आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.775/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2010-2011)

Indian Overseas Bank, 763, Anna Salai, Chennai 600 002.	**Vs.**	The Deputy Commissioner of Income Tax, Large Taxpayer Unit-2, Chennai 600 034.

आयकरअपील सं./ ITA No.946/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2010-2011.)

The Assistant Commissioner of Income Tax, Large Taxpayer Unit-2, Chennai 600 034.	**Vs.**	Indian Overseas Bank, 763, Anna Salai, Chennai 600 002. **[PAN: AAACI 1223J]**
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

Assessee by : Shri. C. Naresh, C.A.,
Department by : Shri. A. Sasikumar, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 06.08.2024
घोषणा की तारीख /Date of Pronouncement : 29.08.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

These cross appeals are arising out of the order dated 29.12.2017 of the Commissioner of Income Tax (Appeals)-5, Chennai (in short the ''ld. CIT(A)''). The

assessment was framed by the DCIT, LTU-II, Chennai for the assessment year 2010-11 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 31.03.2016.

2. The assessee in ITA No.775/Chny/2018 has raised the following grounds of appeal: -

> *''Reopening of assessment*
>
> *1.1. The CIT(A) erred in confirming the reopening, overlooking the fact that AO assumed jurisdiction to reopen only on the basis of disclosures in the published Balance Sheet, which cannot be considered as fresh information in his possession warranting reopening of assessment.*
>
> *Taxability of Unreconciled entries in NOSTRO accounts*
>
> *2.1. The Ld. CIT(A) erred in confirming the taxability of net un-reconciled entries in NOSTRO accounts outstanding for more than 5 years credited to P & L a/c. The CIT(A) ought to have noted that the said sum is not exigible to tax under any of the provisions of the Act.*
>
> *Taxability of amount received under Agricultural Debt Relief and Debt Waiver Scheme*
>
> *3.1 The Ld. CIT(A) erred in holding that amount received from Government under the above scheme is exigible to tax whereas the said sum is utilized to reduce the amount due from farmers and also to reduce the provision held against these accounts. Since the above reduction of provision has effect of reduction otherwise allowable u/s 36(1)(viia), charging to tax this amount resulted in double disallowance''.*

3. The revenue in ITA No.946/Chny/2018 has raised the following grounds of appeal: -

> *''1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*
>
> *2. The learned CIT(A) has failed to observe that the provisions of sec.115JB are applicable even in respect of banks which are governed by Banking Regulation Act, 1949. erred in confirming the reopening, overlooking the fact that AO assumed jurisdiction to reopen only on the basis of disclosures in the published Balance Sheet, which cannot be considered as fresh information in his possession warranting reopening of assessment.*

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored".

4. Succinctly stated, the chequered history involved in the present case which will have a strong bearing on the adjudication of the same are for the sake of clarity are culled out in a chronological manner, as under:

Date	Particulars
29.09.2010	Return of Income for AY 2010-11 filed declaring income at NIL. Selected for scrutiny under CASS.
06.09.2011	Notice u/s 143(2) was issued and served.
31.01.2013	Assessment order u/s 143(3) passed and income was assessed at Rs.1539,05,88,938/-.
20.09.2013	Order of CIT(A).
27.05.2014	Appeal affect order given by AO pursuant to order of CIT(A) dated 20.09.2013. Income was re-computed to Rs.785,59,02,266/-.
12.02.2015	Order u/s 263 of the Act by the CIT.
13.02.2015	Appeal affect order given by AO pursuant to order of CIT dated 12.02.2015. Income was assessed at Rs.760,36,40,367/-.
30.03.2015	Notice u/s 148 was issued. Case was reopened.
29.04.2015	Return filed pursuant to notice u/s 148 of the Act.
16.04.2015	Assessee requested for reasons for reopening assessment.
06.05.2015	Assessee filed objections / written submissions.
22.09.2015	Notice u/s 143(2) was issued.
15.10.2015	Reasons for reopening provided to assessee.
04.01.2016	Objections to reopening the case was disposed of.

31.03.2016	Order u/s 143(3) r.w.s.147 of the Act passed by AO. Computed assessed income as Rs.1060,48,70,585/-. Following additions are made: (i) Disallowance of credit entries in the Nastro Accounts; (ii) Claim of amortisation of investments written off; (iii) Taxability of amount received under Agricultural Debt Waiver and Debt Relief Scheme.
29.12.2017	Impugned order passed by CIT(A) upholding order of AO dated 31.03.2016 u/s 143(3) r.w.s 147 of the Act.
	Hence the present Appeal.

5. Since, we have tabulated the events as supra therefore, we restrict ourselves reiterating the facts again.

6. The ld. Authorised Representative, argued that ld.AO erred in reopening u/s 147 the assessment already completed u/s143(3) of the Act without there being any new 'tangible material' or fresh 'information' in the possession of AO to come to the conclusion that there is escapement of income. Ld.AR further submitted that the reopening was done in respect of unreconciled entries in NOSTRO account and amount received from Government under Agricultural Debt Relief and Debt Waiver Scheme based on the disclosures in annual accounts and in respect of amortization of investments based on the claim in the return of income. In support of above submissions, the ld.AR referred the judgment of the Hon'ble Supreme Court of India in the case of Kelvinator of India Ltd. (320 ITR 561 SC) and the order of co-ordinate

bench of Tribunal in Assessee's own case in ITA No.782/Chny/2001 and ITA No.1991/Chny/2002 dated 15.06.2022 titled as Indian Overseas Bank Vs JCIT.

7. Per contra, the ld. CIT- DR relied upon the orders of the lower authorities and contended that in assessment proceedings claims were allowed to the assessee dehors the judgment of the Hon'ble Supreme Court enquiry was not done properly. He further contended that there is escapement of income hence reopening is justified.

8. We have heard the rival submissions and gone through the record, paper books and impugned order. The reasons for reopening recorded dated 15.10.2015 is as under:

> *''1. In the computation of income the assessee credited Rs.4,89,04,688 to P & L account in respect of credit entries in Blocked Nostro accounts as per the directors of RBI.*
> *The same had been claimed as deduction while computing the total income. This is not an allowable deduction as per IT Act. It was held in 22 ITR 344 (SC) & CIT Vs Axis Advertising (P) Ltd (Mad) 255 ITR 510. The same has to be brought to tax.*
>
> *2. The assessee had claimed Rs.158,78,70,585 as investment written off by amortization while computing the total income. The Investment written off is not an allowable expenditure hence it is required to be withdrawn. It was clearly held by the Supreme Court in the case of Vijaya Bank Vs Add.CIT (SC) 187 ITR 541 that no part of cost investment could be treated as revenue expense.*
>
> *3 The assessee had received Rs136.44 crores (371.97-235.53) from Government of India under agricultural debt waiver and Debt Relief Scheme 2008 as second instalment during the year. This is required to be brought to tax. (The portion of debt which was already claimed and allowed as bad debt.) It is brought to notice, in the case of rural advances, the assessee could write off the bad debts without crediting the debits or without closing the debtors account in the assessee's Book. Such amount is required to be verified and same received from RBI/GOI should be brought to tax.*

4. While computing the disallowance U/S.14A only investment from which the income is received during the year alone taken as investments which is not correct. Similarly, the interest paid in total was not taken. This resulted in short disallowance under Sec 144.
In view of the above, I have reason to believe that income chargeable to tax has escaped assessment and accordingly, the assessment needs to be reopened u/s 147 of the Income tax Act."

9. We may refer relevant portion of the judgment of the Hon'ble Supreme Court of India in the case of Kelvinator of India Ltd. (320 ITR 561 SC) which held as under:

"On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment 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 re-open the assessment. Therefore, post-1st April, 1989, power to re-open 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 re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening 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, Assessing Officer has power to re-open, 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 "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, 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."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

10. Gainfully, we may also refer relevant portion of the order of co-ordinate bench of Tribunal in Assessee's own case in ITA No.782/Chny/2001 and ITA No.1991/Chny/2002 dated 15.06.2022 which held as under:

''7. The reasons recorded by Ld. AO to reopen the assessment read as under: -

The assessee bank has been maintaining its books of accounts under mercantile basis. However, while admitting the interest on securities for Income Tax purposes, the assessee bank reduced the interest accrued due to profit & loss account and offers the same on receipt basis. In this way, the assessee bank had reduced a sum of Rs.12,66,24,544/- from the total income for the asst year 1991-92. In as much as the assessee offers the interest on securities on receipt basis, the sum of Rs. 12,66,24,544/- reduced from the total income for the asst year 1991-92 should have been offered to tax in the assessment for 1992-93 on case basis. Failure on the part of the assessee to include such income has resulted in under assessment of income to the extent of Rs.12,66,24,544/-. I have reasons to believe that income chargeable to tax has escaped assessment within the meaning of Sec.147 of the Income Tax Act. Upon perusal of aforesaid reasons, it could be seen that while framing opinion of escapement of income, Ld. AO has not referred to any tangible material coming into the possession of Ld. AO subsequent to the framing of the regular assessment proceedings. It is an allegation that interest on securities have been offered on receipt basis and therefore, the receipts of earlier years as received in this year, was to be offered to tax.

8. It is discernible from records that the original return of income was already scrutinized by revenue u/s 143(3). The assessee, in its computation of income for AY 1992-93 (Page no. 72 to 78 of paperbook) reduced 'interest on investments in

govt. & other securities accrued but not received' for Rs.1173.77 Lacs. The assessee also added a noted in the computation of income which read as under: -

> *"The interest on securities which is offered to tax under the head "Business" consequent on the amendment to the Income-tax Act, 1961 is accounted and offered to tax under the head "Business". The cash basis of accounting is continued to be adopted for income-tax purposes as the same basis was adopted from the inception, instead of accrued basis. The cash basis of accounting is regularly followed, notwithstanding the change in the head of income, viz, from ``Interest on Securities" to Business".*

It is evident from the computation of income that the assessee had disclosed full details of its claim in respect of interest accrued but not due in the computation of income furnished along with the return of income. The whole basis of reopening was the aforesaid computation along with notes thereon as furnished by the assessee along with the return of income. In other words, there was no new tangible material before Ld. AO to reopen the case of the assessee and the reopening was based on existing material already available on record. In such a case, the reopening would become mere review of the order which is impermissible as per the decision of Hon'ble Supreme Court in CIT V/s Kelvinator of India Ltd. (320 ITR 561). We are of the opinion that the formation of belief has to be on the basis of some fresh tangible material or new information which is not the case here. This being so, reassessment proceedings are liable to be quashed on legal grounds.

9. The aforesaid conclusion also find support from the decision of Hon'ble High Court of Madras in Tanmac India V/s DCIT (78 Taxmann.com 155) wherein reassessment was held to be not justified since the same was sought to be initiated on the basis of return of income and enclosures thereto which was already part of record. Similar is the ratio of decision in Pr. CIT V/s M.R.Narayanan (131 Taxmann.com 280) as well as in CIT V/s RPG Transmissions Ltd. (48 Taxmann.com 57).

10. Considering the ratio of aforesaid binding judicial pronouncements, the reassessment proceedings are liable to be quashed. We order so. The legal grounds urged by the assessee stand allowed. The Ld. AR submitted that in such an eventuality, the issue of computation of deduction u/s 80M would not arise. Concurring with the same, the ground thus raised stand dismissed as infructuous. The appeal stands disposed-off accordingly,

11. It is admitted position that facts as well as point of adjudication as well as the direction of Hon'ble High Court are pari-materia the same in AY 1993-94 except for the fact that issue of computation of deduction u/s 80M is not there in this year. The reasons recorded by Ld. AO to reopen the case of the assessee are substantially the same. Accordingly, the legal grounds urged by the assessee stand allowed and the appeal is disposed-off accordingly.

12. Both the appeals stand allowed in terms of our above order".

11. Having gone through the judgments of the Hon'ble Supreme Court of India in the case of Kelvinator of India Ltd. (320 ITR 561 SC) and the order of co-ordinate bench of Tribunal in Assessee's own case in ITA No.782/Chny/2001 and ITA No.1991/Chny/2002 dated 15.06.2022, we find that 'reason to believe' indispensably be based upon the new 'tangible material' or fresh 'information' in the possession of AO. In this case we find no new 'tangible material' or fresh 'information' in the possession of AO.

12. Therefore, taking guidance from the judgments referred supra, we are of the considered view that if, there is no new 'tangible material' or fresh 'information' in the possession of AO, then if ld.AO assume jurisdiction u/s 147 of the Act it would be nullity and all consequential proceedings pursuant to section 147 is liable to be set aside.

13. We also observe that just before reopening of original assessment, an appeal affect order was given by AO pursuant to order of CIT dated 12.02.2015. The revenue had chance to invoke there issues u/s 263 of the Act but failed to raised these issues in proceedings u/s 263 of the Act.

14. Therefore, in the light of entire conspectus of matter, chequered history of the case and respectfully following the judgment of the Hon'ble Supreme Court of India in the case of Kelvinator of India Ltd. (320 ITR 561

SC) and the order of co-ordinate bench of Tribunal in Assessee's own case in ITA No.782/Chny/2001 and ITA No.1991/Chny/2002 dated 15.06.2022, we set aside the notice u/s 30.03.2015 and all consequential proceedings thereto.

15. Since we have adjudicated the jurisdictional ground of reopening the assessment u/s 147 therefore, we refrain ourselves to decide the issues on merit of additions and revenue appeal.

16. In the result, the appeal of the assessee (ITA No.775/Chny/2018) is partly allowed and consequently appeal of the revenue (ITA No.946/Chny/2018) is dismissed as infructuous.

Order pronounced in the court on 29th day of August, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated :29-08-2024
KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF