiPremchand v. CIT reported in [1953] 24 ITR 506 (SC), wherein, the Hon'ble Supreme Court held that *"as a result of such revaluation, there could be no profit, because, the firm cannot make profit out of itself"*. According to him, the process of revaluation of stock by itself cannot bring in any real profits and cited the decisions in the case of CIT v. K.A.R.K. Firm reported in [1934] 2 ITR 183, and also in the case of ChainrupSampatram v. CIT reported in [1953] 24 ITR 481 and also in the case of CIT v. Hind Construction Ltd., reported in [1972] 82 ITR 211 and he also submitted that it is well settled law that, what is taxable under the Income Tax Law is only a real income and cited the decision in the case of CIT v. M/s.Shoorji Vallabhdas& Co., reported in [1962] 46 ITR 144 and CIT v. Birla Gwalior (P) Ltd., reported in [1973] 89 ITR 266 and submitted that there is no principle by which the stock in trade can be valued at market price so as to bring to tax the

notional profits which might in future be realized as a result of sale of the stock in trade.

**7.** The Ld.AR of the assessee citing the decision of the Hon'ble Madras High Court in the case of M/s.Tanmac India v. DCIT reported in [2017] 78 taxmann.com 155 (Madras), wherein, the Hon'ble Division Bench in a case, wherein, original assessment/intimation was passed u/s.143(1)(a) of the Act (during the manual era) was re-opened by the AO by issuing notice u/s.148 of the Act, which action of Assessing Officer was challenged before the Tribunal which held against the assessee, and the assessee challenged the action of the Tribunal before the Hon'ble High Court 'D' Bench, and their Lordships after considering a catena of decision held in favour of the assessee by holding as under:

> *"6. We first address the question of jurisdiction. The present re-assessment is pursuant to a prima facie intimation in terms of section 143 (1) (a) of the Act. Tribunal concludes the issue adverse to the appellant based on the judgment of the Supreme Court in the case of DCIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (295 ITR 499) that has been rather mechanically applied. The question that now arises for our consideration is whether the assessing officer could, having taken cognizance of the return of income and annexures, issued an intimation under section 143(1) and allowed the matter to rest, thereafter now proceed to issue a notice for re-assessment simply based on the same material that had been available to him all along.*
>
> *7. The sine qua non for the initiation of proceedings in terms of section 147 of the Act is 'reason to believe' on the part of the assessing officer that income chargeable to tax has escaped assessment. While the court cannot examine the sufficiency of reasons on the basis of which re-assessment is initiated, the existence or otherwise such 'reason to believe' is certainly open to verification and would be evident from the reasons recorded prior to issue of notice under section148 as required in terms of section 148(2) of the Act. In order to examine this aspect of the matter, the records were called for and have been duly produced for our perusal by Mr. Narayanaswamy. The reasons recorded are as follows:*

*'The debit claimed towards lump sum payment made as a compensation for future profits forgone by the retiring partner Rs.5,50,000/- is not allowable for the following reasons:*

*1. The payment has not been authorised by partnership deed.*

*2. Serving of future profit is contingent one. Contingent expenditure cannot be allowed.*

*3. Future profits does not relate to the AY in question. And so, the expenditure cannot be allowed in this AY'.*

*8. A perusal of the Reasons would indicate that the assessing officer proceeds solely on the basis of the return of income and the enclosures thereto, being the financials and the deed of partnership, to initiate proceedings for re-assessment. The aforesaid documents however are part of record and the basis on which the intimation under section 143(1)(a) has been issued on 1.12.98. Let us bear in mind that the intimation dated 1.2.1998 has been manually issued, being prior to the electronic era which came into force on and with effect from 2003. The assessing officer has thus evidently applied his mind to the return and annexures even at that stage.*

*9. The scheme of assessment as set out in section 143 requires an assessing officer to process the return by issue of an intimation (which has been done in the present case) and thereafter issue a notice under sub-section (2) of section 143 to the assessee if the assessing officer considers it necessary or expedient to ensure that the assessee has not understated income, computed excessive loss or underpaid tax calling upon him to attend his office and require him on a date to be specified therein, to produce or cause to be produced any evidence on which the assessee may rely in support of such claim. Having done so, an assessment is to be completed in terms of section 153(1) of the Act within a period of two years from the end of the assessment year in which the income was first assessable, in this case, on or before 31.3.2001.*

*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 1.12.1998 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 assesse 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 31.3.2001. This was not done in the present case. Subsequently, a notice under section 148 has been issued on 9.12.2002 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.*

*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 CIT*

*Vs. Kelvinator of India (320 ITR 561) states thus in the context of the beliefthat 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 fulfillment of certain pre-conditions 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 materialto 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 re-assessment, but of review. The reasons make it abundantly clear that the re-assessment is sought to be initiated on the basis of the return of income and the enclosures which were available with the assessing officer since 2.11.1998 and 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 31.3.2001, prior to issue of notice u/s 148. The notice under section 148 dated 9.12.2002 is thus an arbitrary exercise of power and a review of proceedings impermissible in law.*

*13. The Division Bench of the Delhi High Court in the case of Commissioner of Income Tax Vs. Orient Craft Ltd (354 ITR 546) deals specifically with this aspect of the matter. The substantial question of law that was dealt with by the High Court is as follows;*

> *"Was the Tribunal right in law in holding that in the absence of any tangible material available with the Assessing Officer to form the requisite belief regarding escapement of income, the reopening of the assessment made under section 143(1) is bad in law?*

*14. The Division Bench notes that the Supreme Court in the case of Asst. CIT V. Rajesh Jhaveri stock Brokers P. Ltd, (supra) only deals with the formation of an opinion at the time of issuance of prima facie intimation and does not indicate anywhere that a re-assessment can be initiated in the absence of a reason to believe.*

*To conclude, the Division Bench holds thus:*

*'This judgment, contrary to what the Revenue would have us believe, does not give a carte blanche to the Assessing Officer to disturb the finality of the intimation under section 143(1) at his whims and caprice; he must have reason to believe within the meaning of the section'.*

*15. There is yet another relevant aspect. Mr.Kapur, to whom the payment was made in the present case, also retired from two other firms simultaneously, M/s.Jarvis International (hereinafter referred to as 'Jarvis') and M/s AryavarthaImpex (hereinafter referred to as 'Aryavartha'). The facts in the case of Jarvis, Aryavartha and TANMAC, the appellant before us, are identical. However, it appears that the Department, in the cases of Jarvis and Aryavartha, issued notices u/s.143(2) of the Act and completed scrutiny assessment proceedings within time. Thus, in those cases, when proceedings for re-assessment were initiated by issue of notice under section 148, the Tribunal in the case of Jarvis and the Commissioner of Income Tax (Appeals) in the case of Aryavartha as confirmed by the Income Tax Appellate Tribunal, took the view that the assumption of jurisdiction under section 148 was bad in law.*

*16. The facts as well as the law remain identical in all three cases. Thus merely by virtue of the non-action on the part of the assessing officer in the case of the present assessee, i.e. by his failure to issue a notice under section 143 (2) of the Act, the Department gets the advantage of another four years from 31.3.2002 to initiate proceedings for re-assessment. This obviously can neither be the proper interpretation of section 147 nor the intention of Legislature. The CIT (A) in order dated 30.09.2004 distinguishes the present case from the two others on precisely the ground stating thus:-*

*"In my opinion, the Appellant's case stands on a different footing than that of Jarvis International. In that case, the original assessment was completed under section 143(3) and the Assessing Officer had duly examined the allowability of payment of Rs.5,50,000/- to Sri P.C.Kapur at the time of his retirement. After such examinations, the Assessing Officer had taken a conscious decision to allow the same as a revenue expenditure. On the other-hand, in the present case, the Appellants assessment was not completed after scrutiny u/s.143(3). That means, the Assessing Officer did not have the opportunity to examine the allowability of Rs.5,50,000/- paid to Sri P.C.Kapur. Since there was no application of mind and consequently no conscious decision on the part of the Assessing Officer to allow this amount, it cannot be said that the reopening of the assessment was due to change of opinion".*

*It is incorrect to state that the Assessing Officer had no opportunity as the statute grants him full opportunity to scrutinize the assessment if he felt it was necessary and expedient for him to do so. Having chosen not to, he cannot resort to the provisions of S.147 in the absence of any new or fresh material indicating escapement of income.*

*17. A decision of the Delhi High Court in the case of CIT Vs Orient Craft Limited (354 ITR 536) had occasion to consider a similar question and the Division Bench, at Page 546, holds as follows;*

> *"Having regard to the judicial interpretation placed upon the expression reason to believe, and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words reason to believe have to be understood in a liberal manner where the finality of an intimation under section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore, it is not permissible to adopt different standards while interpreting the words reason to believevis-`-vis section 143(1) and section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under section 143(3) cannot apply where only an intimation was issued earlier under section 143(1). It would in effect place an assessee in whose case the return was processed under section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny or is accepted without demur is not a matter which is within the control of the assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden or proving valid reasons to believe could be circumvented by first accepting the return under section 143(1) and, thereafter, issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression reason to believein cases where assessments were framed earlier under section 143(3) and cases where mere intimations were issued earlier under section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed".*
>
> *……….*
>
> *The reasons recorded by the Assessing Officer reached the belief that there was escapement of income on going through the return of incomefiled by the assessee after he accepted the return under section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in CIT v. Kelvinator (supra).*

*18. The above extracts are applicable on all fours to the present case in the facts and circumstances pointed out earlier. In the light of the aforesaid discussion, we*

> *answer question of Law No.2 in favour of the assessee. In view of our conclusion on the aspect of assumption of jurisdiction, we do not see any need to go into the merits of the case and refrain from answering the substantial question of law relating to the same. No costs."*

And therefore, the ld.AR prayed that the impugned action of ld.CIT(A) be upheld.

**8.** We have heard both the parties and perused the material available on record. We note that since the Ld.CIT(A) has decided the appeal of the assessee in their favour by holding that the AO didn't had the jurisdiction to re-open the assessment u/s.147 of the Act. Therefore, we will first of all address the validity the impugned action of the ld.CIT(A) on the legal issue. In this regard, we note that the assessee is engaged in the business of real estate/developing construction projects and in the relevant year under consideration, the assessee had filed return of income on 30.09.2013 declaring total income of Rs.3,27,48,130/- which was initially processed u/s.143(1) of the Act and subsequently, there was a survey conducted at assessee's premise on 07.08.2013 and thereupon, the return of income of the assessee was selected for scrutiny and the AO issued notice u/s.143(2) of the Act, on 02.09.2014 and several other notices to the assessee u/s.142(1) of the Act, including the notice dated 18.03.2015, wherein, inter alia, the AO sought assessee's explanations on the differences of Rs.14,94,75,671/- between the opening and closing balance of the capital account of the assessee firm by way of question No.2(i) as under:

*"on verification of RoI of AY 2011-12, your capital was received Rs.11,47,46,183/- why for AY 2013-14, it has increased up to Rs.26,42,21,854/- kindly explain 'as to why' Rs.14,94,75,671/- should not be added to the total income of M/s.Line Marvel Homes?"*

**9.** Pursuant to the aforesaid notice of the AO, the assessee replied vide letter dated 23/27.03.2015 and explained about the increase in the 'Capital a/c' which reply we find placed at Page Nos.41-61 of the paper book and especially at Page Nos.48-54, the assessee answered the question No.2, wherein, it is noted that the assessee explained that increase in capital account was on account of current year's profit of Rs.2,66,27,747/- and revaluation of land/site -140 LB Road, which was book value at Rs.4.58 Crs. as on 31.03.2011 (AY 2011-12) which was increased by revaluation of the same to Rs.17.48 Crs. as on 31.03.2012 (AY 2012-13). The AO being satisfied with the reply of the assessee accepted the explanation after verification of the records produced by the assessee and financials presented before him and passed the scrutiny Assessment Order u/s.143(3) of the Act, on 30.03.2015 by accepting the return of income.

**10.** Thereafter, the AO had issued notice u/s.148 of the Act dated 29.03.2016 expressing his desire to re-open the assessment for AY 2012-13 and thereafter, gave a copy of the reasons recorded to re-open on 28.11.2016 and finding no response from the assessee, framed the re-assessment u/s.143(3) r.w.s.147 of the Act on 28.11.2016 making an addition of Rs.12,32,92,525/-.

**11.** On appeal, the assessee challenged the action of the AO invoking the jurisdiction to re-open scrutinized assessment and brought to the notice of the Ld.CIT(A) that the issue of "*increase in 'Capital a/c'*" has already been specifically enquired into and the assessee has explained about the increase in the 'Capital a/c' and the AO being satisfied with the explanation/reply has not taken any adverse view against the assessee on this issue and instead accepted the return of income filed by the assessee; and it was contented before the ld.CIT(A) that the AO does not enjoy the power to review the action of his predecessor (AO) and therefore, impugned action of the Assessing Officer reopening the assessment was bad in law. The ld.CIT(A) upheld the legal issue raised by the assessee and since there was no tangible material in the possession of Assessing Officer to initiate reason for reopening the assessment, the ld.CIT(A) cancelled the notice issued u/s. 148 of the Act.

**12.** As far as the contention of the assessee that the land was held as stock in trade appears to be incorrect. A perusal of the balance sheet shows the land in question i.e., site – 140 LB Road, under the head "Project Advances – Non current portion" and grouped under the head "Other Non Current Assets". According to us, if the contention of the assessee that, the land was held as stock in trade is true, then the same would have been shown under the head "Current Assets" and not under the head "Other Non Current Asset". Therefore the claim of the assessee

that the land which was revalued forms part of stock in trade, appears to be incorrect.

**13.** In so far as the reopening is concerned, it can be seen that a query has been raised by the Assessing Officer in the course of the original assessment proceedings u/s.143(3) in connection with the increase in the capital account of the firm. The assessee has apparently explained that the difference of Rs.12,32,92,525/- is nothing but a revaluation of inventory. In this connection the assessee through its letter dated 27.03.2015 at para 4 under the head Guidance Note on Treatment of Reserve Created on Revaluation, which can be seen at page 50 of the paper book, has submitted as follows:

> *"4. A view has been expressed in some quarters that, for measurement of profits, revenue is deemed to have arisen when it is actually collected or when a justifiable claim to collect it arises (e.g. credit sale) or when there is knowledge and evidence that it is capable of being collected if a sale were to be made (i.e. prevailing market price).* ***<u>According to this view, this principle will apply equally to current and fixed assets</u> and, therefore, when fixed assets are written up to their present value, the corresponding Revaluation Reserve cannot be considered as an unrealized reserve.*** *It is, therefore, argued that past accumulated losses as well as depreciation for the year or arrears of depreciation for earlier years which are required to be provided under section 205 of the Companies Act can be written off or adjusted against such Revaluation Reserve."*

**14.** The assessee has stated that the principle will apply equally to current and fixed assets. However, on perusal of the balance sheet of the assessee which forms part of the paper book, clearly demonstrates that the land in question was not even owned by the assessee but was only held as project advance by the assessee and further it can be seen that

the said project advance was not classified as current assets – stock in trade or fixed assets in the balance sheet but as project advance under the schedule – "non current Assets". Thus it can be seen that the assessee has through its submissions dated 27.03.2015 has misled the Assessing Officer to believe that the asset was held as current assets – stock in trade / Fixed Assets, while the same is incorrect. Therefore, it cannot be said that the reopening has been done merely based on a change of opinion but on the basis of information which clearly demonstrate that the assets were not held as current asset as stock in trade or as Fixed Assets. Since, the reopening is not based merely on a change of opinion, we do not countenance the action of Ld.CIT(A) in concluding that the reopening is done merely based on a change of opinion of the AO. Therefore, we are of the considered view that the order of the Ld.CIT(A) is erroneous and hold that the reopening of the case by the AO is valid.

**15.** Coming to the merits of the case, it can be seen that what has been revalued is being "project advance" paid towards land shown under the head – Non current Asset portion in the Balance sheet. At this stage useful referene may be made to the ratio of the decision of the Hon'ble Supreme Court in A.L.A.Firm v CIT 189 ITR 285 (SC), which is applicable in the facts of the case.

**16.** At the outset, the asset in question is nothing but a "project advance" not held as current assets and in fact has been held as a **"non current asset"** which can be seen from pages 25 to 26 of the paper book filed by the assessee containing the balance sheet and schedules thereto. This being the scenario there can be no case for the assessee to state that stock in trade has been revalued since stock in trade is to be classified as current assets and not as "non-current assets". Therefore, reliance placed on the Accounting Standard 2 for arriving at the conclusion that stock in trade is to be valued at cost or net realizable value is not relevant, since the assessee itself has classified the land only as a "non-current asset" and not as stock in trade under current assets. Such being the case, one has to come to the irresistible conclusion that the revaluation made by the assessee during the relevant assessment year, is not of the stock in trade but of a "non-current asset".

**17.** Thus in the present scenario it can be seen that the revaluation would affect the income of the assessee and a direct credit to the capital account of the partners by itself cannot help the assessee escape from the clutches of taxation. The Supreme Court in A.L.A Firm (supra) has held that it is not in every case that an assessee can take the lower of cost or net realizable value and that there are exceptions to this rule. Apparently this is not a case where stock in trade was revalued for the reasons explained earlier and therefore the benefit of Accounting Standard 2 cannot be availed of by the assessee. The decision of the Supreme Court

cited by the Ld.AR in Sakthi Trading Co v CIT 250 ITR 871 is completely distinguishable since that was a case which related to valuation of stock in trade which is not the case before us.

**18.** In the facts and circumstances of the present case and the details discussed as above, we are inclined to set aside the impugned order of the Ld. CIT(A) and uphold the order of the AO in adding the sum of Rs.12,32,92,525/- being the amount which has been credited to the capital account and allow the appeal of the revenue.

**19.** In the result, appeal filed by the Revenue is allowed.

Order pronounced in the open court on 26th July, 2024 at Chennai.

| **Sd/-**<br>**(**एबी टी वर्की**)**<br>**(ABY T VARKEY)**<br>न्यायिकसदस्य**/Judicial Member** | **Sd/-**<br>**(**एस**.**आर**.**रघुनाथा**)**<br>**(S. R. RAGHUNATHA)**<br>लेखासदस्य**/Accountant Member** |
|---|---|

चेन्नई/Chennai,
दिनांक/Dated, the 26th July, 2024
***JPV***

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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