**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH "F": NEW DELHI**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER**
**AND**
**SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 4672/DEL/2024**
**Assessment Year: 2010-11**

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| **Reeta Rana,**<br>**44, Mission Compound,**<br>**Saharanpur-247001.**<br><br>**PAN: ADMPR 6627 F** | Vs | DCIT-3,<br>Saharanpur. |
| **APPELLANT** | | **RESPONDENT** |
| **Assessee represented by** | Shri Anil Jain Adv. | |
| **Department represented by** | Ms. Harpreet Kaur Hansra, Sr. DR | |
| **Date of hearing** | 28.05.2025 | |
| **Date of pronouncement** | 30.05.2025 | |

**O R D E R**

**PER, KHETTRA MOHAN ROY, AM:**

The instant appeal, preferred by the assessee, is directed against the order dated 14.08.2024 (DIN & Order No. ITBA/NFAC/S/250/2024-25/1067643889(1), passed by the Ld. CIT(A)/NFAC, Delhi, arising out of the order dated 12.12.2017, passed by the DCIT, Circle 3(3), Saharanpur, under Section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:

*1. The Ld. CIT(A) has erred in not accepting the legality of proceedings u/s 148 on account of notice issued by ITO Meerut and ITO Saharanpur, without service of the same on the appellant being issued at wrong address.*

*2. The Ld. CIT(A) has erred in not accepting the contention that letter dated 10.11.17 obtained from the appellant for withdrawl of her objections to proceeding under section 148 is on account of false assurance by the assessing office, which is also not fulfilled by the AO.*

*3. The Ld. CIT(A) has erred in confirming the addition of Rs. 56.58.858 not accepting the explanation and evidence filed.*

*4 The order of Ld CIT(A) is against law and facts of case*

*5. The appellant craves the right to add, amend or withdraw any grounds of appeal at the time of hearing."*

3. Sequence of events are noted below:

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| 28-3-2011 | Return of income filed at the income of Rs. 1298450 at Saharanpur |
| 13.8.13 to 3.8.16 | Various notices issued u/s 133(6) by AO Sahranpur and duly replied with evidence. |
| 23.3.2017 | Notice u/s 148 issued by ITO Meerut at the address A-38, Defence colony, Meerut |
| 5.7.2017 | Notice u/s 142(1) issued by ITO Meerut at the address 44, Mission compound ,Sahranpur. |
| 13.7.2017 | Reply filed by the Appellant with desired documents. |
| 18.8.2017 | Case transferred from Meerut to Sahranpur |
| 8.9.17 | Notice u/s 143(2) issued by DCIT Saharanpur without any return filed in compliance to notice u/s 148. |
| 10.11.2017 | Reply filed and objected to the legality of proceedings. |
| 5.12.2017 | Details and explanation on merits filed before AO, |
| 12.12.2017 | Assessment completed u/s 143(3)/147 |
| 14.8.24 | CIT(A) order dismissed the appeal. |
| 22.5.25 | The application filed to AO for the copy of reasons recorded for reopening u/s 148 but the same are not given as not in his file. |

3. The Ld. AR has pointed out to the following corresponding note at page 35 of the paper book:

Office of the
Income Tax Officer, Ward- 2(2),
Room No. 101-A,
Aaykar Bhawan, Bhainsal Ground, Meerut
e-mail- meerut.ito1.2.2@incometax.gov.in
Tel. no. 0121-2401211

F. No.ITO-W-2(2)/Meerut/2016-17/ 1337 Date: 18-08-2017

To,

The Deputy Commissioner of Income Tax
Circle,
Income Tax Office
Court Road, Saharanpur.

Sub:- Transfer of case records in the scrutiny case of Smt. Reeta Rana, r/o 44, Mission Compound, Saharanpur (PAN: ADMPR6627F) F.Y. 2009-10 relevant to the A.Y. 2010-11, time barring on 31-12-2017 – Reg

Kindly refer to the above mentioned subject

In this connection, it is to inform you that on the basis of AIR information, notice u/s 148 was issued to the above mentioned assessee after taking necessary approval of higher authorities. Assessee vide her letter dated 13-07-2017 informed this office that she has regularly been assessed with ITO, Ward-2, Saharanpur. In support, she has submitted copy of ITR for A.Y. ~~2010~~-11. As per ITR, the returned income of the assessee is Rs. 12,98,450/- . Hence, the jurisdiction over this case lies with your good office.

In view of the above of the above case record in original is being transferred to you for necessary action at your end.

It is further to inform you that notice u/s 143(2) has not been issued by the under signed and it may be issued by your goodself. The scrutiny assessment in this case is going to be time barred on 31-12-2017.

Encl: - Case record of A.Y. 2010-11 in original
(paper on correspondence side 120,
order sheet - one)

Yours faithfully,

प्रभजीत कौर हाण्डा
PRABHJEET KAUR HANDA
आयकर अधिकारी/INCOME TAX OFFICER
3(3)(5) सहारनपुर SAHARANPUR

(Pradeep Karnwal)
Income-tax Officer, Ward-2(2), Meerut

Even No. & Date

1. Copy to the Joint Commissioner of Income-tax, Range-2, Meerut for information and record.
2. Copy to the Joint Commissioner of Income-tax, Range, Saharanpur for information.

ANIL JAIN
Advocate
D/358/1984

4. Ld. AR submitted that there was lack of inherent Jurisdiction because reassessment proceedings were initiated by non jurisdictional officer and hence the assessment order may be quashed. We find that Coordinate Bench of ITAT in the case of Saroj Sangwan v. ITO [2024] 162 taxmann.com 704 (Delhi-Trib.), under similar facts, quashed the reassessment, inter alia, by observing as under:

> *"6. I have considered the rival submissions. It is not in dispute that reasons for reopening of the assessment have been recorded in this case by ITO, Ward 2(3), Noida, who was having no jurisdiction over the case of the assessee. When assessee filed letter before ITO, Ward 2(3), Noida on 07.09.2017 stating therein that return filed originally may be treated as return having filed in response to notice u/s 148 of the Act and is also supported by copy of acknowledgment of return filed originally, the ITO, Ward 2(3), Noida transferred this case to ITO, Ward 2(1), Faridabad, vide letter dated 07.09.2017 (PB 10). The AO while completing the assessment in this case has taken the shelter of provisions of section 129 of the Act. However, the said provision is not applicable because it is a matter of assumption of valid jurisdiction in the matter or to validly initiate the reassessment proceedings against the assessee. It is not a case of succession to exercise jurisdiction by one ITO to another ITO. Since, reasons have been recorded for reopening of the assessment by ITO, Noida who was not authorized to do so, therefore, mere recording of reasons for reopening of the assessment by him is of no consequence and has no value under the law. The AO who has jurisdiction over the case of assessee Le. ITO, Faridabad admittedly did not record any reasons for reopening of the assessment. Therefore, the issue is covered in favour of the assessee by order of ITAT Agra Bench in the case of S N Bhargawa (supra). It is, therefore, clear that assumption of jurisdiction by the AO is illegal and bad in law. The AO at Faridabad had not validly assumed jurisdiction to initiate reassessment proceedings against the assessee. This view is further supported by judgment of Hon'ble Gujarat High Court in the case of Hynoup Food & Oil Industries Ltd. v. ACIT_(2008) 307 ITR 115 in which it is observed that AO recorded reasons for reassessment and AO issued a notice u/s 148 must be the same person. Successor AO cannot issue notice u/s 148 on the basis of*

*reasons recorded by predecessor AO. The Hon'ble Gujarat High Court held as under:*

> *"Held, (i) that so far as the assessment years 1990-91 and 1991-92 were concerned, the officer who had issued the notice under section 148 of the Act, was different from the officer who had recorded the reasons and hence, the notices for both these years were invalid and deserved to be quashed on this ground alone."*
>
> *7. In view of the above discussion, I am of the view that the assumption of jurisdiction u/s 147/148 of the Act is illegal and bad in law and, as such, liable to be quashed. I, accordingly, set aside the orders of the authorities below and quash the reopening of the assessment u/s 147/148 of the Act. Resultantly the entire addition stands deleted."*

*7. This decision squarely applies to the facts of the assessee's case. Thus, respectfully following the said decision, the reassessment made by the ITO, Ward 4(1), Gurgaon on the basis of notice issued u/s 148 of the Act by non-jurisdictional Assessing Officer ie. ITO, Ward 69(1), New Delhi, is hereby quashed. Ground nos. 5 & 6 are allowed*."

5. The same view was taken by ITAT Raipur Bench on identical issue in the case of ITO v. Pankojani Walter [2024] 166 taxmann.com 374 (Raipur – Trib.).

6. We also find that Hon'ble Jurisdictional High Court of Delhi in the case of CIT v. Usha International Ltd. (ITA No. 2026/2010 dated 19th July, 2012) has observed as under:

> *"16. Frankly, I am unable to see any difference between a case where a query is raised by the assessing officer which is replied to by the assessee with supporting evidence or material, but the opinion of the assessing officer on the assessee's reply is not recorded in the ITA 2026/2010 (FB) Page 40 of 48 assessment order, and a case where even without a query from the assessing officer, the assessee voluntarily discloses full and true particulars necessary for his assessment, which are not referred to in the assessment*

*order and the opinion of the assessing officer has not been expressly recorded therein. The distinction which was sought to be made on behalf of the revenue between the two types of cases was that in the former the assessing officer has manifested his intention to examine the matter by raising a query, whereas in the latter type of cases he has not even done that. The distinction is too simplistic for acceptance. The question is not whether any query was raised or not. The question is whether the assessee fulfilled his duty of disclosing fully and truly, all material particulars and primary facts necessary for the assessment of his income. Even in a case where a query is raised and a reply is furnished with all supporting material, if the assessing officer chooses to keep silent in the assessment order, what difference does it make that he did not even raise a query and also chose to be silent in the assessment order? In both the cases the basic requirement that the assessee should have adduced all material particulars and primary facts fully and truly, stands satisfied. The raising of a query may only indicate that the assessing officer had inquired into the matter; but if nothing is recorded in the assessment order, that would still not show what opinion he took of the matter, and one has to only presume that he did accept the assessee's version, which is what the Full Bench has held. In my opinion, there is thus qualitatively no difference between the two types of cases. The ruling of the Full Bench of this Court would apply with equal force to both types of cases, since the assessee has furnished, fully and truly, all material ITA 2026/2010 (FB) Page 41 of 48 particulars and primary facts necessary for his assessment. The presumption under section 114(e) is applicable to both types of cases.*

*17. In my understanding of the judgment of the Full Bench of this court in Kelvinator (supra), the ruling is applicable to all cases where the assessment was completed under section 143(3) of the Act, subject only to the condition that the assessee has furnished fully and truly all material particulars and primary facts necessary for the assessment. It is not a question of deemed formation of opinion alone; it goes beyond that, and the substratum of the ruling is that the assessing officer cannot take advantage of the perfunctory manner in which he completed the assessment. This does not necessarily mean that wherever the assessing officer has completed the assessment under section 143(3) it must be taken as if he has discharged his duties in a perfunctory manner. The ratio of the judgment is rooted to the salutary principle that the assessees shall not be subjected to harassment if*

*they have furnished full and true particulars at the time of the original assessment, which is what the Supreme Court observed in the judgment in Srikrishna Pvt. Ltd. (supra). It certainly does not imply that every assessment order passed under section 143 (3) without an elaborate discussion of various contentions and claims put forth by the assessee is necessarily a wrong order to be corrected later by resorting to section 147. Making an assessment to income tax represents the quantification of the charge to tax; it is a serious task. Legal consequences follow. A return of income is not a mere scrap of paper. It is to be treated with the respect it deserves. I think the real principle laid down by the Full Bench in Kelvinator (supra) is that if the ITA 2026/2010 (FB) Page 42 of 48 assessee has discharged his duty of furnishing full and true particulars at the time of the assessment, it may be fairly taken that the assessing officer has equally discharged his functions in the manner required of him. If he passes an assessment order under section 143(3) of the Act, it hardly matters that he has not recorded his agreement with the assessee on every issue or point; that could be reasonably inferred.*

*18. We are not concerned here with the case of a derelict assessee who has failed to furnish full and true particulars at the time of assessment. It is nobody's case that the assessee did not do so. As noted by me earlier, the first proviso to section 147 can be resorted to only if the assessee has not discharged the duty. Where the assessee has discharged his duty and the assessment completed under section 143 (3) is reopened within the period of 4 years from the end of the assessment year, the assessing officer has to either show that the disclosure is not full and true or he has come into possession of some ―tangible material‖, to borrow with respect the expression used by the Supreme Court in Kelvinator (supra), to come to the conclusion that there is escapement of income. The material must have a live link with the formation of the belief regarding escapement of income. When there is no failure on the part of the assessee to furnish full and true particulars and there is no tangible material on the basis of which the assessing officer can allege escapement of income, the only consequence would be that the assessing officer was exercising the power of review on the very same materials which he is presumed to have examined. This would amount to abuse of the power to re-assess and has to be checked. The solution to this problem lies in deciding ITA 2026/2010 (FB) Page 43 of 48 the question whether there was full and true disclosure by the assessee. It*

*does not lie in pigeon-holing the ruling of the Full Bench of this court in Kelvinator (supra), affirmed by the Supreme Court, only to cases where there is overt evidence in the assessment order framed under section 143(3) to show that the assessing officer had originally formed an opinion in favour of the assessee. That, with respect, would water down the ratio of not only the Full Bench judgment of this court in Kelvinator (supra), but also the judgment of the Supreme Court which affirmed the Full Bench judgment and would also introduce an area of uncertainty despite the categorical pronouncements. I do not think that within the parameters of judicial discipline and comity I can take the liberty of putting such gloss or embellishment upon those binding rulings. To argue or hold that when the assessing officer fails to examine a subject matter, entry, claim or deduction, he forms no opinion, notwithstanding that the assessee had made a full and true disclosure and notwithstanding that the assessment was completed under section 143 (3) and to further hold that it would be a case of ―no opinion‖, would be to fly in the teeth of the two rulings. It is not even open to the revenue to urge such a proposition.*

*19. I must now refer to the judgment of the Supreme Court in A.L.A Firm Vs. CIT (1991) 189 ITR 285, wherein the provisions of section 147(b) of the Act as they stood before 01.04.1989 were being examined. That case was predominantly concerned with the question as to what would constitute ―information‖ within the meaning of section 147(b). It was held that the statute does not require that the ITA 2026/2010 (FB) Page 44 of 48 information must be extraneous to the record and that it is sufficient that if the material, on the basis of which the assessment is sought to be reopened, came to the notice of the assessing officer subsequent to the original assessment and that such material may come to the notice of the assessing officer from the record itself. It was also observed that if the income tax officer had considered the material in the original assessment and formed an opinion, then he would be powerless to reopen the assessment. These observations do not in any way – in my humble understanding – impinge on the question before us. What was decided by the Full Bench of this court in Kelvinator (supra) is that when once an assessment order is framed under section 143(3) and the assessee had undisputedly furnished full and true particulars at the time of original assessment, then he must be presumed to have formed an opinion; and if he reopened the assessment within two years without proving any failure on the part of the assessee to furnish full and*

*true particulars, that would only amount to a change of opinion not permissible in law.*

*20. However, the further observations of the Supreme Court in A.L.A. Firm (supra) broadly support the view taken by the Full Bench of this court. These observations are as under: -*

> *"We think there is force in the argument on behalf of the assessee that, in the face of all the details and statement placed before the Income-tax Officer at the time of the original assessment, it is difficult to take the view that the Income-tax Officer had not at all applied his mind to the question whether the surplus is taxable or not. It is true that the return was filed and the assessment was ITA 2026/2010 (FB) Page 45 of 48 completed on the same date. Nevertheless, it is opposed to normal human conduct that an officer would complete the assessment without looking at the material placed before him. It is not as if the assessment record contained a large number of documents or the case raised complicated issues rendering it probable that the Incometax Officer had missed these facts. It is a case where there is only one contention raised before the Income-tax Officer and it is, we think, impossible to hold that the Income-tax Officer did not at all look at the return filed by the assessee or the statements accompanying it. The more reasonable view to take would, in our opinion, be that the Income-tax Officer looked at the facts and accepted the assessee's contention that the surplus was not taxable. But, in doing so, he obviously missed to take note of the law laid down in G.R. Ramachari and Co. [1961] 41 ITR 142 (Mad) which, there is nothing to show, had been brought to his notice. When he subsequently became aware of the decision, he initiated proceedings under section 147(b). The material which constituted information and on the basis of which the assessment was reopened was the decision in G.R. Ramachari and Co. [1961] 41 ITR 142 (Mad). This material was not considered at the time of the original assessment. Though it was a decision of 1961 and the Income-tax Officer could have known of it had he been diligent, the obvious fact is that he was not aware of the existence of that decision then and, when he came to know about it, he rightly initiated proceedings for reassessment.*

*We may point out that the position here is more favourable to the Revenue than that which prevailed in the Madras cases referred to earlier. There, what the Income-tax Officer had missed earlier was the true purport of the relevant statutory provisions. It seems somewhat difficult to believe that the Income-tax Officer could have failed to read properly the statutory provisions applicable directly to the facts before him (though that is what seems to have happened). Perhaps, an equally plausible view on the facts could have been taken that he had considered them and decided, in one case, not to apply them and, in the other, on a wrong construction thereof. In the present case, on the other hand, the material on which the Income-tax Officer has taken action is a judicial decision. This had been pronounced just a few months earlier to the original assessment and it is not difficult to see that the Incometax Officer must have missed it or else he could not have completed the assessment as he did. Indeed it has not been suggested that he was aware of it and yet chose not to apply it. It is, therefore, much easier to see that the initiation of reassessment proceedings here is based on definite material not considered at the time of the original assessment."*

*21. Quite apart from the fact that A.L.A. Firm (supra) was a case where a binding judgment of the jurisdictional High Court was overlooked when the original assessment was made, the earlier part of the observations of the Supreme Court in the aforesaid paragraph show the reluctance or disinclination of the court to accept the broad proposition, that even if full and true particulars had been furnished by the assessee at the time of the original assessment, it cannot be said that the assessing officer had applied his mind to the claims or contentions put forth by the assessee. The observation of the court that ―.....it is opposed to normal human conduct that an officer would complete the assessment without looking at the material placed before him‖ is in substance and effect echoed in the judgment of the Full Bench of this court in Kelvinator (supra). Again the emphasis is as to whether the assessee has discharged his duty, and if so, he should not be asked to go over the grind again merely on the ground that the assessing officer has not examined the facts disclosed fully and truly and, therefore, was in no position to form an opinion*

*22. I find it difficult to assent to the contention of the revenue that section 114(e) of the Evidence Act was incorrectly invoked by the Full Bench of this court in Kelvinator (supra). It has been held by the Full Bench that the section applies to an assessment order made under section 143(3) of the Act and the judgment has been affirmed by the Supreme Court. The last word on the subject has been said. The contention cannot even be heard.*

*23. On the first question referred to this Full Bench as to the meaning of the term ―change of opinion‖, I have nothing to add to the draft proposed. As to the first part of the second question my answer would be that the assessment proceedings cannot be validly reopened under section 147 of the Act even within four years, if an assessee has furnished full and true particulars at the time of original assessment with reference to the income alleged to have escaped assessment, if the original assessment was made u/s 143(3). My answer to the second part of the second question is that the issue is concluded by the judgment of the Full Bench of this court in Kelvinator (supra).*

*24. My answer to the third question is this. So long as the assessee has furnished full and true particulars at the time of original assessment and so long as the assessment order is framed under section 143(3) of the Act, it matters little that the assessing officer did not ask any question or query with respect to one entry or note but had raised queries and questions on other aspects. Again the answer to this question stands concluded by the judgment of the Full Bench of this court in Kelvinator (supra). My answer to question No.(iv), in respectful agreement with the judgment of the Full Bench of this court in Kelvinator (supra), is a limited answer. It is that section 114(e) of the Evidence Act can be applied to an assessment order framed under section 143(3) of the Act, provided that there has been a full and true disclosure of all material and primary facts at the time of original assessment. In such a case if the assessment is reopened in respect of a matter covered by the disclosure, it would amount to change of opinion. I do not in the circumstances consider it necessary to answer the broad question as to what are all the circumstances under which section 114(e) of the Evidence Act can be applied.*

7. Learned DR could not controvert the issue and failed to submit any judgment so as to compel us to take a divergent view. Respectfully following the observations of the Hon'ble Delhi High Court initiation of proceedings u/s 148 is not sustainable in the eye of law. Accordingly, the entire assessment fails and the entire consequent addition is liable to be deleted. We order accordingly.

8. In the result, assessee's appeal is allowed.

Order pronounced in open court on 30.05.2025.

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| Sd/ | Sd/- |
| **(MS. MADHUMITA ROY)** | **(KHETTRA MOHAN ROY)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated: 30.05.2025.
*MP*
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI