

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH: CHENNAI**  
 श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष  
**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

ITA Nos.	Assessment year	Appellant	Respondent
1341/CHNY/2024	2012-13	<b>Shri Nochipalayam Kaliappan Kandasamy,</b> 19/A1, Neelam Garden Apts., Chinna Kothur, Karur – 639 002.  <b>PAN: AAHPK 7003Q</b>	<b>The ACIT,</b> Circle 2(1), Trichy.
2584/CHNY/2024	2012-13	<b>Shri S.Aravind,</b> S.F.No.146, OthaiyoorRaod, T.ChellandiPalayam, Karur – 639 003.  <b>PAN: AGQPA 5374B</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2585/CHNY/2024	2013-14		
2586/CHNY/2024	2012-13	<b>Shri M.Velusamy,</b> No.129A/404, Dev Place, M.G.Road, Bharathi Nagar, Karur – 639 002.  <b>PAN: AFBPV 2442R</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2587/CHNY/2024	2013-14		
2588/CHNY/2024	2012-13	<b>Shri Palanisamy Gounder Loganathan,</b> No.100A, Sellandipalayam, Thoranakkalpatti, Karur – 639 002.  <b>PAN: ABXPL 3145P</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2589/CHNY/2024	2013-14		
2590/CHNY/2024	2012-13	<b>Shri Ramasamy Palanisamy,</b> 111/B, Vaiyapuri Nagar, 2 <sup>nd</sup> Cross, Sengunthapuram Post, Karur – 639 002.  <b>PAN: AAJPP 9838N</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2591/CHNY/2024	2013-14		
2685/CHNY/2024	2013-14	<b>Shri P.Karunanithi,</b> No.6, Karuppanna Nagar, Vangapalayam, Vengamedu Post, Karur – 639 006.  <b>PAN: ACJPK 0267G</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.



ITA No.2587/CHNY/2024 & 22 others  
(AYs 2012-13 & 2013-14)  
Shri M. Velusamy & others

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<b>ITA Nos.</b>	<b>Assessment year</b>	<b>Appellant</b>	<b>Respondent</b>
2686/CHNY/2024	2013-14	<b>Shri K.Kathirvel,</b> No.290A, Amutham Nagar, Mahatma Gandhi Road, Karur – 639 002.  <b>PAN: AULPK 0500E</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2687/CHNY/2024	2013-14	<b>Shri P.Nallusamy,</b> No.85/4, Sukkaliyur Post, Karur – 639 003.  <b>PAN: ADSPN 1565E</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2688/CHNY/2024	2012-13	<b>Shri P. Thangarasu,</b> No.47A, Chinnakulathupalayama, Karur – 639 001.  <b>PAN: ADOPT 2298Q</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2689/CHNY/2024	2012-13	<b>Shri K.Sadasivam,</b> No.3/15, Nochipalayam, Karur – 639 002.  <b>PAN: APFPS 1144D</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2690/CHNY/2024	2013-14		
2691/CHNY/2024	2012-13	<b>Shri K.Baskar,</b> No.2/267-3, Sindhu Nagar, Andan Koil East, Karur – 639 002.  <b>PAN: AKDPB 1375N</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2692/CHNY/2024	2013-14		
2693/CHNY/2024	2012-13	<b>Shri K.Paramasivam,</b> Covai Road, AndankovilPudur, Andankoil Post, Karur – 639 002.  <b>PAN: AIMPP 8513H</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2694/CHNY/2024	2013-14		
2695/CHNY/2024	2012-13	<b>Shri S.Easwaramoorthy,</b> S.F.No.400, Gandhi Nagar, Sukkaliyur, Karur – 639 002.  <b>PAN: AACPE 3504H</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.
2696/CHNY/2024	2013-14		
2697/CHNY/2024	2013-14	<b>Shri R. Eswaramoorthy,</b> No.26/F, Kadhapparai Post, Arugampalayam, Karur – 639 0006.  <b>PAN: AAJPE 3129R</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.



ITA No.2587/CHNY/2024 & 22 others  
(AYs 2012-13 & 2013-14)  
Shri M. Velusamy & others

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ITA Nos.	Assessment year	Appellant	Respondent
2765/CHNY/2024	2012-13	<b>Shri M.Natesan,</b> No.47A, Chinnakulathupalayam, Karur – 639 001.  <b>PAN: AFEPN 9980P</b>	<b>The Income Tax Officer,</b> Ward – 1, Karur.

<b>S.A.No. 61/Chny/2024</b> [In ITA No. 1341/Chny/2024] निर्धारणवर्ष / Assessment Year : 2012-13		
<b>Shri Nochipalayam Kaliappan Kandasamy,</b> 19/A1, Neelam Garden Apts., Chinna Kothur, Karur – 639 002.	<b>v.</b>	<b>The ACIT,</b> Circle 2(1), Trichy.
[ <b>PAN:AAHPK 7003Q</b> ]		
(प्रार्थक/Petitioner)		(प्रत्यर्थी/Respondent)
अपीलार्थकीओरसे/ Appellants by	:	Shri T. Banusekar, Advocate & Ms. Samyuktha Banusekhar, Advocate
प्रत्यर्थकीओरसे /Respondent by	:	Ms. R. Anita, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	14.02.2025
घोषणाकीतारीख /Date of Pronouncement	:	09.04.2025

### आदेश / ORDER

#### **PER ABY T. VARKEY, JM:**

The appeal in ITA No.1341/CHNY/2024 is preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), Chennai (hereinafter in short 'the Ld.CIT(A)'), dated 19.03.2024 for the Assessment Year (hereinafter in short 'AY') 2012-13; and all other



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twenty-two (22) appeals are preferred by fourteen (14) different assessee's against the common order of the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi dated 30.09.2024 for the AYs 2012-13 & 2013-14.

**2.** Since the issues involved in all these appeals are common, they were heard together. Both parties agree that the appeals in the matters of **Shri S Aravind** for AYs 2012-13 & 2013-14 may be taken as lead case and result of which will be followed *mutatis mutandis* in all the other appeals.

**3.** In all these appeals, the addition/s impugned are emanating from the survey action which was conducted u/s 133A of the Income-tax Act, 1961 [in short 'the Act'] upon the 'Karur Kongu Charitable Trust' on 23.01.2013. It would therefore be first relevant to discuss the background facts relating to the issue/s impugned in these appeals. Briefly stated, the facts of the case are that, one M/s Karur Kongu Charitable Trust [in short 'Trust'] was set-up by way of Trust Deed dated 04.02.2011 comprising of thirty-two (32) trustees with the purpose of operating a polytechnic college for charitable purposes. The trustees are noted to have collectively acquired land of 17.99 acres out of which land of 5.02 acres was transferred to the Trust for a value of Rs.4,07,000/- recorded in the books



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of accounts on 01.06.2011. The Trust is noted to have undertaken construction of the polytechnic college for which it had engaged a builder, M/s Selvaraj & Co. Later on, survey u/s 133A of the Act was conducted upon the Trust on 23.01.2013 and in the course of which, several materials were seized, which are *inter alia* noted to comprise of loose documents regarding investment in land, purported trial balance as on 28.11.2012, ledgers, an estimate for proposed construction of college along with undated completion certificate of equivalent amount. Simultaneously, the builder [M/s Selvaraj & Co.] was also surveyed from whose premises loose documents relating to construction undertaken was also seized. The statements of the Managing Trustee, Site Engineer and the Partner of the builder firm was also recorded. It is *inter alia* observed that, the builder had admitted to have received Rs.2.40 crores in cash towards the said construction. To this, all the trustees are noted to have admitted that they had collectively paid Rs.2.25 crores out of their unaccounted sources and agreed to proportionately pay tax on the same in the FY 2012-13 relevant to AY 2013-14 and that the balance sum was explained to have been paid out of the regular sources of the Trust. Pursuant to this admission, the trustees are noted to have proportionately offered the admitted sums in their returns of income filed for AY 2013-14.



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**4.** Post the survey, the case of the trustees for AY 2013-14 are noted to have been taken up for scrutiny by the AO by issue of notice u/s 143(2) of the Act dated 29.05.2014. Thereafter, the AO is noted to have issued notices u/s 142(1) of the Act calling for books of accounts, explanation and other details. The AO is noted to have taken cognizance of the admission made by the trustees in the course of survey and that they had paid taxes thereon. The AO is also noted to have observed that, the assesses had produced their books of accounts along with supporting evidences and that in light of the same, the documents and material found in the course of survey were examined and thereafter, the assessments were completed u/s 143(3) of the Act in which no further addition was made by the AO.

**5.** Later on, it is noted that, the cases of these assesses were re-opened after the expiry of four years from the end of the relevant assessment years 2012-13 & 2013-14 by issue of notices u/s 148 of the Act both dated 26.03.2019. The assesses are noted to have requested the AO to treat the original return filed u/s 139 of the Act as the return of income in response to notice u/s 148 of the Act. Upon request of the assesses, the AO is noted to have supplied the *reasons* recorded for reopening the assessments. Drawing our attention to the recorded '*reasons*' for both these AYs, the Ld. AR for the assesses showed us that,



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the AO after re-appraisal of the impounded survey material, which according to him, was already examined in the course of original assessment for AY 2013-14, *changed his opinion* and formed a belief that the assesses had failed to disclose fully and truly the investments made on the construction of the polytechnic college. It is observed from the impugned reassessment orders that, according to AO, both the cost of land & cost of construction of the building were not correctly disclosed/offered by the trustees. Based on the loose sheets impounded at the time of survey, the AO is noted to have held that, the cost of land acquired by the trustees was actually Rs.2,91,20,000/- and thus computed sum of Rs.66,20,000/- which in his view was incurred outside the books of accounts had escaped assessment. Further, the AO also examined the purported trial balance seized in the course of survey and inferred that contributions stated to have been received from the Trustees for construction was Rs.12.78 crores whereas the cost which ought to have been incurred, as per completion certificate, as obtained by the Department, was Rs.17.02 crores. The differential sum of Rs.4.24 crores was held to be further cost incurred by the trustees and the same was apportioned between AYs 2012-13 & 2013-14 at Rs.1,28,98,946/- and Rs.2,94,97,054/- respectively. The AO is accordingly noted to have proportionately assessed the aforesaid computed further cost of land and construction in the hands of all the trustees. Aggrieved by the action of



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the AO, all the trustees are noted to have preferred appeal before the Ld. CIT(A) who is noted to have confirmed the action of the AO. Being aggrieved by the said order, the trustees are now in appeal before us.

**6.** We first take up the appeal of the lead assessee for AY 2012-13 in ITA No.2584/Chny/2024 [ Shri S Aravind] in which the assessee is *inter alia* noted to have challenged the legal validity of the reopening u/s 147/148 of the Act. In our view, the legal issue raised by the assessee challenging the jurisdiction of the AO to reopen the assessment, if found valid, goes to the root of the matter, and therefore we deem it fit to first adjudicate the same.

**7.** Assailing the reopening of assessment by issue of notice u/s 148 of the Act, the Ld. AR for the assessee submitted that, the survey was conducted on 23.01.2013 and that, the AO was in possession of the relevant seized material basis which the reasons were recorded and impugned reopening was done, much prior to the expiry of time limit for issuance of notice u/s 143(2) of the Act for AY 2012-13 viz., 30.09.2013. According to him, since the AO was of the view that the seized material did not contain anything which incriminated the assessee qua AY 2012-13, the AO chose not to take up the case for scrutiny assessment. According to him therefore, when the AO chose not to issue notice u/s



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143(2) of the Act when the time was available, and he was already in possession of the impounded material, then the subsequent issue of notice u/s.148 of the Act based on the same seized material was not a valid action and hence, reopening notice is bad in law. For this, the Ld. AR relied on the decision of Hon'ble Madras High Court in the case of **Tanmac India v DCIT [2016] 97 CCH 0189** and the Hon'ble Delhi High Court decision in the case of **CIT v. Orient Craft Ltd. 354 ITR 0536 (Del)** and the decision of the coordinate Bench of this Tribunal in the case of **Cheyur Ramakrishnan Rajkumar v. ITO (ITA No.334/Chny /2024)**.

**8.** Per contra the Ld. CIT, DR appearing for the Revenue has contended that the assessee had not filed his return of income for AY 2012-13 u/s 139 of the Act and therefore there was no occasion for the AO to take up his case for scrutiny by issue of notice u/s 143(2) of the Act and thus in her view, the decision of Hon'ble Madras High Court (supra) being relied upon by the assessee was distinguishable. The Ld. CIT, DR further argued that, the AO also did not have the occasion at the material time to examine the seized material and ascertain whether the case for AY 2012-13 could be taken up for scrutiny until the assessment for the surveyed year i.e. AY 2013-14 was completed u/s 143(3) of the Act. The Ld. DR further relied on the decision of Hon'ble Supreme Court in the



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cases of **ACIT v Rajesh Jhaveri Stock Brokers (P) Ltd. (291 ITR 500)** & **EssEss Kay Engg. Co. (P) Ltd. v CIT (247 ITR 818)** to support the AO's action of reopening the assessment for AY 2012-13 which was completed u/s 143(1) of the Act. According to her, since the assessment was not completed u/s 143(3), the AO never had the occasion to form any opinion on the seized material for the relevant AY 2012-13 and hence she contended that the impugned reopening was justified.

**9.** The Ld. AR, in his rejoinder, pointed out that, the assessee had filed his return of income for AY 2012-13 on 16.10.2013 and invited our attention to the acknowledgment of the return of income, which has been placed in the paper-book and asserted that the AO has acknowledged in the respective assessment orders of the other assessee's/Trustees that they all have filed ITR's (12 assessee's out of 25 filed in the year 2012 & the rest in 2013). According to him, therefore, as per the law in force, the AO was legally empowered to take up the income-tax assessment of AY 2012-13 for scrutiny until six months from the end of the relevant assessment year i.e. on or before 30.09.2013, if the return is filed within due-date u/s.139(1); or within six months from the end of the financial year in which the return is furnished; and placed copy of Finance Act-2012, and drew our attention to relevant portion of section 139 & 143 of



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the Act to buttress his afore said submission. And further brought to our notice that the Finance Act, 2012, permits the assessee to file return [ITR] before the expiry of one year from the end of the relevant assessment year and the assessee's in the present case had in fact filed the ITR's before the permissible time limit prescribed u/s.139 of the Act, and the AO had time up to 30.09.2014 [u/s 143] to issue notice u/s 143(2) on or before 30.09.2014. Therefore, according to him, in the present set of cases, the AO had extended time to issue notice u/s 143(2) of the Act for AY 2012-13. Thus, Ld AR submitted that the reasoning given by the Revenue to distinguish the assessee's reliance on the decision of Hon'ble Madras High Court (supra) was misconceived & misplaced. He further argued that, the decisions cited by the Revenue were not relevant to the plea raised by the assessee, as in those cases, it was only held that, no opinion can be said to have been formed in the proceedings u/s.143(1) of the Act.

**10.** We have heard the rival submissions of both the parties. The facts as noted are that, survey action u/s 133A of the Act was conducted on 23.01.2013 in the course of which several material including loose documents, trial balance, completion certificate, estimated cost of construction etc. were seized by the AO. Also, statements of several persons were recorded by the AO at the time of survey. Thereafter,



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pursuant to post survey enquiries, the AO is noted to have recorded the last of the statement of the trustees in the month of August 2013. It is accordingly noted that the AO was indeed aware about the contents of the seized material, as he had examined the same in the post survey enquiries and thereafter examined the trustees on oath u/s 131 of the Act.

**11.** For the relevant AY 2012-13, the assessee is noted to have filed his return of income on 16.10.2013. Having regard to the time limit set out in Section 143 of the Act, it is observed that, the AO was legally empowered to take up the income-tax assessment of AY 2012-13 for scrutiny until six months from the end of the relevant assessment year i.e. 30.09.2013, if the return is filed within due-date u/s 139(1) or *six months from the end of the financial year in which the return is furnished*. Accordingly, in light of the facts, as taken note above, we find that, the AO being already in possession of seized material found in course of survey, could have indeed taken up the case for AY 2012-13 for regular scrutiny u/s 143(2) of the Act, even if the assessee [Arvind] had filed return on 16.10.2013, in his view, it was necessary to do so, since he had time till 30.09.2014 to issue notice u/s 143(2). The AO is however noted to have refrained from doing so. We therefore find force in the Ld. AR's submission that, the AO, who had conducted the survey, after examining the impounded material,



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was not of the view that the income of the assessee for AY 2012-13 was required to be scrutinized. Later on however, the AO's successor is noted to have *changed his opinion* and issued notice u/s 148 of the Act on 26.03.2019 beyond four years from the end of the relevant assessment year, on the basis of the same impounded material, which was already in his possession, when the assessment for AY 2012-13 was not taken up for scrutiny u/s 143(2) of the Act, and basis the same stale material, the AO is noted to have formed his belief that income of the assessee chargeable to tax had escaped assessment. According to us, such action of the AO cannot be countenanced. The relevant *recorded reasons*, by the AO before reopening the assessment for AY 2012-13 as taken note of by us, is as follows:-

"The assessee is one of the trustee in "The Karur Kongu Charitable Trust", located at No.464, Vaiyapuri Nagar, 2nd Cross, Sengunthapuram, Karur. The trust was established on 04.02.2011. The trustees (32 in Nos) bought 17.99 acres of land at Pungambadi village, near Karur on 09.03.2011. The guide line value of the land was Rs. 14,40,000/- and the market value was Rs.2,60,50,000/-. Out of this, the trust bought 5.02 acres of land at a cost of Rs.4.49 lakhs for constructing a Polytechnic College. During the Financial Year 2011-12 relevant to the assessment year 2012-13, the trust started constructing a Polytechnic College on the land. The construction work was continued till the financial year 2012-13.

Meanwhile a survey u/s 133A was conducted at the premises of the above trust on 23.02.2013. During the survey proceedings, sworn statements were recorded from R. Palanisamy, the Managing trustee, Shri B. Sathyamoorthy, partner of Erode based builder firm (M/s S.Selvaraj& Co) and Shri S. Sethurajan site Engineer of the firm.

Shri R. Palanisamy, the managing trustee of the trust had admitted in his statement that a construction contract was executed between the trust and with a builder firm called M/s S. Selvaraj & Co of Erode



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on 05.09.2011. The total value of the contract was Rs. 12 crores. Also, according to him, the trust had paid Rs.8 lakhs as on 23.01.2013 Further, he had admitted, each trustee had contributed Rs. 40 lakhs towards the construction cost.

In his statement, the partner of the builder firm Shei R.R.Sathyamoorthy also acknowledged the contract agreement executed on 05.09.2011 towards the construction of the Polytechnic College. Further, he had admitted that the firm had received Rs.3,80,00,000/- and the total value of the contract was Rs.7 crores (except cement and steel). Further, the statement given by the ate engineer Shri S. Sethurajan on the loose sheets impounded also strengthened the building construction commenced during the Financial Year 2011-12

Consequent to the survey, the assessments of the 32 trustees for the Asst. Year 2013-14 were completed on 28.03.2016 During the scrutiny proceedings, the trustee Shri S.Aravind admitted Rs.8 lakhs towards the purchase of land (17.99 acres) from his unaccounted income However, he failed to disclose the investments made on the construction of the College building Further, the trustee had failed to admit the investments even in the return of income filed for the assessment year 2012-13. In this juncture, it is pertinent to note that the trust came into existence only in the year 2011 and the trust had not generated any income during the year of construction. The only source for the construction was from the trustees as there was no external borrowings by the trust

Therefore, the above trustee had failed to disclose truly and fully on the investments made during the Financial Year 2011-12 on the construction of the Polytechnic College. Hence, I have reason to believe that the income chargeable to tax has escaped assessment and I request the Pr.CIT Trichy-1, Trichy to accord approval to initiate proceedings u/s 147 for the assessment year 2012-13."

**12.** Reading of the above reasons shows that, the AO has relied on the same statements which were recorded at the time of survey and the material impounded then, to infer that the assessee had not fully disclosed the correct value of his investments. In our opinion, when the AO's predecessor, who conducted the survey, did not choose to issue a



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notice u/s.143(2) of the Act to initiate proceedings for scrutiny of the return of income of AY 2012-13, on the basis of the seized survey material already in his possession, then the obvious conclusion was that he did not consider it necessary or expedient to do so. This opinion of the AO cannot be arbitrarily changed to re-assess the income on the basis of stale material, which was already on record. Having missed this bus earlier, the Revenue cannot be permitted to avail of the extended time-limit beyond four years, particularly in the absence of any new or tangible material (*apart from the existing survey material*) being brought on record. In our considered view therefore, the reopening of assessment for AY 2012-13 was invalid and bad in law.

**13.** Our above view is found to be squarely supported by decision of the Hon'ble jurisdictional Madras High Court in the case of **Tanmac India v DCIT (supra)**. While answering to the question as to whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Assessing Officer is justified in reopening the assessment by issuance of notice under section 148 of the Act when no new material was unearthed justifying the re-opening of the assessment, the Hon'ble High Court is noted to have held as follows:

**"12. If the assessing officer, after issuing intimation u/s. section 143(1) does not issue a notice u/s. 143(2) of the Act to initiate proceedings for scrutiny of the return of income, the obvious conclusion is that he does not consider it necessary or expedient to do so, the inference being that the Return of Income filed was**



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**in order. It is this opinion that cannot be arbitrarily changed by the assessing officer, to re-assess income on the basis of stale material, already on record. If we thus keep in the mind the above fundamental requirement of section 147, it would be apparent that the exercise undertaken by the Revenue in this case is not one of re-assessment, but of review. The reasons make it abundantly clear that the re-assessment is sought to be initiated on the basis of the return of income and the enclosures which were available with the assessing officer since 2.11.1998 and which ought to have prompted him to issue a notice under section 143(2) of the Act to conduct the proceedings under scrutiny. What is sought to be done by the re-assessment ought to have been achieved by scrutiny assessment proceedings. Having missed the bus earlier, the Department cannot be permitted to avail of the extended time limit in the absence of any new or tangible material, when the time for scrutiny assessment has elapsed on 31.3.2001, prior to issue of notice u/s. 148. The notice under section 148 dated 9.12.2002 is thus an arbitrary exercise of power and a review of proceedings impermissible in law.**

13. The Division Bench of the **Delhi High Court** in the case of **CIT v. Orient Craft Ltd.** [2013] 354 ITR 536/215 Taxman 28/29 [taxmann.com](http://taxmann.com) 392 deals specifically with this aspect of the matter. The substantial question of law that was dealt with by the High Court is as follows;

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

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

To conclude, the Division Bench holds thus:

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



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**14.** The Hon'ble Madras High Court in particular on the issue of non-action on the part of the Assessing Officer in issuing 143(2) of the Act on the basis of material which was already on this record, is noted to have observed as under: -

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

.....

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

17. A decision of the Delhi High Court in the case of Orient Craft Ltd. (supra) had occasion to consider a similar question and the Division Bench, at Page 546, holds as follows;

'Having regard to the judicial interpretation placed upon the expression reason to believe", and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore, it is not permissible to adopt different standards while interpreting the words "reason to believe" vis-à-vis section 143(1) and section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under section 143(3) cannot apply where only



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an intimation was issued earlier under section 143(1). It would in effect place an assessee in whose case the return was processed under section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny or is accepted without demur is not a matter which is within the control of the assessee; he has no choice in the matter. **The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under section 143(1) and, thereafter, issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" in cases where assessments were framed earlier under section 143(3) and cases where mere intimations were issued earlier under section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed."**

.....

The reasons recorded by the Assessing Officer reached the belief that there was escapement of income "on going through the return of income" filed by the assessee after he accepted the return under section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in CIT v. Kelvinator (supra)."**[Emphasis supplied]**

**15.** Following the ratio laid down by the Hon'ble jurisdictional High Court (supra), we hold that the reopening of assessment for AY 2012-13 to be bad in law and therefore the impugned order passed u/s 147/143(3) of the Act is held to be *ab initio* void and is thus quashed. The assessee thus succeeds in his appeal in ITA No.2584/Chny/2024 for AY 2012-13.

**16.** We now turn our attention to the appeal for **AY 2013-14** in **ITA No.2585/Chny/2024**. It is noted that, the income-tax assessment for AY 2013-14 was originally completed u/s. 143(3) of the Act. The AO is



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noted to have issued notices u/s 143(2) & 142(1) of the Act calling for several details and documents. Upon examining the books of accounts and details, in light of the material impounded during the course of survey, the AO is noted to have accepted the additional unaccounted income offered and declared in the return of income and no further addition was made. It is not in dispute that the income-tax assessment for AY 2013-14 has been reopened beyond four years by issue of notice u/s 148 of the Act dated 28.03.2019. According to the Ld. AR, there was no fresh tangible material available with the AO to validly reopen the assessment and that the AO had simply reviewed the material already available on record and on change of opinion, had reopened the assessment, which according to him was not permissible. Referring to the first proviso to Section 147 of the Act, the Ld. AR further submitted that, where an assessee had filed a return of income and thereafter the assessment was completed either under section 143(3) or under section 147 of the Act, then in such case, no notice under section 147 of the Act could have been issued beyond four years from expiry of relevant assessment year, unless the AO demonstrates in the recorded reasons that income had escaped assessment as a consequence of assessee's failure to disclose truly and fully all facts necessary for his assessment. According to the Ld. AR, in the present case, all the relevant information and details were made available at the time of original assessment which



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was examined by the AO in the light of impounded material and therefore it was not only a case of change of opinion by the AO but also the assessee cannot be said to have failed to disclose truly and fully all material facts necessary for assessment for that year and in that view of the matter, the Ld. AR has contended that AO could not have validly reopened the assessment for AY 2013-14 after the expiry of four years.

**17.** Per contra, the Ld. DR has filed written submissions rebutting the contention of the appellant. According to the Revenue, though the assessee had furnished all other details but he failed to produce the details of contributions to the Trust and therefore in absence of these details, there was failure on assessee's part to truly and fully disclose all material facts in the course of original assessment. The Ld. DR further submitted that, the AO had also overlooked the impounded material, more particularly the trial-balance and the draft completion certificate, which in his view revealed the unaccounted investments made by the trustees in the land and building and therefore in his view, the AO had rightly reopened the assessment u/s 147 of the Act.

**18.** The Ld. AR in his rejoinder argued that the contentions put forth by the Revenue were fraught with factual inaccuracies. He first pointed out that, the trustees in their statement recorded at the time of survey had



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furnished the details of contributions made to the Trust which were recorded in the books of the Trust as well and the unaccounted contributions had been admitted and disclosed in the return of income. He thus submitted that, when the assessee had already declared the unaccounted contributions to tax in his return of income, there was no reason for the assessee to separately furnish the details thereof. He further invited our attention to the contemporaneous facts to show that the land was acquired in 2011 and thereafter portion of the land was contributed to the Trust. According to him, if AO was of the view that the assessee had made unaccounted contributions for purchase of land, then also, any adverse inference could have legally been drawn in the year of purchase of land i.e. 2011 and not the relevant FY 2012-13. He further showed us that, the purported trial balance being referred to by the AO to allege that the trustees had made unaccounted investments, contained incorrect figures and was therefore unreliable and according to him therefore, it was for this reason the AO's predecessor who framed the original assessment had also not relied upon the same. The Ld. AR also showed us that, even the AO while framing the impugned reassessment did not adopt the figures as mentioned in the trial balance but had only selectively chosen certain items/figures which suited his purpose of drawing adverse inference against the assessee. In respect of the *reasons recorded* by the AO on the basis of the draft completion certificate that



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the investments made towards construction of building was not fully recorded in the books of accounts and that the trustees had made further unaccounted contributions, he brought our attention to the final valuation certificate which was obtained by the Department, according to which, the estimated cost of construction ought to have been Rs.12.35 crores. Drawing our attention to the books of accounts of the Trust, he showed us that, the Trust had incurred cost of Rs.14.19 crores towards the construction of building and therefore for this reason the AO's predecessor didn't find any reason to infer that any additional cost of construction, apart from what was already admitted by the trustees, had been incurred. According to the Ld. AR therefore, not only were the reasons recorded by the AO on incorrect premise but the same constituted *change of opinion* on the basis of material already available on record. He thus urged that the impugned reopening of assessment ought to be held as invalid.

**19.** We have heard the rival submissions of both the parties. Before we advert to the facts in this case, let us first look into the well settled principles regarding reopening of assessments completed u/s 143(3) of the Act, beyond four years. In this regard, it is first pertinent to examine the relevant provision of the Act i.e., Section 147 of the Act which reads as under:



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"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:**[Emphasis given by us]"

**20.** We note that the Hon'ble Supreme Court in the case of **Calcutta Discount Co. Ltd. v. CIT [1961] 41 ITR 191** has held [in cases, where proviso is applicable] that, both the conditions, (i) the Income-tax Officer having reason to believe that there has been under-assessment and (ii) his having reason to believe that such under- assessment has resulted from nondisclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of four years. The Hon'ble Supreme Court in the case of **Ganga Saran & Sons (P.) Ltd. v. ITO [1981] 6 Taxman 14/131 ITR 1** further held that, the expression "*reason to believe*" occurring in Section 147 is stronger than



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the expression "*is satisfied*" and this legal requirement has to be met in the reasons recorded before re-opening. The Hon'ble Court held that it has to be kept in mind that if an assessment (original assessment) has been made u/s. 143(3), the proviso to Sec. 147 further mandates that no action shall be taken under section 147 after the expiry of 4 years from the end of the relevant assessment year, unless there is failure on the part of the assessee to disclose fully and truly all facts necessary for his assessment for that assessment year.

**21.** It is noted that, the Hon'ble Supreme Court in the case of **CIT Vs. Foramers France (264 ITR 566)** has similarly held that, an assessment completed u/s 143(3) cannot be reopened merely upon *change of opinion* with reference to facts already available with the AO at the time of regular assessment. In the opinion of the Apex Court, a regular assessment u/s 143(3) could not be reopened after expiry of 4 years from end of assessment year unless escapement was resulted from assessee's failure to disclose all material facts necessary for its assessment.

**22.** Having regard to the provisions of law governing reopening of assessment, it is observed that, in all cases where assessment is completed under section 143(3) or under section 147 of the Act and such concluded assessment is being sought to be reopened beyond four years,



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it is not only necessary for the AO to form reasonable belief that income had escaped assessment as envisaged in Section 147 of the Act but additionally he has to show that such escapement occurred as a result or consequence of assessee's failure to disclose truly and fully all facts necessary for assessment. The AO after obtaining information and documents from the assessee cannot supplement his conclusion about assessee's failure to disclose truly and fully material facts, if the recorded reasons do not refer to such failure. In the circumstances, where the AO initiates the reassessment proceedings beyond four years from the end of the relevant assessment year, then the AO is duty bound to demonstrate in his reasons recorded prior to issue of notice, the failure on the assessee's part to truly and fully disclose all material facts in the course of original assessment.

**23.** Further, it is also by now well settled in law that, where the assessee is able to show that, the issue with reference to which the AO formed the reason to believe was examined or enquired into or was deliberated upon in the original assessment then, the AO is not permitted to take recourse to proceedings under Section 147 of the Act. The AO is thus not permitted to form his reasons to believe, on reappraisal of the same facts and materials already available on record as it would constitute '*change of opinion*'. Gainful reference in this regard may be



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made to the decision of the Hon'ble Supreme Court in the judgment reported in **CIT v. Kelvinator of India Ltd (320 ITR 561)** wherein the Apex Court held as follows:

"...

'2.A short question which arises for determination in this batch of civil appeals is, whether the concept of "change of opinion" stands obliterated with effect from 1-4-1989, *i.e.*, after substitution of section 147 of the Income-tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1987 ?

...

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



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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."

5. For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs.'

**24.** Following the above, the Hon'ble jurisdictional Madras High Court in the case of **CIT v. India Cements Ltd. (424 ITR 410)** has held as follows:

"30. Having held so, we need to consider as to whether the reassessment was validly done. The Tribunal held in favour of the assessee stating that the reassessment was bad in law. To decide this issue, we may straightaway refer to the decision in the case of *Kelvinator of India Ltd. (supra)*, wherein the Hon'ble Supreme Court pointed out that post 1-4-1999, the power to reopen was much wider and that however, one needs to give a schematic interpretation to the words "reason to believe", failing which, Section 147 of the Act would give arbitrary powers to the Assessing Officer to reopen the assessment on the basis of "mere change of opinion", which cannot be, *per se*, reason to reopen. It was pointed out that there is a conceptual difference between the power to review and power to reassess, that the Assessing Officer has no power to review, that he has the power to reassess and that reassessment has to be based on fulfilment of certain pre-conditions and if the concept "change of opinion" is removed, then in the garb of reopening the assessment, review would take place. It was held that the concept of "change of opinion" should be treated as in-built test to check the abuse of power by the Assessing Officer. Thus,



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it was held that after 1-4-1999, the Assessing Officer has power to reopen provided there is "tangible material" to come to the conclusion that there is an escapement of income from assessment and reasons must have a live link with the formation of the belief.

31. Bearing the aforementioned legal principles in mind, if we examine the facts of the present case, as rightly pointed out by the Tribunal, all particulars relating to dividends and short term capital gains and other particulars were available with the Assessing Officer during the assessment proceedings, which was concluded on 15-2-1999 under section 143(3) of the Act. Furthermore, the Tribunal, on facts, recorded that the Department did not bring any material fact before it, which was not disclosed in the original return of income.

32. Even in this appeal, no such fact has been brought to our notice nor pleaded in the memorandum of grounds of appeal and presumably that is the reason why the Revenue had raised the substantial questions involving the interpretation of Rule 27 of the Rules and conveniently was not focussing on the issue as to whether the reopening of assessment was on account of change of opinion. A reading of the reassessment order dated 31-3-2004 will clearly reveal that all facts and figures were gathered by the Assessing Officer only from the original return of income filed by the assessee. There was no fresh or tangible material available with the Assessing Officer to reopen the proceedings. Therefore, we have no hesitation to conclude that the reopening of the assessment beyond four years was clearly a case of change of opinion. For all the above reasons, substantial questions of law Nos. 1 to 3 are liable to be answered against the Revenue and consequently, it is held that the reopening of the reassessment is bad in law and is liable to be *set aside*.

33. Accordingly, the appeal filed by the Revenue is dismissed. The reassessment order dated 31-3-2004 is *set aside*. Substantial questions of law Nos. 1 to 3 are answered against the Revenue. As we have answered substantial questions of law Nos.1 to 3 against the revenue, there would be no necessity for us to answer the substantial question of law No. 4 and the said question is left open. No costs."

**25.** In the light of the legal principles set out above, let us now examine the *reasons recorded* by the AO in order to reopen the assessment after four years and within six years, which is found placed at Page 42 of the Paper book, which reads as under:



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"The assessee is one of the trustee in "The Karur Kongu Charitable Trust", located at No.464, Vaiyapuri Nagar, 2nd Cross, Sengunthapuram, Karur. The trust was established on 04.02.2011. The trustees (32 in Nos) bought 17.99 acres of land at Pungambadi village, near Karur on 09.03.2011. The guide line value of the land was Rs.14,40,000/- and the market value was Rs.2,60,50,000/-. Out of this, the trust bought 5.02 acres of land at a cost of Rs.4.49 lakhs for constructing a Polytechnic College. During the Financial Year 2011-12 relevant to the assessment year 2012-13, the trust started constructing a Polytechnic College on the land. The construction work was continued till the financial year 2012-13.

Meanwhile, a survey u/s 133A was conducted at the premises of the above trust on 23.01.2013 During the survey proceedings, sworn statements were recorded from Shri R. Palanisamy, the Managing trustee, Shri R.R.Sathyamoorthy, partner of Erode based builder firm (M/s S.Selvaraj& Co) and Shri S.Sethurajan, site Engineer of the firm. Shri R. Palanisamy, the managing trustee of the trust had admitted in his statement that a construction contract was executed between the trust and with a builder firm called M/s S.Selvaraj& Co of Erode on 05.09.2011. The total value of the contract was Rs. 12 crores. Also, according to him, the trust had paid Ra. 5 lakhs as on 23.01.2013. Further, he had admitted, each trustee had contributed Rs. 40 lakhs towards the construction cost.

In his statement, the partner of the builder firm Shri R.R.Sathyamoorthy also acknowledged the contract agreement executed on 05.09.2011 towards the construction of the Polytechnic College. Further, he had admitted that the firm had received Rs.3,80,00,000/- and the total value of the contract was Rs.7 crores (except cement and steel). Further, the statement given by the site engineer Shri S.Sethurajan on the loose sheets impounded also strengthened the building construction commenced during the Financial Year 2011-12.

Consequent to the survey, the assessments of the 32 trustees for the Asst. Year 2013-14 were completed on 28.03.2016. During the scrutiny proceedings, the trustee Shri S.Aravind admitted Rs.8 lakhs towards the purchase of land (17.99 acres) from his unaccounted income. However, he failed to disclose the investments made on the construction of the College building. In this juncture, it is pertinent to note that the trust came into existence only in the year 2011 and the trust had not generated any income during the year of construction. The only source for the construction was from the trustees as there was no external borrowings by the trust.



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Therefore, the above trustee had failed to disclose truly and fully on the investments made during the Financial Year 2012-13 on the construction of the Polytechnic College. Hence, I have reason to believe that the income chargeable to tax has escaped assessment and I request the Pr.CIT, Trichy-1, Trichy to accord approval to initiate proceedings u/s 147 for the assessment year 2013-14.”

**26.** Perusal of the above shows that the reasons recorded by the AO was based on the same impounded survey material which was already available with the AO at the time of completion of the original assessment u/s 143(3) of the Act dated 28.03.2016. Upon going through the notices issued u/s 142(1) of the Act, replies furnished by the assessee, it is observed that, the AO had examined the books of accounts and details of the trustees & the Trust in light of the impounded material, and thereafter framed the assessment u/s 143(3) of the Act, wherein he had *inter alia* observed as follows: -

“A survey u/s 133A was conducted in the premises of M/s The Karur Kongu Charitable Trust, N. 111/B, Vaiyapuri Nagar, II Cross, Sengunthapuram Post, Karur – 639002 on 23.01.2013. The trust is running a college in the name and style of M/s Kongu Hi-Tech Polytechnic College. **In the trust, there are 32 trustees. During the course of survey proceedings, it was found that he trustees of the trust have contributed towards corpus donation and admitted Rs.2.25 Crores as additional income in the name of the trustees. Books of accounts and documents have been impounded.** The assessee Shri ARAVIND S, individual filed his return of income for the assessment year 2013-14 admitting total income of Rs.14,40,720/-.

**Since this is a survey case and books of accounts and documents have been impounded, this case has been selected for scrutiny and Notice under section 143(2) was issued to the assessee on 29.05.2014 served on 12.06.2014.**



**::31 ::**

In response to notice issued the authorised representative of the assessee Shri R. Subramanian, Chartered Accountant, appeared and filed the Power of Attorney in his favour. **During the course of assessment proceedings, the representative of the assessee provided the Books of accounts, bills & vouchers and other supporting evidences in support of Return of Income filed. The Books of accounts and other documents produced were examined.**

**The trustees of the trust have offered Rs. 2.25 Crores as additional income in their individual capacity and the assessee's contribution was Rs.8,00,000/-. In the Return of Income filed, the assessee has admitted the same in addition to the regular income and paid the taxes.**

**Also, the books of accounts and documents impounded at the time of survey were thoroughly examined. Since, the assessee has offered the entire amount admitted at the time of Survey in the Return of Income fled the assessment of the assessee is completed accepting the income returned. In addition to the above, all the details furnished were thoroughly verified for its genuineness.**

Assessed u/s 143(3) of the Income tax Act, 1961. Demand Notice u/s 156 is attached to this order as Annexure. Penalty proceedings u/s 271(1)(c) is initiated separately.”[Emphasis given by us]

**27.** From the above observations made in the original assessment order, it is amply evident that, the impounded material, referred to in the recorded reasons, was already considered while completing the original assessment and clearly there was no fresh tangible material available with the AO to reopen the assessment beyond four years. Rather, the recorded reasons (supra) shows that the AO had re-examined the facts and material already available in assessment records and formed his opinion that income chargeable to tax has escaped assessment. In our considered view, such action of the AO amounted to ‘*change of opinion*’



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and following the dictum of law, as discussed above, the reopening of assessment is held to be invalid.

**28.** The Ld. DR however had strenuously contended that, the AO's predecessor had not correctly applied his mind to the facts and material available on record at the time of original assessment and therefore the AO had rightly reopened the assessment. In this regard, we find the reliance placed by the assessee on the decision of the Hon'ble Madras High Court in the case of **CIT v Arvind Remedies Ltd (378 ITR 547)** to be of relevance, wherein it has been held as follows:

"In the light of the above, we hold that when the Assessing Officer had failed to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment. On the contrary, it was the Assessing Officer, who failed to consider the material placed before him at the time of regular assessment for which the assessee cannot be found fault with. Therefore, the notice issued under section 147 of the Income tax Act beyond the period of four years was wholly without jurisdiction and cannot be sustained."

**29.** In view of the above decision (supra), even if the AO did not consider the material available with him prior to completing the original assessment, the assessee cannot be faulted for not truly and fully disclosing all material facts in the original assessment so as to reopen his assessment beyond four years as the condition precedent in the first proviso to Section 147 does not stand satisfied.



**30.** Moreover, the Ld. AR demonstrated before us that, the AO had indeed considered the impounded material and thereafter took a plausible view that there was nothing further to be added/assessed to the total income of the assessee. Before us the Ld. DR referring to the recorded reasons had contended that, the actual cost of land deciphered from the trail balance and seized material was Rs.2.90 crores whereas the trustees had paid only Rs.14 lacs (approx.) for the same and therefore the assessee-trustees had not correctly disclosed the contributions towards the land in original assessment. In this regard, we find force in the Ld. AR's preliminary objection that, the land in question was admittedly acquired in 2011 and not in the relevant FY 2012-13 and therefore adverse inference, if any, could have been legally drawn only in that year and not the relevant AY 2013-14. On this aspect alone, we find that, the reasons recorded by the AO for AY 2013-14 to be based on wrong assumption of relevant facts available on record.

**31.** Drawing our attention to the second portion of the reasons viz., the cost of construction of building was not fully accounted, the Ld. AR showed us that, the costs incurred were recorded in the books of accounts of the Trust and not the trustees. It was brought to our attention that, only the unaccounted portion as admitted by the builder as well as the



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trustees had been declared and admitted by the latter proportionately in their respective returns of income, which was examined and accepted by the AO in the original assessment. Taking us through the documents placed on record, it was shown that, the balance cost of construction was incurred by the Trust out of regular voluntary contributions from the trustees and the same was recorded in the books of accounts. He also brought to our notice that, the cost recorded in the books of accounts was comparatively higher than the valuation certificate obtained by the AO from the Departmental valuer (DVO). Having regard to these facts, we find merit in the Ld. AR's submission that, the AO's predecessor had taken a plausible view in the original assessment by not drawing any further adverse inference on this aspect. Overall therefore, according to us, the impugned reasons recorded by the AO were based on re-appraisal of the same set of facts which amounts to impermissible '*review/change of opinion*'.

**32.** The next argument raised by the Ld. DR in support of the validity of the reopening of assessment was that, though the AO had observed in the assessment order that he had examined the impounded material but the AO had not made pointed and specific enquiries on the aspects highlighted in the recorded reasons and therefore, due to his non-application of mind, the reopening of assessment could not be said to be



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based on 'change of opinion'. According to us, this argument put forth by the Revenue is fundamentally flawed. There may be cases where the AO does not and may not raise any written query but still the AO in the first round/original proceedings may have examined the subject matter, claim etc., because the aspect or question may be too apparent and obvious. To hold that the AO in the first round didn't examine the question or subject matter and form an opinion, would be contrary and opposed to normal human conduct. Such cases have to be examined individually. Some matters may require examination of the assessment order or queries raised by the Assessing Officer and answers given by the assessee but in others cases, a deeper scrutiny or examination may be necessary. Several aspects including papers filed and submitted with the return and during the original proceedings are relevant and material. Sometimes application of mind and formation of opinion can be ascertained and gathered even when no specific question or query in writing had been raised by the Assessing Officer. The aspects and questions examined during the course of assessment proceedings itself may indicate that the Assessing Officer had applied his mind on the entry, claim or deduction etc. However, this would depend upon the facts and circumstances of each case.

**33.** In the facts of the present case, the AO is noted to have conducted the survey upon the Trust pursuant to which he impounded several materials and recorded the statement/s of the managing trustee and the



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builder. In the post survey enquiries, statements of other trustees were also recorded. It is in the course of post survey enquiries, the trustees quantified and admitted to unaccounted income by way of cost incurred towards the construction of college building and also paid taxes on the same in their returns of income for AY 2013-14. These facts show that, the AO was well aware about the contents of the relevant impounded material, and had applied his mind in the post survey enquiries, pursuant to which he also recorded statements of other trustees in the month of August 2013. Thereafter, the AO took up the scrutiny of the return of income filed for AY 2013-14 by issue of notice u/s 143(2) of the Act, and his observations in the original assessment order shows that the assessment was framed after examining the impounded material. These contemporaneous facts thus suggests that the AO had applied his mind to the impounded survey material and only because specific line of enquiry, was not to the liking of his successor, it can't be reason enough to allege that he didn't consider the impounded survey material before completing the original assessment.

**34.** For the above discussed reasons therefore and in light of the cited decisions (supra), we thus hold that the usurpation of jurisdiction u/s 147 of the Act being based on '*change of opinion*' upon re-appraisal of facts already existing on record, was bad in law and void *ab initio*. Therefore, we are inclined to quash the order passed u/s 147/143(3) of the Act for



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AY 2013-14. Accordingly, the appeal of the assessee for AY 2013-14 stands allowed.

**35.** Since the facts & circumstances across all other cases, reasons recorded by the AO etc., as agreed by both parties, are identical, the result of both the above appeals for AYs 2012-13 & 2013-14 shall *mutatis-mutandis* apply to all the other appeals of other assessee trustee(s) respectively. Following our decision (supra) we accordingly hold the reopening of assessment to be invalid and hence quash the orders passed u/s 147/143(3) of the Act in the matters of other trustee(s) as well.

**36.** In the result, all the appeals stand allowed.

Order pronounced on 09<sup>th</sup> April, 2025 at Chennai.

**Sd/-**  
(जगदीश)  
(JAGADISH)

लेखासदस्य/ACCOUNTANT MEMBER

**Sd/-**  
(एबी टी. वर्की)  
(ABY T. VARKEY)

न्यायिकसदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 09<sup>th</sup> April, 2025.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Madurai
4. विभागीय प्रतिनिधि/DR &
5. गार्डफाईल/GF.