

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 644/Chd/2022
निर्धारण वर्ष / Assessment Year : 2015-16

The ACIT Circle1 (1), Chandigarh	बनाम	M/s SML Isuzu Ltd. SCO 204-205, Sector 34-A, Chandigarh
स्थायी लेखा सं./PAN NO: AACCS2991P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Jain, Advocate and
Ms. Somya Jain, C.A
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR
सुनवाई की तारीख/Date of Hearing : 12/08/2024
उद्घोषणा की तारीख/Date of Pronouncement : 18/09/2024

आदेश/Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the **Revenue** under section 253 of the Income Tax Act, 1961. **Revenue** is aggrieved by the order no. ITBA/FAC/250/2022-23/1044150537(1) dt. 22/07/2022 of the Ld. CIT(A) passed under section 250 of the Act, which is hereinafter referred to as the "**impugned order**".

2. At the outset the Registry has pointed out that the appeal filed by the **Revenue** is time barred by **05 days** for which Revenue has filed a condonation of delay application.

3. Delay of 05 days is condoned for which Revenue has shown sufficient cause for purpose of condonation of delay. Appeal is therefore taken up for **final hearing**.

Factual Matrix

4. The assessee is engaged in the business of manufacturing of commercial vehicles and is a public limited company. For the year under consideration

which is A.Y. 2015-16 and the corresponding previous year period is from 01/04/2014 to 31/03/2015, the assessee company filed its return of income on 30/11/2015 declaring income of **Rs. 52,39,32,000/-**.

5. The original assessment proceedings in the case of the assessee was completed vide order dt. 30/11/2017 which was issued under section 143(3) of the Act, whereby the total income of the assessee company was assessed at Rs. **57,03,70,400/-** after making **addition** on account of alleged **under valuation of closing work in progress**.

6. That the aforesaid **addition** made by the AO was **deleted** by the CIT(A) and the order of Ld. CIT(A) was thereafter **affirmed** by the Tribunal vide order dt. 20/03/2019.

7. Subsequently, the proceedings under the Section 147 were initiated in the case of the assessee vide notice dt. 10/02/2020 issued under section 148 of the act. The said reassessment proceedings were completed vide order dt. 27/09/2021 passed under section 147 of the Act, whereby reassessment was done of the assessee at **Rs. 57,65,85,400/-** after making the disallowance of bad debts written off during the year. The order of Ld. AO bears No. ITBA/AST/S/147/2021-22/10359/30321(1) and is dated 27/09/2021.

8. That the assessee challenged the validity of the reassessment proceedings and the disallowance made by the AO in the aforesaid reassessment order dt. 27/09/2021 passed under section 147 of the Act, by preferring an appeal before CIT(A). The CIT(A) by the "impugned order" dt. 27/07/2022 however quashed the reassessment proceedings **as being bad in law** and **not sustainable**. Since the reassessment proceedings itself was quashed, no specific finding was rendered by the **CIT(A) on merits** on the issue of disallowance of claim of bad debts written off.

9. That being aggrieved by the impugned order the Revenue is in appeal before this Tribunal and has raised following grounds of appeal in Form No. 36 before us:

1. *On the facts of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee holding that the notice u/s 143(2) was issued beyond prescribed time limits when the time limits for issuance of various notices was extended through ordinance as Taxation and Other laws (Relaxation of Certain Provisions) Ordinance, 2020 and subsequently the Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and notifications dated 31.12.2020 and 31.03.2021 issued under section 3 thereof.*

2. *On the facts of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee by holding that proceedings initiated u/s 147/148 are based merely on the change of opinion whereas no finding had been mentioned in the original assessment order on the issue considered for issuance of notice u/s 148.*

3. *On the facts of the case and in law, Ld. CIT(A) has erred in not deciding the appeal of the assessee on merit on the issue of escapement of income chargeable to tax amounting to Rs. 62,15,000/-.*

10. The assessee company in their **synopsis** filed has submitted that the impugned order of the **Ld. CIT(A) is correct** and that it has been rightly held that the reassessment order dt. 27/09/2021 **is bad in law** for reasons as under:

(a) No escapement of income – reassessment proceedings without jurisdiction and illegal.

(b) No fresh / tangible material to reopen the closed assessment and proceedings initiated merely on the basis of change of opinion on existing facts.

(c) Legal objections filed by the assessee not disposed off by a separate speaking order.

11. **Regarding (a) (supra) with regard to no escapement of income – Reassessment without jurisdiction and illegal :-** It is submitted by the assessee company is that during the relevant assessment year 2015-16, the assessee had in terms of Section 36(1)(vii) of the Act, claimed deduction for bad debts written off aggregating to Rs. 62,15,000/- viz(1) Bank guarantee invoked by the

Jalandhar City Transport Services Ltd. – Rs. 50,00,000/- [Fifty Lakhs] (ii) Trade receivable from Viking Motors (P) Ltd. – Rs. 12,15,594/-, which was duly debited in the statement of profit and loss account under the head “ provision of doubtful trade receivable / advances” [Reliance on Note 26 at page 22 of paper book]

[provision for doubtful trade receivable / advances → 62.15 lakhs dt. 31/03/2015 – Rs. 53.95 Lakhs dt. 31/03/2014]

12. The assessee company submits that the aforesaid amounts are “**actually written off**” as bad debt in so far as or in as much as the said amount of bad debts was correspondingly **reduced** from “trade receivable / advances” in the balance sheet for the relevant period. **Please see above entry (supra).**

13. The assessee company submitted that the aforesaid amounts were receivable / advanced by them in the regular course of business, which undisputedly constituted a debt in so far as:

(i) **Jalandhar City Transport Services Ltd. [JCTS]**- The assessee had undertaken business transaction of sale of vehicles with the said party and proceeds thereof was duly offered to tax in the past and relevant assessment year(s). In terms of the business agreement entered into by the assessee with JCTS, in the event there was any delay in the delivery of vehicles beyond a stipulated time period, JCTS was entitled to invoke the bank guarantee maintained with Canara Bank Ltd.

During the year under consideration, due to delay in delivery of certain vehicles beyond the stipulated time period, JCTS invoked the bank guarantee to the extent of Rs. 50,00,000/- (Fifty Lakhs) (three instalments refer pages 96 – 99 of paper book) and the said amount was debited from the bank of the assessee company on 23/02/2015 (page 100-101 of paper book), It is further averred by the assessee company that the condition stipulated in Section 36(1)(vii) of the

Act is that the debt on part thereof should have been taken into account for computing income. In other words even if a part of the debt (and not the whole debt) has been taken into account for computing income, the write off of the whole debt is allowable deduction.

Reliance for aforesaid was placed on the following decision and wherein it has been held that if part of the debt (interest) is offered to tax in earlier years, deduction of bad debt is available to the assessee qua the total amount (i.e; interest and principal) of debt written off-

- CIT v. T. Veerabhadra Rao: 155 ITR 152 (SC)
- CIT v. D B (India) Securities Ltd: 318 ITR 26 (Del)
- CIT v. Bonanza Portfolio Ltd: 320 ITR 178 (Del)
- CIT v. Shreyas S. Morakhia: 342 ITR 285 (Bom.)
- CIT v. Pudumjee Pulp & Paper Mills Ltd.: 235 Taxman 451 (Bom.)
- Angel Capital and Debt Market Ltd. v. ACIT: 118 TTJ 351 (Mum ITAT)
- Angel Commodities Broking (P.) Ltd. v. DCIT: 164 TTJ 275 (Mum ITAT)
- FedEx Express Transportation & Supply Chain Services India (P.) Ltd. v. DCIT: 169 TTJ 732 (Mum. Trib.)
- Bhavik Rajesh Khandra Share and Stock Brokers (P) Ltd. vs DCIT: 8 ITR(Trib) 155 (Mum. Trib)
- Kisan Ratilal Choksey Shares and Securities (P.) Ltd. v. Addl. CIT: 41 ITR(T) 114 (Mum. Trib.)

In the facts of the present case, it was submitted by the assessee company that income earned from sales made to JCTSL had been offered to tax in the earlier years and thereby as a consequence, the bank guarantee came to be invoked and being a part of same transaction of sale of vehicle is allowable as deduction in the terms of Section 36(1)(vii) of the Act.

(ii) **Viking Motors(P) Ltd. ('viking')**- The assessee had in earlier years, entered into regular business transaction of supply of vehicles to Viking. The income resulting therefrom was duly offered to tax in the respective year(s). However, an amount of **Rs. 12,15,394/-** payable by the said party did not seem recoverable and thereby the same was written off in the books of the assessee company.

14. It is emphatically submitted that the fact, that the aforesaid amounts constitute “**debt**” in the regular course of business **has not at all been disputed by the AO.**

15. The contention of the AO in disallowing the claim of bad debt as stated in the reasons recorded and the impugned assessment order is (i) the assessee had incorrectly claimed deduction in respect of “Provision” for bad debt as against actual write off {Note:- From perusal of profit and loss account (other expenses) note ‘26’ provisions of doubtful trade receivables / advances has been claimed at Rs. 62.15 lacs, which is not allowable to the assessee u/s 36 of the Act, being these debts were not written off / taken into account – No evidence or clarification regarding written off bad debts are available on record} and (ii) the assessee was unable to establish that the debt had become bad { Note- The assessee produced bank statement and a letter to support the claim that Rs 50,00,000/- corresponds to invocation to bank guarantee. It is to be noted that there is no confirmation from the third party regarding the assessee's claim that the said amount was invoked by the customer as guarantee. Also, the assessee did not produce bank statement of the recipient to prove the claim. With respect to the letter submitted by the assessee, it is a copy of email sent by the assessee to citybusjalandhar@gmail.com. Mere email sent by the assessee cannot be accepted as substantial evidence since there is no acknowledgement from the recipient. Also, the assessee submitted relevant extracts from financial statements. The same cannot be accepted without supporting documentary evidence. Therefore, the assessee's contention that the amount was irrecoverable cannot be accepted)

... With respect to Rs 12,15,594/- [Viking Motors Private Ltd. (Viking) (supra)written off, the assessee submitted an extract of financial statement. The reason for re-opening the case clearly states that no evidence or clarification was available on record regarding the amount written off. The assessee stated

that Rs 12,15,594/- relates to amount pending to be received from a certain dealer (M/s Viking Motors (P)Ltd.). The assessee did not submit any supporting documentary evidence. Hence, the assessee's claim cannot be accepted.

16. The assessee contention on core issue (supra) is that there is incorrect appreciation of facts and position of law.

Re(i):- (Actual write off of bad debt)

17. Once a provision is made (books of account) **by reducing the same from the relevant asset investment account** in the balance sheet, it would be regarded as provision or actual write off of debt / asset [Vijaya Bank Vs. CIT : 323 ITR 166 relied upon]. The assessee further relies upon the judgment of Supreme Court of India in case of southern Technologies Ltd. Vs. JCIT 320 ITR 577 and states that in Instant case besides debiting the P&L account they have correspondingly **reduced the amount from debtors account on the asset side of the balance sheet** and consequently, at the end of the year, the figure shown on the asset side was net of the alleged provision. Such treatment **amounted to actual write off for the purpose of availing benefit of deduction under the section.**

18. That the assessee is squarely covered by the precedent law as they have debited the profit and loss account with provision for bad and doubtful debts and reduced the said provision from the total debtor account.

19. That since the deduction is rightly claimed under section 36(1)(vii) of the Act, it cannot be said that there is no income escaping assessment thereby warranting the reassessment proceedings.

Re(ii) No requirement to establish non recoverability of debt

20. There is no requirement to establish that the debt written off was actually irrecoverable and once the amount is written off in the books of account of the assessee, then the claim of deduction is admissible.

21. Reliance on CBDT Circular No. 12/2016 dt. 30/05/2016 wherein it is stated that the claim of deduction u/s 36(1)(vii) of the Act shall be admissible if it has been written off as irrecoverable in the books of the assessee and fulfils the conditions stipulated in sub section (2) of Section 36 of the Act.

22. That it is not prudent / nor permissible in law to question the decision of the assessee to write off the debts which are not recoverable and neither the assessee is required in law to prove / establish that the debt had actually become bad before writing off the same in its books.

Deduction even otherwise allowable u/s 28/37 of the Act.

23. **Even otherwise amount written off qualifies a business loss allowable as deduction under section 28 of the Act.**

24. Payment towards invocation of bank guarantee, being merely a business settlement or compensation motivated purely by commercial purpose, there was sufficient commercial expediency on the part of the assessee to make the said payment, in order to safeguard its business interests and thus allowable as business deduction u/s 37 (1) of the Act.

25. Write off of trade receivable was a commercial decision taken in the best business interest of the business and constitutes expenses in terms of section 37(1) of the Act.

26. Thus, expenditure is even otherwise allowable as business loss / expense in terms of section 28/37 of the Act.

27. Accordingly, the reassessment proceedings initiated by the AO for mere verification of details without there being any evidence / material to indicate that the deduction was wrongly claimed by the assessee is without jurisdiction illegal and bad in law.

Re (b) No new tangible material – Proceedings initiated on mere change of opinion

28. Though the powers under section 147/148 are vide, the same are not unfettered or plenary, in so far as AO in the garb of reassessment cannot seek to review the earlier assessment framed under section 143(3) of the Act on account of mere “change of opinion”.

29. that the Reassessment cannot be initiated unless some new additional fact come on record leading to the belief of escapement of income.

30. That reasons recorded refers to “Perusal of records” or similar observations is indicative of the fact that the reassessment proceedings are initiated on reappraisal of existing facts and not on basis of any new tangible material which is not permissible in law.

31. That the return of income filed by the assessee for the year under consideration was picked for regular assessment vide notice dt. 19/09/2016 issued under section 143(2) of the Act.

32. That all the information as sought for by the AO **inclusive of audited financial statement for the year under consideration were provided for**. The aforesaid fact finds strength from the fact that the AO has, in the original assessment order dt. 30/11/2017, duly recorded in para 4 that

“ On perusal of final accounts of the assessee”

That above is clearly indicative of the fact that the original assessment proceedings was completed by the AO after detailed examination of the accounts of the assessee, wherein the bad debts written off was duly disclosed / reflected.

Basis above the action of the AO in reopening the case of the assessee for the year under consideration solely based on disclosure made in the audited

financial statements, which was duly considered by the AO during the course of original assessment proceedings, constitutes a mere change in opinion on examined facts.

33. That no new information / material came to the possession of the AO subsequent to the completion of assessment, in as much as in the reasons recorded the AO has merely mentioned that " from the perusal as profit and loss account (other expenses) note '26' provisions of doubtful trade receivable / advances has been claimed at Rs. 62.15 lacs which is not allowable to the assessee u/s 36 of the Act, being these debts were not written off / taken into account....."

34. That reassessment proceedings have merely been initiated on the basis of audited financial statements duly filed during the course of the original assessment proceedings.

35. That initiation of reassessment proceedings in the absence of any tangible material merely on the basis of reappraisal of information / facts already available on record, is nothing but on the basis of mere change of opinion which is not permissible in law. Being so, the impugned, reassessment order is illegal and bad in law and the CIT(A) rightly quashed the same.

Re(c): Non disposal of legal objections

36. That pursuant to the 'receipt of reasons' dated 17/02/2020 the assessee filed legal objections challenging the validity of reassessment proceedings vide letter dt. 16/12/2020.

37. That the AO without dealing with the aforesaid preliminary objections vide **a separate speaking order**, proceeded to conclude the assessment which vitiates the impugned reassessment proceedings.

38. That for aforesaid reason, too, the reassessment proceedings is invalid and bad in law and CIT(A) has rightly quashed the reassessment order.

Re:- Ground of Appeal No. 3- On merits

39. No finding of CIT(A) in the impugned order on merits of disallowance made, the disallowance made by the AO is not sustainable for following reasons:-

Re(i) Jalandhar City Transport Services Ltd. ('JCTS')- Bank Guarantee Invoked

40. Due to delay in delivering vehicles by the assessee to **JCTS**, they the **JCTS** invoked Bank Guarantee of Rs. 50,00,000/-. Since the income earned from sales made to **JCTS** has been offered to tax in the earlier years, thereby the bank guarantee invoked, being a part of the same transaction of sale of vehicles, was rightly claimed as deduction in the terms of Section 36(1)(vii) of the Act. Reliance on CIT Vs. Veerabhadra Rao : 155 ITR 152 (SC) and CIT Vs. DB,(India) Securities Ltd.; 318 ITR 26 (Del). The aforesaid of **Rs. 50,00,000/-** debited in the P&L Account of assessee company and corresponding reduction was made from ' Trade Receivable / advances' in the balance sheet for the relevant period hence 36(1)(vii) complied with. Alternatively the payment towards invocation of Bank Guarantee being merely a 'business settlement' or compensation motivated purely by commercial purpose and there being sufficient commercial expediency on part of the assessee company to make the said payment, in order to safeguard its business interests, such expense was even otherwise allowable as deduction u/s 28/37 (1) of the Act.

Re(ii) Viking Motors(P) Ltd. Trade receivable written off

41. The assessee had, in earlier years, entered into regular business transactions of supply of vehicles to Viking. The income resulting there from was duly offered to tax in the respective year(s). However an amount of **Rs.**

12,15,594/- payable by the said party did not seem recoverable and thereby the same was **written off** in the books of the assessee. The amount was debited under the head "Provision of doubtful trade receivable / advances" in P&L account and was correspondingly reduced from "trade receivable / advances" appearing in balance sheet, hence 36(1)(vii) complied. Even otherwise write off of trade receivable was a commercial decision taken in the business interest of the assessee and constitutes business loss / expense in terms of section 28/37 (1) of the Act.

Record of Hearing

42. The personal hearing in the matter took place on 12/08/2024 when both the parties appeared and were heard at length on their respective submissions. The Ld. DR contended that the "impugned order" is bad in law and illegal. The Ld. DR stated that on balance sheet of the assessee perse the amount of Rs. 62,15,000/- is not written off in aggregate. Full and complete "Tax Audit" report not disclosed completely in a sense that amount of bad debts / written off are not reflected by way of words or highlighted. Mere furnishing of tax audit is not full disclosure unless and until its material contents are not disclosed truthfully during the assessment proceedings. It is not stated in the balance sheet in such a manner that it catches the eyes, that the amounts are bad debts or part thereof which is written off as irrecoverable in the accounts.

The reopening of the assessment is done according to section 147/148 of the act. There is 'Reasons to belief' and for that 'existing material is sufficient'. In the 'original assessment' no view was formed on issues herein and thereafter there are 'reasons to belief' that income has escaped in original assessment. CIT(A) ought to have disposed off the case on merits, which was not done so in the first appeal which was before him under the Act. The Ld. CIT(A) on the facts of the case and in law has erred in passing the 'impugned order' by holding that he proceedings initiated u/s 147/148 are based merely on the 'change of opinion'

whereas no finding has been mentioned in the original assessment order on the issues, considered for issuance of notice u/s 148. The Ld. DR further contended that in the original assessment order no view was formed. The Ld. DR has placed on record three written submissions dt. 06/06/2024, 07/06/2024 and 27/06/2024. The written submissions can be briefly summarised as follows :

(i) During the course of hearing on 06/06/2024 the Ld. AR accepted that the first issue i.e; issue of notice under section 143(2) of the Act beyond limitation period has been wrongly decided against the Department in the first appeal therefore Department is not contesting first issue.

(ii) Second issue is regarding issue of notice u/s 147 of the Act which is being held as change of opinion by the Ld. CIT(A). It was contended that on ITBA portal no tax audit report i.e Form No. 3CA-CD etc required to be filed for compliance u/s 44AB of the Act for the year under consideration was uploaded / efiled. During the course of the original assessment, the assessee vide letter dt. 21/07/2017 had filed a paper copy of tax audit report i.e; form No. 3CA-CD which does not have any e filed number or insignia of the Income Tax Department. Therefore there is no disclosure of information under the act and same amounts to failure on part of the assessee. [Ref letter dt. 7/6/2408 Dept]. Vide their final submission dt. 27/06/2024 the DR has contended that only **two issues survives for this Tribunal :-**

(A) Initiation of proceedings u/s 147/148 is bad in law being illegal.

(B) Disallowance of rs. 62,15,000/- in terms of Section 36(1)(vii) of the Act.

Basis section 147 the Department / Revenue contends that a mere perusal of Section 147 reveal that there is no reference or mention **explicitly or impliedly to a new tangible** information as claimed by the assessee to the effect that there must be a new tangible information for reopening of the assessment. The Ld. DR has stated that the assessee has mainly relied upon the judgement of Hon'ble Delhi High Court in the case of Kelvinator India Ltd. reported in (2002) 256 ITR (Del) (FB) which was subsequently upheld by the Hon'ble Supreme Court in (2010) 320 ITR 561 (SC). The said judgement be read in holistic manner. Basis that he contents that there should not be review of its own order by the AO as the

AO power is limited to rectification under section 154. Statute must be read as a whole. It is contended that when there is no discussion on the issues in the assessment order and no details were called for by the AO or filed by the assessee on the issues, no finding either positive or negative was arrived at during the course of the original assessment proceedings- hence there is no question of change of opinion. Therefore notices under section 148 of the Act cannot be quashed and reliance is heavily placed amongst others on judgment of Hon'ble Supreme Court in case of Kalyanji Mauji & Co. vs. CIT- 102 ITR 287 (SC) and that of Bombay High Court in case of Yuvraj Vs. UOI Bombay- (2009) 315 ITR 84 wherein it was held that points not decided while passing assessment order u/s 143(3) is not change of opinion and that assessment was opened validly. The jurisdictional High Court judgment in case of Ropar District, Cooperative Milk Producers Union Ltd. Vs. CIT = (2009) 311 ITR 42 (P&H) relied upon.

It was also pleaded that even if for argument sake, it is accepted there was disclosure by the assessee in form of note to trading and profit and loss account and balance sheet, this will not take away the jurisdiction and competency of the AO to issue notice under section 148 of the Act.

On merits of the case, CIT(A) has not adjudicated, the DR contended. Therefore this Tribunal may take a call to decide the issue or set aside the issues to the file of the CIT(A) to adjudicate the matter.

43. The assessee in rejoinder written argument has contended as below:

1. The counsel for the department had, on 06.06.2024 and 07.06.2024, filed written submissions in the captioned matter raising the following arguments:

- (i) Tax Audit Report in Form 3CD, though included in the paper book filed before the Tribunal, was not e-filed by the assessee on the income tax e-filing portal;
- (ii) There is no requirement to have any fresh tangible material for reopening in terms of section 148 of the Act;
- (iii) The present case is not a case of change in opinion;
- (iv) On merits - allowability of bad debts is contested.

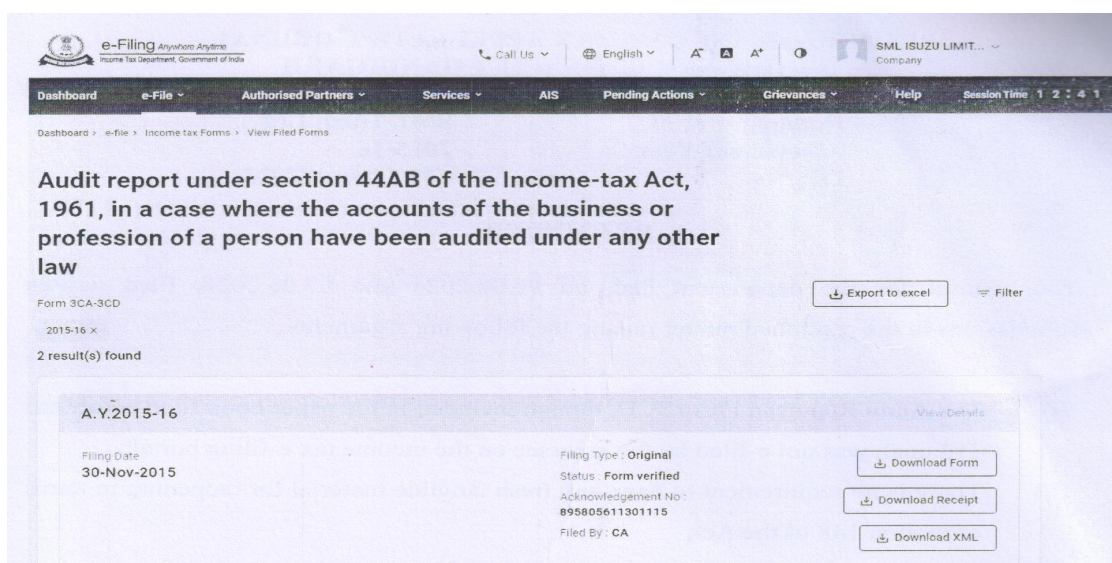
2. In rejoinder/ rebuttal to the above, and in addition to our arguments made vide synopsis dated 18.09.2023, it is submitted as under:

Re (i): Tax Audit report not filed on the portal

3. The DR has, in submissions submitted that the assessee company did not file its Tax Audit Report in Form 3 CD on the e-filing portal but has included the same in the paper book filed before the Tribunal.

4. In this regard, it is respectfully submitted that the claim made by the DR in his submission that the tax audit report in Form 3CD was not e-filed by the assessee is factually incorrect inasmuch as Form 3CD was duly e-filed by the assessee on the income tax e-filing portal on 30.11.2015 vide e-filing acknowledgement number 895805611301115. A copy of the screenshot of the e-filing portal duly evidencing filing of Form 3CD on 30.011.2015 is reproduced hereunder for your Honour's ready reference:

IMAGE PASTE HERE



5. On a perusal of the aforesaid, it will be appreciated that there was no delay in filing the tax audit report by the asscssee and the same was duly furnished online.

Re (ii): Fresh Tangible material not required for initiating proceedings under section 148 of the Act

6. The DR, in his submission, has submitted that there is no requirement for any fresh tangible material to initiate proceedings under section 148 of the Act.

7. In this regard, it is, at the outset, submitted that there is no dispute that no fresh tangible material was available with the assessing officer post completion of original assessment. This is, in any case, fortified by the reasons recorded, which clearly states that the proceedings have been initiated based on perusal of note 26 and the profit and loss account forming part of the audited financial statements [refer paras 2 ad 3 on pg.61].

8. It is respectfully submitted that in order to initiate proceedings under section 147 of the Act, it is incumbent on the part of the assessing officer to first possess some fresh '**tangible material**', on the basis of which prima facie case/ belief of any escapement of income on the part of the assessee is made out after completion of the original assessment proceedings.

9. In the present case, no new material/ tangible fact/ information has come to the notice of the assessing officer subsequent to completion of the original assessment as is evident from the fact that the reassessment proceedings have been initiated merely on the basis of disclosure made in the audited financial statements, which, as a matter of fact and admitted by the DR, were before the assessing officer during the course of original assessment proceedings.

10. In **CIT vs. Kelvinator of India Ltd: [2002] 256 ITR 1 (Del) (FB)**, the reassessment proceedings were reopened within 4 years on the basis of the information contained in the tax audit report [refer para 21 pg. 9]. The issue before the Court was whether in the absence of any new / fresh material, reopening is permissible.

11. The Full Bench of the Hon'ble Court, reproduced with approval the following extracts of decision in **Jindal Photo Films Ltd V. DCIT: [1998] 234 ITR 170 (Del)** in absence of any new material, reopening is not permissible on mere fresh application of mind on the same set of facts:

"11. In *Jindal Photo Films Ltd. 's case (supra)*, R.C. Lahoti, J. (as His Lordship then was) observed:

"The power to reopen an assessment was conferred by the Legislature not with the intention to enable the Income-tax Officer to reopen the final decision made against the revenue in respect of questions that directly arose for decision in earlier proceedings. If that were not the legal position it would result in placing an unrestricted power of review in the hands of the assessing authorities depending on their changing moods" (p. 177)

It was further held by the Bench that:

"Reverting back to the case at hand, it is clear from the reasons placed by the Assessing Officer on record as also from the statement made in the counter-affidavit that all that the Assessing Officer has said is that he was not right in allowing deduction under section 80-1 because he had allowed the deductions wrongly and, therefore, he was of the opinion that the income had escaped assessment. Though he has used the phrase 'reason to believe' in his order admittedly, between the date of the orders of assessment sought to be reopened and the date of forming of opinion by the ITO nothing new has happened. There is no change of law. No new material has come on record. No information has been received. It is merely a fresh application of mind by the same Assessing Officer to the same set of facts. While passing the original orders of assessment, the order dated 28-2-1994, passed by the Commissioner of Income-tax (Appeals) was before the Assessing Officer. That order stands till today. What the Assessing Officer has said about the order of the Commissioner of Income-tax (Appeals) while recording reasons under section 147 he could have said even in the original orders of assessment. Thus, it is a case of mere

change of opinion which does not provide jurisdiction to the Assessing Officer to initiate proceedings **under** section 147 of the Act.

It is also equally well-settled that if a notice under section 148 has **been** issued without the jurisdictional foundation under section 147 being available to the Assessing Officer, the notice and the subsequent proceedings will be without jurisdiction, liable to be struck down in exercise of writ jurisdiction of this Court. If 'reason to believe' be available, the writ court will not exercise its power of judicial review to go into the sufficiency or adequacy of the material available. However, the present one is not a case of testing the sufficiency of material available. It is a case of absence of material and, hence, the absence of jurisdiction in the Assessing Officer to initiate the proceedings under section 147/148 of the Act. " (p. 178)

Thus, the Court held that even under the newly substituted section 147, with effect from 1-4-1989, an assessment could not be reopened on a mere change of opinion. Yet again in Foramer's case (supra), a Division Bench of the Allahabad High Court has held that if a notice under section 147/148 was issued after the coming into force of the Amended Act, the latter shall be attracted. However, it is observed that :

"Although we are of the opinion that the law existing on the date of the impugned notice under section 147/148 has to be seen, yet even in the alternative even if we assume that the law prior to the insertion of the new section 147 will apply even then it will make no difference since even under the original section 147 notice for reassessment could not be given on the mere change of opinion as held in numerous cases of the Supreme Court, some of which have been mentioned above. Since the Tribunal in the appeal relating to the assessee-company had considered the Tribunal's earlier decision in Boudier Christian's case, it will obviously amount to mere change of opinion, and, hence, the notice under section 147/148 would be illegal." (p. 444) "

12. Finally disagreeing with the Gujarat High Court and endorsing the aforesaid view is Jindal

Photo (supra), the **Full Bench** observed as under:

"13. We are, with respect, unable to subscribe to the aforementioned view. If the contention of the revenue is accepted, the same, in our opinion, would confer an arbitrary power upon the Assessing Officer. The Assessing Officer who had passed the order of assessment or even his successor officer only on slightest pretext or otherwise would be entitled to reopen the proceeding. Assessment proceedings may be furthermore reopened more than once. It is now trite that where two interpretations are possible, that which fulfils the purposes and object of the Act should be preferred.

22. We are unable to agree with the submission of Mr. Jolly to the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report has already been submitted by the assessee. It is one thing to say that the Assessing Officer had received information from an audit report which was not before the ITO, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself.

23. We also cannot accept submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded on analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding, under section 147. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or subsection (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind. It is well-known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong.

For the reasons aforementioned, we are of the opinion that answer to the question raised before this Bench must be rendered in the affirmation, i.e., in favour of the assessee and against the revenue. No order as to costs, (emphasis supplied)

13. The **Supreme Court**, while dismissing the appeal against the aforesaid judgment, reported as **CIT vs. Kelvinator Of India Ltd: [2010] 320 ITR 561 (SC)** held that the assessing officer has no power of review and can reopen assessment **"provided there is "tangible material" to come to the conclusion"**. The pertinent observations are reproduced hereunder:

"4. 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 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 1-4-1989], 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 1-4-1989, 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 re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. 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 reassess. But reassessment has to be based on fulfilment 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 1-4-1989, 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 "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 31-10-1989, 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." [Emphasis supplied] "

14. Your Honour's kind attention in this regard is also invited to the decision of the **Bombay High Court** in the case of **German Remedies Ltd vs. DOT: 285 ITR 26**, wherein the assessee-firm filed the return of income for the assessment years 1999-2000 and 2000-01. The assessment orders under section 143(3) of the Act were passed determining income after making various additions and disallowances. The Assessing Officer by impugned notice under section 148 sought to reopen the assessments on the grounds, inter alia, that (1) the assessee had not furnished any evidence to show that the tax was deducted at source before making remittances in foreign currency relating to payment of interest, royalty, consultancy and analytical fees; (2) that the gross dividend had been allowed against the allowable net dividend; and (3) the processing charges received by the assessee for the job work done for locals were not income derived from industrial activity and, therefore, the processing charges ought to have been excluded while computing deduction under section 80-IA/80-IB of the Act. The assessee filed a writ petition challenging the notice in which the High Court directed the assessee to file objection for reopening the assessment and further directed the Assessing Officer to dispose of the same in accordance with law. Thereafter, the assessee filed objections for reopening the assessment which were rejected by the Assessing Officer. On petition, the Hon'ble High Court quashed the re-assessment proceedings by observing as under:

"It is a settled position of law that though the power conferred under section 147 for reopening the concluded assessment are very wide, **the said power cannot be exercised mechanically or arbitrarily.** The expression 'reason to believe that any income chargeable to tax has escaped assessment' means entertaining a reasonable belief that particular income went unnoticed by the Assessing Officer and, hence, escaped assessment. Even after the introduction of the concept of the deemed escapement of income by Explanation 2 to section 147 with effect from 1-4-1989, the belief that the income has escaped assessment entertained by the Assessing Officer must be a prudent belief and not mere change of opinion. **Thus, an assessment order passed after detailed discussion cannot be reopened within a period of 4 years from the end of the relevant assessment year, unless the Assessing Officer has reason to believe that due to some inherent defect in**

the assessment, the income chargeable to tax has been under assessed or assessed at too low rate or excessive relief is granted or excessive loss or depreciation allowance or any other allowance under the Act has been computed. [Para 5]

In the instant case, after the service of the notice under section 148, the assessee had filed its objections for reopening the assessment to the effect that in the light of the binding decision of High Court and the decision of the Tribunal there was no scope for entertaining the belief that the income had escaped assessment. However, the said objection had been rejected without even considering the said binding decision. [Para 6]

As regards first ground for reopening the assessment, it was brought to the Court's notice that by a letter the assessee had furnished its annual return of deduction of tax at source during the financial year 1998-99 relevant to the assessment year 1999-2000. Receipt of the said letter was not disputed by the revenue. Thus, the reopening of the assessment on the ground that the assessee had not furnished TDS particulars was wholly unjustified. [Para 7]

As regards second ground for reopening the assessment, the dividend income received during the year was claimed as exempt and the same was accepted in the assessment order passed under section 143(3). The reason for reopening the assessment was that in the absence of particulars it could not be said that no part of the borrowed fund had been used for investment from which the income generated was exempt under section 10(33) and that the assessee might have incurred expenditure for earning the dividend income such as proportionate salary, telephone charges, etc. which ought to have been disallowed from the gross dividend income received by the assessee. From the reasons recorded by the Assessing Officer, it was clear that the assessment was sought to be reopened merely on suspicion that the assessee might have utilized the borrowed fund for investment and that the assessee might have incurred expenditure for earning the dividend income. **There was no material whatsoever to entertain a prima facie belief that the income had escaped assessment and the reasons entertained by the Assessing Officer that the income had escaped assessment was wholly based on presumption, conjectures and surmises. Reopening of the assessment based on suspicion, presumption, conjectures and surmises is not permissible in law.** [Para 8]

As regards last ground for reopening the assessment, it was brought to the Court's notice that the very same issue was agitated for the assessment year 1996-97 and the Tribunal by its order had held that the processing charges received by the assessee were liable to be included for the purposes of deduction under section 80-IA/80-IB. The above decision of the Tribunal was brought to the notice of the Assessing Officer. However, the Assessing Officer rejected the objection without referring to the said decision. The said conduct of the Assessing Officer in refusing to follow the **binding** decision of the Tribunal was highly deplorable. Therefore, reopening of the assessment on account of processing charges was also unsustainable. [Para 10]

In that view of the matter, since the reopening of the assessment was based on conjectures and surmises and the same was sought to be justified by ignoring the

binding decisions, the reopening of the assessment was in gross abuse of the process of law and the same was liable to be quashed and set aside. [Para 11]

The petition was allowed. The notices issued under section 148(1) in both the petitions were quashed and set aside, "(emphasis supplied)

15. In the case of **KLM Royal Dutch Airlines vs. ACIT: 292 ITR 49**, the **Hon'ble Delhi High Court** held that the proceedings initiated under Section 147 through issue of notice under section 148 of the Act without there being any tangible material coming to the knowledge of the assessing officer was beyond jurisdiction and was accordingly quashed. The relevant observations of this Hon'ble Court are as under:

"Applying this line of decisions to the facts of the present case, the inescapable conclusion that would have to be reached is that **while assessment proceedings remain inchoate, no "fresh evidence or material" could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the Assessing Officer for framing the then current assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened under section 143(2), the return had been accepted as correct. It may be argued that thereafter recourse could be taken to section 147, provided fresh material had been received by the Assessing Officer after the expiry of limitation fixed for framing the original assessment. So far as the present case is concerned we are of the view that it is evident that, faced with severe paucity of time, the Assessing Officer had attempted to travel the path of section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law.**" (emphasis supplied).

16. The **jurisdictional Punjab & Haryana High Court** in the case of **CIT V. ITW India Ltd: [2015] 377 ITR 195 (P&H)** following the decision of the Supreme Court in *Kelvinator of India (supra)*, held that the assessing officer does not have power to reopen proceedings on mere change of opinion.

17. In **CIT v. Feather Foam Enterprises (P) Ltd.: [2008] 296 ITR 342 (Del.)** where case was reopened within 4 years, the Court held that reopening without new material is not permissible. The pertinent observations are reproduced hereunder:

" 11. It is well-settled that such facts which could have been discovered by the Assessing Officer but were not discovered at the time of original assessment, will not constitute a new information. Where no new material has come on record nor any new information has been received, it would merely be a case of fresh application of mind by the Assessing Officer to the same set of facts and in such a situation, it would be a case of mere change of opinion which does not provide justification of the Assessing Officer to initiate proceedings under section 147 of the Act.

12. In the light of these principles, **it is to be seen as to whether in the present case, any new material had come on record after completion of assessment proceedings or it is a case of mere change of opinion.** It has been held in large number of decisions of the Apex Court as well as of High Courts, that when the

primary facts necessary for the assessment are fully and truly disclosed to the Assessing Officer at the time of original assessment proceedings, the Assessing Officer is not entitled to commence proceedings under section 147 of the Act on a change of opinion.

13. Further, **the Assessing Officer has got no power to review his order nor he can do so if under section 147 of the Act. The Assessing Officer ordering reassessment cannot sit as a court of appeal over the Assessing Officer making the original assessment and it is not open to the Assessing Officer ordering reassessment to substitute his own opinion for that of the Assessing Officer, who made the original assessment.**" (emphasis supplied)

18. It has been similarly held in the following cases that proceedings under section 147 of the Act cannot be initiated unless some new/ additional fact has come on record leading to the belief of escapement of income:

- Chhugamal Rajpal vs. S.P. Chaliha [1971] 79 ITR 603 (SC)
- CIT vs. Batra Bhatta Company; 174 Taxman 444 (Del.)-SLP dismissed in 320 ITR 24
- PCIT v. Tata Power Delhi Distribution Limited: ITA No.689 of 2016 (Del.)
- Shipra Srivastava vs. ACIT: 184 Taxman 210 (Del.)
- Amity Hotels Pvt. Ltd. vs. CIT 272 ITR 75 (Del)
- CIT vs. Vineeta Jain and CIT vs. Atul Jain 299 ITR 383 (Del)
- CIT vs. SFIL Stock Broking Ltd 325 ITR 285 (Del)
- Bhor Industries Ltd. vs. ACIT: 267 ITR 161 (Bom)
- Hindutan Lever Ltd. vs. R. B. Wadkar, ACIT: 268 ITR 332 (Bom)
- BhogwatiSahakariSakharKarkhana Ltd. vs. DCIT: 269 ITR 186 (Bom)
- Ajanta Pharma Ltd. vs. ACIT: 267 ITR 200 (Bom)
- Grindwell Norton vs. ACIT: 267 ITR 673 (Bom)
- CIT v. Abdul Rahman Sait: 306 ITR 142 (Chennai)
- Asteroids Trading and Investment P. Ltd. v. DCIT: 308 ITR 190 (Bom.)
- CIT v. JyotiDevi; 218 CTR 264 (Raj.)
- CartiniIndia Ltd.: 224 CTR 82 (Bom)
- CIT v. Mittal Casting Ltd.; 124 Taxman 11 (Del.)

19. In the facts of the present case, as stated supra, it is reiterated that undisputedly no new information/ material came to the possession of the assessing officer subsequent to the completion of assessment. In the reasons recorded, the assessing officer has merely mentioned that "*From perusal of profit and loss account (other expenses) note provisions of doubtful trade receivables / advances has been claimed at Rs.62.15 lacs which is not allowable to the assessee u/s 36 of the I. T. Act, 1961 being these debts were not written off / taken into account....*".

20. It may thus be noted that the reassessment proceedings have merely been initiated on the basis of audited financial statements duly filed during the course of original assessment proceedings.

21. In view of the aforesaid, it is respectfully submitted that initiation of re-assessment proceedings in the absence of any new tangible material, merely on the basis of re-appraisal of information/ facts already available on record, is not permissible in law.

22. Being so, the impugned reassessment order is illegal and bad in law and the CIT(A) rightly quashed the same.

Re (iii): Reassessment on the basis of mere change of opinion - case of the assessee, in fact, is that the reopening is on mere review of existing facts and hence not permissible in law:

23. The DR, in his submissions, has stated that the present case is not a case of change of opinion.

24. In this regard, as stated supra and admitted by the DR, the assessee had duly disclosed the provision for doubtful debts and its reduction from trade receivables in Note 16 and Note 26 forming part of the audited financial statements of the assessee, duly submitted during the course of regular assessment proceedings.

25. Pertinently, the return of income filed by the assessee was selected for scrutiny under section 143(2) of the Act, *inter-alia*, to examine the claim of 'Large any other deduction claimed in Schedule BP of return' (refer page 5 of submission dated 06.06.2024 filed by DR).

26. Accordingly, the assessing officer, vide notice dated 30.06.2017 issued under section 142(1) of the Act, directed the assessee to furnish various details, including copy of the audited financial statements. The same were duly submitted by the assessee vide reply dated 21.07.2017 (refer page 7 and 9 of submission dated 06.06.2024 filed by DR).

27. During the course of assessment proceedings, the assessee furnished all information as sought for by the assessing officer. **The aforesaid fact finds strength from the fact that the assessing officer has, in the original assessment order dated 30.11.2017, duly recorded in para 4 that "on perusal of the final accounts of the assessee..."**

28. It will thus be appreciated that the assessment proceedings was completed by the assessing officer after detailed examination of the accounts of the assessee, wherein the bad debts written off was duly disclosed/reflected.

29. In view of the aforesaid, the action of the assessing officer in reopening the case of the assessee for the year under consideration **solely based on disclosure made in the audited financial statements, and without any new material coming to the knowledge of the assessing officer**, it is respectfully submitted, **constituted reopening merely to review the existing/ examined facts, which is not permissible in law.**

30. In view of the aforesaid, the reassessment proceedings undertaken by the assessing officer were beyond jurisdiction, illegal and not sustainable in law.

31. At this juncture, it is pertinent to mention that the DR in his submissions, has placed reliance on the decision of the Kerala High Court in the case of CIT vs. Skyline Builders: 191 Taxman 59 to hold that notes to accounts wherein it was not disclosed that the expense claimed is a prior period expense could not be termed as true and full disclosure. In this regard, it will be appreciated that the aforesaid decision has been rendered in the peculiar facts and in context of reassessment proceedings initiated beyond the period of four years where the

contention was that there was no failure on the part of the assessee, as mandated by proviso to section 147 of the Act. It is, thus, in the context of the peculiar facts that the Court held that disclosure in notes to account from wherefrom it was not clear that the expenditure related to the earlier periods did not amount to full and true disclosure by the assessee.

32. That apart, it is respectfully submitted, it is settled legal position that so long as disclosure in 'computation of income' / 'notes to accounts' / 'audit report' contains complete disclosure of facts, the same shall meet the requirement full and true disclosure of material facts [refer *Sun Investment (P) Ltd. vs. ACIT 344 ITR 1 (Del.)*; *Sak Industries Private Ltd v. DCIT: 363 ITR 378 (online) (Del.)*; *CIT v. Sain Processing and Weaving Mills (P) Ltd.; 325 ITR 565 (Del.)*]. It, in fact, depends upon the nature of disclosure, be in return or in notes to accounts, etc.

33. In the present case, it was not the case of the assessing officer that the disclosure in the notes to the financial statements was not complete or untrue - in fact, the assessing officer, noticing from the financial statements, that claim of bad debts had been written off, reopened the proceedings without any fresh tangible material.

34. It is in the aforesaid context, it is the case of the assessee-respondent, that reopening merely tantamount to review, which is not permissible in law.

Re (iv): On merits - allowability of bad debts without writing off in the accounts

35. The DR, it is respectfully submitted, in his submissions has not made any comment on the allowability of the deductions for bad debts claimed by the assessee. The DR has, on the contrary, placed reliance on CBDT Circular No. 12/2016 dated 30.05.2016 to hold that there is no requirement to establish non-recoverability of debts and only the following twin conditions need to be fulfilled for allowability of bad debts-

- (a) Debts must have been taken into account while computing income;
- (b) It shall be written off in the books of accounts

36. In the facts of the present case, as explained vide our submission dated 18.09.2023, both the aforesaid twin conditions stand satisfied inasmuch as -

- (a) Income earned from both the parties in question, viz., Jalandhar City Transport Services Ltd and Viking Motors (P) Ltd were duly offered to tax by the assessee in earlier years; and
- (b) The assessee has duly debited the profit and loss account with provision of bad and doubtful debts and reduced the said provision from the total debtors account [refer **Vijaya Bank vs. CIT: 323 ITR 166 (SC)**].

37. In view of the aforesaid, since the twin conditions stand satisfied and the DR has not been able to point out any discrepancy in the claim of the assessee / raised any adverse remark, the deduction claimed by the assessee is allowable.

Findings and Conclusion

44. We now have to decide the legality, validity of the impugned order of the Ld. CIT(A). The core dispute inter-se between the Revenue and the assessee is whether Revenue is entitled in law to reopen a closed assessment under section 143(3) of the Act, for A.Y. 2015-16 which was completed by the Ld. AO on 30/11/2017 on basis of mere change of opinion when there is no fresh material on record and no new information is with the Department about escapement of income. The revenue contends that even if there is no fresh material on record and no fresh information, then also by virtue of section 147/148 they are entitled in law to reopen the assessment and carry out reassessment. Exercise of such power does not amount to review. Per contra the Ld. AR has contended that exercise conducted by Revenue under section 147/148 is nonest as all material information including audited balance sheet was on record when original assessment took place for A.Y. 2015-16 on 30/11/2017. It is their contention before us that exercise of such power under section 147/148 disturb the finality of the assessment proceedings which was originally concluded under section 143(3) of the Act, such an exercise of power amounts to review of the completed assessment proceedings which is not permissible in law as power of review is not expressly conferred by the statute on AO. Merely because subsequently after original assessment proceedings are all over, they are prohibited by law under section 147/148 to do reassessment merely because they feel based on existing material there is a need to relook or change of opinion.

45. The Ld. CIT(A) has held as below on core issue:

5.6 Section 147 of the I.T. Act empowers the AO to reopen the cases if he has reasons to believe that any income chargeable to tax has escaped "assessment for any assessment year subject to the provisions of section 148 to 153. The first Proviso to section 147 of the I.T. Act states that where an assessment under 143(3) of the I.T. Act has been made for the relevant assessment year, no action shall be

taken under the section after the expiry of four years from the end of the relevant assessment year subject to certain conditions. However, in this case the re-opening of the case has been done by the AO within four years from the end of the relevant assessment year.

5.7 In the instant case, it is observed that assessment u/s 143(3) of the I.T. Act for A.Y. 2015-16 was completed by the AO on 30.11.2017. As per first Proviso to section 147 of the I.T. Act, four years from the end of the relevant assessment year ended on 31.03.2020, whereas the AO issued the notice u/s 148 of the I.T. Act on 10.02.2020. Thus, the notice was issued by the AO within four years from the end of the relevant assessment year and, therefore, the first Proviso to section 147 of the I.T. Act is not attracted in this case.

5.8 Section 147 of the Income Tax Act is reproduced as under:-

Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

5.9 The appellant during the appellate proceedings has submitted that keeping in view the above said facts, circumstances and legal position of the case, it is very clear that all the material facts to determine the total income were available and duly considered at the time of original assessment and also all the judgments as mentioned above are prior to the date of original assessment order and after due consideration of the same, the amount was allowed as expenditure. Further there are **no** changes in the set **of facts and law for the A. Y. 2015-16** from the date of filing of the return **and from the date of the original assessment made u/s. 143(3) till the date on which the notice u/s. 148** for re-

opening was issued and no new information **or material is on record** to form the reason to believe that it **was escaped assessment on the part** of the appellant on failure to disclose **the fully and truly all material facts**. In the following judgments, it has been held that when there is no change in the set of facts and law, i.e. the set of facts and law are same at the time of re-opening as it were at the time of original assessment, it will only tantamount to change of opinion by the Department and in such case the re-opening procedure should not be taken as way to correct his own or his predecessor error of judgment.

5.10 As per the reasons recorded for issuing the notice u/s 148 of the IT. Act for the AY 2015-16, the issue which has formed the reasons to believe that the income of the appellant has escaped assessment, namely, addition made with regard to provision for doubtful trade receivables of Rs. 62,15,000/-. In this regard, it is observed that the complete information with regard to provision for doubtful trade receivables/advances of Rs. 62,15,000/- is being derived from Note No. 26 to live financial statements for the year ended 31.03.2015. All such information was available during the course of assessment proceedings u/s 143(3) of the IT. Act and there is no fresh tangible material arisen or made available between the date of framing the assessment u/s 143(3) of the IT. Act vide order dated 30.11.2017 and the date of issuance of notice u/s 148 of the IT. Act for the AY 2015-16, i.e. 10.02.2020, which is necessary to reopen the assessment u/s 147 of the IT. Act and which led to the formation of belief that the income of the appellant has escaped assessment for the AY 2015-16. The complete disclosure was made and relevant information was submitted during the course of assessment proceedings u/s 143(3) of the IT. Act. There is no fresh tangible material on the basis of which notice u/s 148 of the IT. Act has been issued to the appellant. The reasons recorded for issue of notice u/s 148 of the IT. Act are only on the basis of material on record which was submitted during the course of assessment proceedings and there is no new material brought on record. It is amply clear from the perusal of the reasons recorded for the A.Y. 2015-16 that the issue which formed the reasons to believe that the income of the appellant has escaped assessment have been derived from the material already available during the course of assessment proceedings u/s 143(3) of the IT. Act. There is no fresh tangible material which may lead to believe that the income of the appellant has escaped assessment for the AY 2015-16. On perusal of the reasons recorded and provided to the appellant, it is amply clear that no fresh tangible material has arisen at the time of forming reasons to believe that the income of the appellant has escaped assessment. The reassessment u/s 147 of the Act has been initiated only on the basis of the material which was already available during the course of original assessment proceedings u/s 143(3) of the Act, that is, the profit & loss account, computation of income for the AY 2015-16. There is no whisper of presence of fresh tangible material in the reasons recorded for initiating the reassessment proceedings for the AY 2015-16. It has been held in various case laws that no re-assessment can be made u/s 147 of the IT. Act in the absence of fresh tangible material.

5.11 It has been held by the Supreme Court of India in the case of Kelvinator of India Ltd that after 01.04.1989, the Assessing Officer has no power to review, he has the power to reassess. But re-assessment has to be based on fulfillment of certain pre-conditions and if the concept of "change of opinion" is removed, as contended by the Revenue then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as

an inbuilt test to check abuse of power by the Assessing Officer. Hence, after 01.04.1989, the 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. The Apex Court also relied upon the Circular No.549 of the CBDT dated 31.10.1989, which stated that the amending Act 1989, has again amended section 147 to re-introduce the expression "has reason to believe" in place of the words "for reasons to be recorded by him in writing, is of the opinion". The Apex Court held that there is a vital difference between the conclusion of the Assessing Officer after scrutiny which may appear to the Revenue to be erroneous and the situation where the Assessing Officer during the scrutiny assessment does not examine a particular claim of the appellant altogether. The latter will follow within the purview of re-opening of assessment, particularly when the notice is issued within a period of four years, but the former may not.

5.12 The Supreme Court of India in the case of Zee Media Corporation Ltd (2020) 114 [taxmann.com](#) 193 (SC) has held that the Tribunal correctly came to the conclusion that in the absence of any new tangible material, which was not on record during the original assessment proceedings, any attempt on the part of the Assessing Officer to re-open the assessment on this ground would be based on a mere change of opinion.

5.13 It has been held by the High Court of Karnataka in the case of DELL India Pvt. Ltd. (2021) 123 [taxmann.com](#) 468 (Karnataka) that when a power u/s 147 of the I.T. Act is to be exercised, the concept of change of opinion must be treated as a inbuilt test to check abuse of power of Assessing Officer, hence "reason to believe" in context of section 147 cannot be based on mere change of opinion of the Assessing Officer. The oversight, inadvertence or mistake of Assessing Officer or error discovered by him on re-consideration of same material is mere change of opinion and does not give him any power to re-open a concluded assessment.

5.14 It has been held by the High Court of Madras in the case of Trichy Steel Rolling Mills Ltd. (2022) 137 [taxmann.com](#) 485 (Madras) that where Assessing Officer having noticed that appellant was erroneously allowed deduction towards bad debts, re-opened the assessment after expiry of four years after completion of the original assessment u/s 143(3) of the I.T. Act, the re-assessment proceedings would be based on change of opinion in the absence of tangible material or evidence unearthed subsequently, which the appellant did not produce at the time of original assessment u/s 143(3) of the IT. Act.

5.15 In the case of MR Narayanan, the assessment was completed u/s 143(3) of the I.T. Act. Subsequently, the Assessing Officer found that excess relief was allowed by way of deduction of interest on housing loan and, therefore, the assessment was re-opened u/s 148 of the I.T. Act. The High Court of Madras in this case (2021) 131 [taxmann.com](#) 208 (Madras) has held that all the facts and figures were gathered by the Assessing Officer from the original return of income filed by the appellant. There was no fresh or tangible material available with the AO to re-open the proceedings and held that this was case of change of opinion.

5.16 In view of the above facts and circumstances of the case, and relying on the judgements of the Apex Court and the various High Courts as discussed above, the AO was not in possession of any new tangible material. The Assessing

Officer has re-opened the case u/s 147 of the I.T. Act on the issue of bad debts of Rs.62,15,000/- u/s 36 of the I.T. Act and these documents were already available to him during the course of regular assessment proceedings u/s 143(3) of the I.T. Act. The action of the AO in re-opening the assessment on this ground would be based on mere change of opinion. Hence, "reason to believe" in context of section 147 of the I.T. Act could not have been based on mere change of opinion of the Assessing Officer. Therefore, the AO was not within his rights to issue notice u/s 148 of the I.T. Act as per the provisions of section 147 of the I.T. Act. Therefore, the ground taken by the appellant is **allowed**.

5.17 The appellant during the appellate proceedings has submitted that the AO was not justified in not disposing off the objections raised by the appellant with regards to the reasons recorded by passing a speaking order.

5.18 It is observed that the appellant had filed preliminary objections against the reasons recorded for reopening of assessment u/s 147 of the I.T. Act as supplied by the AO vide his letter dated 16.12.2020. No separate speaking order was passed by the AO to dispose off the preliminary objections raised by the appellant for reopening of assessment u/s 147 of the I.T. Act and which is against the law laid down by Hon'ble Supreme Court of India in GKN Driveshafts (India) Ltd.

5.19 The Apex Court in the case of GKN Driveshafts (India)Ltd. (2003) 259 ITR19(SC) has held as under:-

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the above said five assessment years."

5.20 Keeping in view the above facts, circumstances, legal position and Hon'ble Supreme Court Judgement in the favour of the appellant that the notice issued u/s 148 and reassessment made thereon u/s 147 of the I.T. Act is bad in law and the appellant's appeal is **allowed** on this ground.

46. We hold that the Revenue has no jurisdiction in law under section 147/148 to reopen the closed assessment proceedings which happened on 30.11.2017 under section 143(3) of the Act when Ld. AO passed the assessment order. A careful perusal by us of the said original assessment order dt. 30.11.2017 under section 143(3) of the Act shows that all accounts i;e copy of audited financial statements for the year ended March 31, 2015 relevant to the year under consideration A.Y. 2015-16 were on file of Ld. AO and so also copy of Tax Audit

Report for the year ended March 31, 2015 relevant to the year under consideration. We on para 4 of the original assessment order dt. 30/11/2017 notes that following is averred therein

“4 During the course of the assessment proceedings, on perusal of the final accounts of the assessee, it was”

In view of above averment we hold that full and complete accounts (supra) were before the Ld. AO before the assessment order dated 30.11.2017 was passed. Therefore when everything is known to the Department any failure on part of assessee cannot be alleged later on in terms of 147/148 as that would amount to doing violence on “ Compliances made by the assessee as were sought, if express compliance of issues would have been sought at that stage i.e original assessment stage perhaps objectively that too would have been compiled with by assessee company” during proceedings held under section 143(3) which are sacrosanct. The Department has turn around and has done volte face by issuing a notice under section 148 on 10/02/2020 when admittedly all account along with all material particulars were with them. It is therefore just not open for them in law to issue a notice u/s 148 for purposes of 147 as “Material ingredients” are not with Revenue at all.

47. We also notice in the original assessment order dated 30.11.2017 that even the notes to accounts were gone through. We gainfully refer to para 5.1 were in following is recorded:

“ 5.1 After going through notes to accounts.....”

The above averment clearly means that Revenue besides accounts had also **examined the notes to the account therefore issuing notice under section 147/148 just does not arises.** We therefore hold that failure on part of the Department to examine something which is before them i.e books of accounts, Financial statements and Tax Audit Report minutely cannot lead to reassessment

be ordered by way of issuing notices under section 147/148. Despite this factual position department did issued the impugned notice, which is totally wrong and incorrect as there is complete failure on part of Revenue in the original assessment proceedings; when admittedly everything was not only there, but was examined too (supra) cannot lead to reassessment. The core and only reason for purpose of reassessment is **“from perusal of profit and loss account (other expenses) note “ 26” Provisions of doubtful trade receivables / advances has been claimed at Rs. 62.15 lacs which is not allowable to the assessee under section 36 of the Act, being these debts were not written off / taken into account. No evidence or clarification regarding written off bad debts are available on record. Therefore, an amount of Rs. 62,15,000/- has escaped assessment within the meaning of section 147 of the Act by under assessment and wrong allowance of expenditure. In view of this, I have reasons to believe that income of the assessee to the tune of Rs. 62,15,000/- has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.”**

48. The above reasons for reopening closed /original assessment is required to be examined under 147 which speaks of “ Reason to believe” “ Income chargeable to tax has escaped assessment” in view of above averment recorded in the original assessment order dt. 30/11/2017 (supra) we are of the considered view that there is **“No reason to belief” in the first instance** and secondly **“there is no escapement of income too”**. In return of income this income is disclosed along with books of account **which was visible perse in** books of account. Without there being any other information on record when such an exercise of nature referred to in 147/148 is done then; it amount to “ Changing opinion” which was ‘earlier determined’ in a quasi judicial exercise which was original assessment proceedings and that too under section 143(3). Such an exercise in our view is not permissible in law as Ld. AO has no power of review. Revenue has other options like 154 & 263 of the Act. We also notice that reasons were contested and no independent speaking order was given despite

mandate of Supreme Court of India in case of GKN Driveshafts (India) Pvt. Ltd. Vs. ITO reported in (2002) 125 Taxmann 963 (SC)= (2003) 259 ITR 19 (SC); wherein it has been held that “on receipt of reasons the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by **passing a speaking order.....**” “.....**the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order.....**” **On page 64 to 73 of paper book of assessee company’s legal objection of assessee are on record but Revenue has not passed a speaking order.**

Before us too this grievance is made with which we respectfully agree. Consequently we hold that it was incumbent upon Revenue to have passed a speaking order as is mandate of Hon’ble Supreme Court of India(supra). The Revenue has erred in law.

49. We hold that no fresh tangible material was in possession of the Revenue when reassessment notice was issued to the Assessee company. This is more or less admitted position in the instant case [Note 26 on page 22 of paper book and para 2 & 3 on page 61 of Paper book]. There was no fresh tangible material at all with Revenue for 147/148 proceedings; after original assessment proceedings dt. 30/11/2017 were over. Even DR has admitted this position factually. We therefore hold that exercise of power by Revenue U/s 147/148 is illegal and not proper. We gainfully refer to the judgment of Hon’ble Delhi High Court Full Bench in case of CIT Vs. Kelvinator India Ltd. reported in [2002] 256 ITR 1 (Del)(FB) particularly the following:

“.....Merely because during the assessment proceedings the relevant material was on record or could have been with due diligence discerned by the Assessing Officer for the purpose of assessing a particular item of income chargeable to tax, it cannot be inferred that the Assessing Officer must necessarily have deliberated over it and taken it out while ascertaining the taxable income or that he had formed any opinion in respect thereof. If looking back it appears to the Assessing Officer, (albeit within four years of the end of the relevant assessment year) that a particular item even though reflected on the record was not subjected to assessment and was left out while working out the taxable income and the tax payable thereon, i.e., while making the final assessment order, that would enable him to initiate the proceedings irrespective of the question of non-disclosure of material facts by the assessee. . . .”

13. We are, with respect, unable to subscribe to the aforementioned view. If the contention of the revenue is accepted, the same, in our opinion, would confer an arbitrary power upon the Assessing Officer. The Assessing Officer who had passed the order of assessment or even his successor officer only on slightest pretext or otherwise would be entitled to reopen the proceeding. Assessment proceedings may be furthermore reopened more than once. It is now trite that where two interpretations are possible, that which fulfils the purposes and object of the Act should be preferred.

14. It is well-settled principle of interpretation of statute that entire statute should be read as a whole and the same has to be considered thereafter Chapter by Chapter and then section by section and ultimately word by word. It is not in dispute that the Assessing Officer does not have any jurisdiction to review its own order. His jurisdiction is confined only to rectification of mistake as contained in section 154 of the Act. The power of rectification of mistake conferred upon the ITO is circumscribed by the provisions of section 154. The said power can be exercised when mistake is apparent. Even mistake cannot be rectified where it may be a mere possible view or where the issues are debatable. Even the Tribunal has limited jurisdiction under section 254(2) of the Act. Thus, when the Assessing Officer has considered the matter in detail and the view taken is a possible view, the order cannot be changed by way of exercising the jurisdiction of rectification of mistake.

15. It is a well-settled principle of law that what cannot be done directly cannot be done indirectly. If the ITO does not possess the power of review, he cannot be permitted to achieve the said object by taking recourse to initiating a proceeding of reassessment or by way of rectification of mistake. In a case of this nature the revenue is not without remedy. Section 263 of the Act empowers the Commissioner to review an order which is prejudicial to the revenue.

19. The Board in exercise of its jurisdiction under the aforementioned provisions had issued the circular on 31-10-1989. The said circular admittedly is binding on the revenue. The authority, therefore, could not have taken a view, which would run counter to the mandate of the said circular. Clause 7.2 as referred to hereinbefore is important.

From a perusal of clause 7.2 of the said circular, it would appear that in no uncertain terms it was stated as to under what circumstances the amendments had been carried out, i.e., only with a view to allay the fears that the omission of the expression 'reason to believe' from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessment on mere change of opinion.

It is, therefore, evident that even according to the Board, a mere change of opinion cannot form the basis for reopening a completed assessment.

23. We also cannot accept submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded on analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind. It is well-known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong.

For the reasons aforementioned, we are of the opinion that answer to the question raised before this Bench must be rendered in the affirmation, i.e., in favour of the assessee and against the revenue. No order as to costs.

Basis above and basis Jindal Photo Films Ltd. Vs. DCIT (1998) 234 ITR 170 (Del) We hold that between the date of original assessment order dt. 30/11/2017 and 10/02/2020 (Notice u/s 148) (page 52, 60, 61 of paper book) **nothing new has happened. There is no change of law. No new material has come on record. No information has been received. It is merely a fresh application of mind by Revenue on same set of facts. Thus it is a case of mere change of opinion which does not provide jurisdiction to the AO** to initiate proceedings under section 147 of the Act. We also hold that it is a case of absence of material and hence total absence of jurisdiction in the hand of Revenue to initiate proceedings under section 147/148 of the Act.

We also gainfully refer to the judgement of Hon'ble Supreme Court of India in case of CIT vs. Kelvinator India Ltd. reported in (2010) 320 ITR 561 (SC) wherein it has been held that the AO has no power to review and can open assessment provided there is tangible material to come to the conclusion. The pertinent observations are as under:

"4. 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 reopen. 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 reassess. But reassessment has to be based on fulfilment 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"

We also gainfully refer to the judgment of Hon'ble Bombay High Court in case of German Remedies Ltd. Vs. DCIT reported in 285 ITR 26 and in particular following part of para 5 :

"Thus, an assessment order passed after detailed discussion cannot be reopened within a period of 4 years from the end of the relevant assessment year, unless the Assessing Officer has reason to believe that due to some inherent defect in the assessment, the income chargeable to tax has been under assessed or assessed at too low rate or excessive relief is granted or excessive loss or depreciation allowance or any other allowance under the Act has been computed"

We also gainfully refer to the judgement of Hon'ble Delhi High Court in case of CIT Vs. Feather Foam Enterprises (P) Ltd. reported in [2008] 296 ITR 342 (Del) wherein at para 11,12, and 13 following is held

" 11. It is well-settled that such facts which could have been discovered by the Assessing Officer but were not discovered at the time of original assessment, will not constitute a new information. Where no new material has come on record nor any new information has been received, it would merely be a case of fresh application of mind by the Assessing Officer to the same set of facts and in such a situation, it would be a case of mere change of opinion which does not provide justification of the Assessing Officer to initiate proceedings under section 147 of the Act.

12. In the light of these principles, **it is to be seen as to whether in the present case, any new material had come on record after completion of assessment proceedings or it is a case of mere change of opinion.** It has been held in large number of decisions of the Apex Court as well as of High Courts, that when the primary facts necessary for the assessment are fully and truly disclosed to the Assessing Officer at the time of original assessment proceedings, the Assessing Officer is not entitled to commence proceedings under section 147 of the Act on a change of opinion.

14. Further, **the Assessing Officer has got no power to review his order nor he can do so it under section 147 of the Act. The Assessing Officer ordering reassessment cannot sit as a court of appeal over the Assessing Officer making the original assessment and it is not open to the Assessing Officer ordering reassessment to substitute his own opinion for that of the Assessing Officer, who made the original assessment.**" (emphasis supplied)

In final analysis after examining the rival contention we are of the considered view that the facts and circumstances of the instant case is very peculiar in a sense that **material in Form of Financials were all before Ld. AO** who carried out original assessment proceedings in 2017, same material came to be analysed later in the year 2020 for purpose of 147/148 and notice (Reasons to belief) came to be issued which was replied – On “objections” but no speaking order came to be passed. Reassessment was done and reassessment order dt. 27/09/2021 came to be passed u/s 147 whereby addition of Rs. 62,15,000/- was made on ground that Rs. 50,00,000/- Bank Guarantee invoked by City Bus Jalandhar for doubtful trade receivable / advances shown by way of note 26 to Financial Statement and doubtful recovery of Rs. 12,15,594/- against Viking Hotels (P) Ltd. claimed vide Note 26 – Not satisfactorily explained and proved hence addition .The Ld. CIT(A) however on issue of applicability of 147/148 has upheld the contention of assessee company and has set side the impugned

reassessment order dt. 27/09/2021 **in a meritorious way**. The Ld. CIT(A) has not gone on merit of the case as **very foundation basis** which proceedings were conducted of reassessment lacked complete merit and **since foundational issue** was in favour of **assessee it was rightly not decided** on merits as it is settled law that question of inherent jurisdiction should be decided at the threshold before merits are considered because to consider merit itself amounts to assumption of jurisdiction.

Order

50 In the circumstances we upheld the order of Ld. CIT(A) and dismiss the Revenue appeal.

51. Appeal of Revenue is dismissed.

Order pronounced in the open Court on 18/09/2024

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar