

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA**  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**  
**AND**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.452/KOL/2025  
(निर्धारण वर्ष / Assessment Year : 2016-2017)

DCIT, CC-1(4), Kolkata	Vs	Kkalpana Industries India Ltd. 2B, Pretoria Street, Middleton Row, Kolkata-700071
PAN No. :AABCK 2239 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.K.Tulsiyan, Advocate and Ms. Puja Somani, CA
राजस्व की ओर से /Revenue by	:	Shri P.N.Barnwal, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	24/06/2025
घोषणा की तारीख/Date of Pronouncement	:	25/06/2025

**आदेश / O R D E R**

**Per George Mathan, JM :**

This is an appeal filed by the revenue against the order dated 13.11.2024, passed by the Id. CIT(A), Kolkata-20, passed in DIN & Order No.ITBA/APL/S/250/2024-25/1070338584(1), for the assessment year 2016-2017.

2. Shri P.N.Barnwal, Id.CIT-DR appeared on behalf of the revenue and Shri S.K.Tulsiyan, Advocate with Ms. Puja Somani, CA, appeared on behalf of the assessee.

3. A perusal of the appeal record, we find that the appeal of the revenue has been filed belatedly by 28 days. In this regard, the revenue has filed an application for condonation of delay stating sufficient reasons which are plausible and not found to be false. Thus, the delay of 28 days in filing the appeal is condoned and appeal is admitted for hearing.

4. At the time of hearing, the Id. AR submitted that he was invoking his liberty under Rule 27 of the ITAT Rules, 1963 in regard to the issue which has been held against the assessee by the Id. CIT(A). It was submitted that the assessment order passed in the case of assessee was barred by limitation. The Id. AR has also filed written submission as follows :-

*“Please refer to the facts and submissions of the case below:*

1. *The assessee is engaged in the business of plastic and PVC. The assessee company filed its e-return of income for A.Y. 2016-17 declaring a total income of Rs.2,43,78,638/- in response to the notice issued u/s.153A of the Act. The assessment was completed u/s 143(3)/153A of the Act on 28-12-2018 at a total income of Rs.2,48,33,8901-.*

2. *Subsequently, on perusal of the assessment records for the subject assessment year, the AO noted that the assessee had debited a sum of Rs.2668.98 lakhs as 'Exceptional and Extraordinary items' in the Profit and Loss A/c for the year. It was further noted that the assessee had received a sum of Rs.108.08 crores from Universal Sompo Insurance Company during the year which was adjusted against the insurance claim receivable of Rs. 134.77 crores and the remaining loss of Rs.26.69 crores (Rs. 134.77 cr minus Rs. 108.08 cr) was recognized by the assessee as 'Exceptional and Extraordinary items' and claimed as deduction from the Business Income. The learned AO opined that the insurance claim received by the assessee is chargeable under the head Capital Gains as per provisions of section 45(1A) of the Act, however, the difference of income claim receivable and insurance claim actually received by the assessee was allowed as deduction from Business Income in the assessment order passed u/s 143(3)/153A of the Act dated 28-12-2018. On such premise, the learned AO formed reason to believe that income chargeable to tax to the tune of Rs.26.96 cr has escaped assessment and accordingly notice u/s 148 of the Act was issued to the assessee dated 31-03-2021.*

3. *In response to the reasons recorded, the assessee stated that a devastating fire had broken out at Dankuni Plant of the assessee on 19-10-2014. This resulted in a huge loss of assets and records inside the premises of the unit. The factory was adequately covered under the Insurance Policy with the Insurance Company, M/s Universal Sompo General Insurance Co. Ltd. The claim amount was provisionally recognized at Rs. 134.77 crores. This provisional amount of Rs. 134.77 crores receivable by the assessee was shown in the Audited Accounts under the head 'Current Assets' in FY 2014-15. In FY 2015-16, relevant to current assessment year 2016-17, a sum of Rs.108.08 cr only was received by the assessee as full and final settlement by the Insurance Company. Insurance Claim of Rs.108.08*

crores was received by the assessee for Loss of Fixed Assets and the same was reduced from the Block of Fixed Assets. The sum of Rs.26.69 crores (Rs.134.77cr - Rs.108.08cr) on account of current assets, being not receivable by the assessee from the Insurance Company was debited under the head 'Exceptional and extraordinary Items' in the Profit and Loss A/c of the company in the current year and also mentioned in the Notes to Accounts.

4. W.r.t the observation of the AO that the sum of Rs.26.69 crores is not allowable from the profits and gains of business, the break-up of Rs.26.69 cr and the reasons as to why the assessee is eligible to claim the same was submitted as follows:

Particulars	Rs. in crores	Remarks
Extraordinary Item debited in profit and Loss A/c (a)	26.69	Claim not received from the Insurance Company debited in profit and Loss A/c, being loss incurred due to fire at Dankuni Plant.
Less		
Loss of Profit Policy as per the Insurance Policy not granted by the Insurance company in full and final statement (b)	(5)	A sum of ₹5 crores had already been added back in the computation of income for the current year. Hence, the benefit of deduction of ₹5 crores was not claimed by the assessee.
Sale of Scrap relating to scrap due to fire ©	2.18)	Included in Sales and accordingly offered for tax in the current year.
Loss of Stock due to fire (d)	(19.51)	The assessee had incurred Loss of Stock due to fire at Rs.19.51 cr. However, the said claim was not reimbursed by the Insurance Company and hence was treated as Loss in the current year by debiting Profit and Loss A/c as part of the Extraordinary Item. Copy of the estimate worked out by the management enclosed at page 21-23 of the paper book.
Balanced (a-b-c-d)	--	

The above chart explains that out of the sum of Rs.26.69 cr, a sum of Rs.5 crores was already added back in the computation of income, a sum of Rs.2.18 crores was included in sales and thus accordingly offered to tax and the balance sum of Rs.19.51 cr was loss suffered by the assessee on account of loss of stock due to fire. Since stock is a revenue item and not a capital asset, loss on such account was rightly treated as revenue loss and cannot be treated as capital loss in terms of section 45(1A) of the Act since it would apply only to Capital Assets. This revenue loss of Rs.19.51 crores was not compensated by the Insurance Company and hence the assessee was entitled to the said deduction of Rs.19.51. As such, there was no under assessment of income.

5. It was further submitted that the said fact of fire breaking out in Dankuni Unit and loss of Rs.26.69 crores, being claim not received by the assessee from the Insurance Company was duly mentioned in the financial statements and the same was duly perused and examined by the preceding learned AO and on being satisfied, no additions was made by the preceding AO in the order passed u/s.143(3)/153A of the Act. Thus, the reopening notice issued on a mere change of opinion on the same set of facts was clearly not as per law. In fact there was not even an allegation of non-disclosure of facts in the reasons recorded and it was very clearly evident that the reopening was done on the basis of material already available on record.

6. The learned AO accepted the claim of the assessee that a sum of Rs.5 crores on account of Loss of Profit Policy was already added back in the computation of income. However, he was not fully convinced with the submissions filed by the assessee and disallowed the sum of Rs.21.69 crores (Rs.26.69 cr - Rs.5 Cr) claimed by the assessee under the head Business Income in his order passed u/s 147/143(3) of the Act dated 31-03-2022.

7. Aggrieved, the assessee filed an appeal before the learned CIT(A). The grounds of appeal so taken by the assessee before the learned CIT(A) are as follows:

No.	Section	Issue	Grounds
1.	147	Order not as per law	That the reassessment order passed by the learned AO u/s. 147 of the Act dated 31-03-2022 is ab initio void, ultra vires and null in law.

2.	147	Order not as per law	<i>That on the facts of the case and in law, the order passed u/s 147/143(3) of the Act dated 31-03-2022 is antedated and barred by limitation since the Online Service of Orders-Letter dated 31-03-2022 was uploaded on the income tax portal of the assessee on 01-04-2022 and the assessment order was served on the assessee at its registered email id only on 16-04-2022.</i>
3.	147	Order not as per law	<i>That on the facts of the case and in law, the AO's assumption of jurisdiction u/s.147 of the Act on the same set of facts available before the preceding learned AO is a mere change of opinion which is not permissible u/s 147 of the Act.</i>
4.	147	Order not as per law	<i>That on the facts of the case and in law there is no allegation of non-disclosure of facts by the assessee in the reasons recorded, no new material or facts was in the possession of the learned AO in reopening a completed assessment and thus the reopening having being done on the basis of material already on record is a mere change of opinion which is not permissible u/s 147 of the Act.</i>
5.	147	Order not as per law	<i>That, on the facts and in the circumstances of the case, the reassessment order passed u/s 147 of the Act dated 31-03-2022 by the Ld. A.O. without meeting the objections raised by the assessee on reopening of the assessment was contrary to the binding principle of law laid down by Hon. Supreme Court in the case of GKN Driveshafts (India) Ltd reported in 259 ITR 19 (SC), and hence void ab initio.</i>

6.	45(1A)	Loss of Stock due to fire	<i>That, on the facts of the case and in law the Ld. A.O. erred in treating the sum of Rs.19.51 crores as capital loss when it was duly explained to him that the said loss was on account of Loss of Stock due to fire and since stock is a revenue item and not a capital asset, loss on such account was rightly treated as revenue loss and cannot be treated as capital loss in terms of section 45(1A) of the Act</i>
7.	45(1A)	Sale of Scrap	<i>That, on the facts of the case and in law the Ld. A.O. erred in ignoring the submissions filed by the assessee stating the stock of Rs.2.18 crores was sold as scrap due to fire and the said sum of Rs.2.18 crores was included in Sales reported by the assessee in the audited accounts and was accordingly offered to tax, thus taxing the same will tantamount to double addition</i>
8.	199	Short TDs and TCS credit	<i>That, on the facts of the case and in law, the Ld. A.O. erred in giving short credit of TDS and TCS of Rs.1,32,12,469/-without assigning any reasons thereof.</i>
9.	208	Advance Tax	<i>That, on the facts of the case and in law, the Ld. A.O. erred in giving short credit of advance tax of Rs. 1,75,00,000/- without assigning any reasons thereof.</i>
10.	140A	Self Assessment Tax	<i>That, on the facts of the case and in law, the Ld. A.O. erred in giving short credit of self-assessment tax of Rs.80,00,000/-without assigning any reasons thereof.</i>
11.	250(5)	Provision for further ground	<i>That further ground or grounds of appeal may be submitted on or before the date of hearing.</i>

8. During appellate proceedings, for Grounds 1-2, it was submitted that the assessment order passed u/s 147/143(3) of the Act is dated 31-03-2022, however the same was not uploaded on the portal on 31-03-2022. 'Online Service of Orders - Letter' dated 31-03-2022 was uploaded on the income tax portal of the assessee on 01-04-2022. In the present case, notice u/s 148 of the Act was issued and served on the assessee on 31-03-2021. As per section 153 of the Income Tax Act'1961, the reassessment order u/s 147 of the Act should have been passed within 12 months from the end of the financial year in which the notice under section 148 was served i.e. within 31-03-2022.

The assessment order was served on the assessee at its registered email id only on 16-04-2022, thus the assessment order is ante-dated and thus barred by limitation and hence not as per law. Furthermore, the DIN mentioned in the 'Online Service of Orders - Letter' and in the Assessment order are different. However, this ground was dismissed by the learned CIT(A) on the ground that although there is some irregularity in service of order but the appellant has not been able to prove conclusively that the assessment order was passed only on 16-04-2022.

9. During appellate proceedings, for grounds 3-4, it was submitted that the original assessment was completed u/s 143(3)/153A of the Act on 28-12-2018 at a total income of Rs.2,48,33,890/-. Audited Accounts, Tax Audit Report, computation of income, ITR Form were all placed before the then learned AO. In the Profit & Loss Account of the company, under the head "Profit before exceptional and extraordinary items and tax", the claim of loss of Rs.2668.98 lakhs arising on full and final settlement of insurance claim was duly shown. This fact of loss of Rs.2668.98 lakhs on account of insurance claim was duly recorded in the audited accounts and was well within the knowledge of the predecessor AO at the time of assessment, who after considering the same passed the assessment order u/s.143(3)/153A of the Act.

The present reopening has been done on the basis of material already available on record at the time of original assessment. Therefore, clearly there is no question of suppression of facts, rather, it is a clear case of review with an intention to reexamine the books of accounts of the company. The original assessment having been completed u/s.143(3)/153A of the Act for the relevant assessment year based on the material on record and since no new material or information was received by the learned AO subsequently after the completion of assessment u/s. 143(3)/153A of the Act, the proceedings initiated u/s. 147 of the Act by the learned AO merely tantamount to change of opinion which cannot form the basis for reopening a completed assessment. Even in the reasons recorded the Ld. AO has nowhere recorded that any new material had come to his possession after the completion of original assessment. The reopening has been made based on the material already available on records Such reopening on change of opinion is not permissible in law specially when no new facts

*have been come to light after completion of original assessment and the reopening is based on material already on record and duly disclosed by the us in the course of original assessment. Reliance in this regard was placed on the judgment of the full bench of Delhi High Court in the case of CIT vs Kelvinator Of India Ltd (2002) 256 ITR 0001.*

*However, the learned CIT(A) rejected this ground of the assessee and held that,*

*"Therefore, it cannot be held as if the A. O. has made any specific opinion regarding the claim of insurance loss of Rs.2668.98 lakhs in the P & L A/c. in the original assessment completed u/s. 143 (3)/153A of the Act. Further when the A. O. has not formed any opinion on the said matter in the original assessment, then, there is no question arises of "changed of opinion" on this occasion. Therefore, the initiation proceedings u/s. 147 cannot be held as "changed of opinion". Hence, I do not find merit in the grounds taken by the appellant. As such, it is rejected."*

*10. During appellate proceedings, for ground 5, the assessee further submitted that in response to the reasons recorded, the assessee filed its objections on 15-09-2021 reiterating the facts of the case and also submitted that the present proceedings is purely based on a change of opinion, since the said issue of loss of Rs.26.69 crores was duly explained at the time of original assessment. Such reopening on change of opinion is not permissible in law specially when no new facts have been come to light after completion of original assessment and the reopening is based on material already on record and duly disclosed by the assessee in the course of original assessment. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of GKN Driveshafts India Limited reported in (2003) 259 ITR 19. However, the learned AO summarily disposed of the objections of the assessee. Copy of the order disposing the objections is enclosed at page 42-47. On perusal of the same, it may kindly be noted that objections raised by the assessee were not at all discussed. The objections were summarily disposed of by the learned AO for the mere sake of disposing the objections. In the order disposing the objections, he has merely copy pasted the reasons recorded without specifically dealing with the factual and legal contentions raised by the assessee.*

*However, the submissions of the assessee were not appreciated and this ground of the assessee was rejected. The relevant extract of the CIT(A) order is reproduced hereunder:*

*"However, I found from the record and submission of the appellant itself that the A. O. has passed very detailed order mentioning specific facts of the case vide its letter ITBA/AST/F/1 7/202122/1035469137(1) dated 10-09-2021, in response to the objections filed by the appellant.*

*Therefore, I do not find merit in the grounds taken by the appellant that objection filed by the appellant to the reason to believe has not been*

disposed off by the A. O. by passing a speaking order. Hence, ground taken by the appellant is rejected."

11. W.r.t the merits of the case, for Grounds 6-7, the assessee during appellate proceedings submitted that a devastating fire broke out on 19/10/2014 at the company's Dankuni Plant which resulted in huge loss of assets, stock and records inside the premises of the unit. However, the factory was adequately covered under the Insurance Policy with the Insurance Company, M/s Universal Sompo General Insurance Co. Ltd. The claim amount was provisionally recognized at Rs. 134.77 crores and was shown in the Audited Accounts under the head Current Assets for the FY 2014-15. During the relevant assessment year, a sum of Rs.108.08 crores only was received by the company as full and final settlement against the claim raised with the Insurance Company. Out of the sum received, Material Damage Claim allowed was Rs.107,64,43,388/- and loss of Profit [LOP] claim allowed was Rs.48,97,816/- (totaling to Rs.108,13,41,204/-). Discharge Voucher issued by the Insurance Company, Universal Sompo General Insurance Company Ltd. was also enclosed, refer page 54 of the paper book. It was submitted that the insurance claim received by the company during the relevant assessment year was only for loss of Fixed Assets since 're-instatement of premium' would otherwise not have been allowed to the company. Loss of stock is a revenue item and is therefore the loss of Rs.2 1.69 crores is allowable as a business loss.

The learned CIT(A) perused the submissions and the documents filed by the assessee and allowing this ground of appeal of the assessee on merits held that,

"I find merit in the submission of the appellant that the assessee has suffered loss due to fire. Since the claim of loss of stock of Rs. 2]. 69 crores due to fire was not compensated by the Insurance Company to the assessee. Hence, the same was liable to be claimed as loss in P & LA/c. Therefore, it has rightly claimed the said loss of Rs. 21.69 crores in the P & L A/c. as Exceptional and Extraordinary items which is allowable as a claim as per provision of the Income Tax Act, 1961. Hence, claim of Exceptional and Extraordinary items of Rs. 21. 69 crores by the appellant in the P & L A/c. is allowed and the addition made by the A. O. of Rs. 21.69 crores is deleted. In view of the above facts of the case, it is humbly requested before your goodself to direct the learned A0 to delete the additions made in the assessment order of Rs. 21.69 crores."

12. Aggrieved with the order of the learned CIT(A), the Department has filed this present appeal. Rebutting the grounds of appeal so taken by the Revenue, the assessee humbly submits as follows:

*Submissions:*

At the outset, it is humbly submitted that the assessee has neither filed any appeal against the order of the learned CIT(A) nor filed any cross

*objections in the present appeal filed by the Revenue. The assessee humbly prays to support the order of the learned CIT(A) for grounds No.1 to 5 by virtue of Rule 27 of the ITAT Rules. For the sake of ready reference, the said rule is reproduced as under for ready reference:-*

*"Respondent may support order on grounds decided against him."*

*27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.*

*Here, it is humbly submitted that Rule 27 of the ITAT Rules provides an opportunity to the respondent, where it has not filed any appeal or cross objection before the Tribunal to support the order of Id. CIT (A) on any ground decided against him by the id. Commissioner of Income-tax (Appeals). The id. CIT(A) in the present case has not adjudicated grounds 1-7 on merits holding that the said grounds are of academic interest only.*

*It is humbly submitted that the assessee is within its legitimate and lawful rights to challenge the dismissal of the ground by way of application under Rule 27 of the ITAT Rules and is entitled to defend the order of id. CIT (A) on all grounds including grounds which have been decided against it. In this regard, reliance is placed on the judgment of the Hon'ble Delhi High Court in the case of Sanjay Sawhney vs. Principal Commissioner of Income-tax [2020] 116 taxmann.com 701 (Delhi)/[2020] 273 Taxman 332 (Delhi)[18-05-2020], wherein the Hon'ble Court has held as under:*

*"Rule 27 embodies a fundamental principle that a respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the assessee was not an aggrieved party, as he had succeeded before the Commissioner (Appeals) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITA T, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The respondent-assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the revenue, it could rely upon rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITA T, therefore, committed a mistake by not permitting the assessee to support the final order of Commissioner (Appeals), by assailing the findings of the Commissioner (Appeals) on the issues that had been decided against him. The appellant-assessee, as a respondent before the ITAT was entitled to agitate the*

*jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITA T suffers from perversity insofar as it refused to allow the Appellant-assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under rule 27. The question of law as framed is answered in favour of the appellant-assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITA T with a direction to hear the matter afresh by allowing the Appellant-assessee to raise the additional grounds, under rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under section 153C of the Act." [Para 26]*

*The above order was recently followed by the Hon'ble Kolkata Bench in the case of DCIT, Circle 11(1), Kolkata vs Meenakshi Mercantiles Limited (ITA 2849/Kol/2024) wherein it was held that,*

*"07. In our opinion, the assessee is within its legitimate and lawful rights to challenge the dismissal of the ground by way of application under Rule 27 of the ITA T Rules and is entitled to defend the order of Id. CIT(A) on all grounds including grounds which have been decided against it."*

*Supporting the order of the learned CIT(A) by virtue of Rule 27 of the ITAT Rules, the assessee herein first discusses the grounds of appeal dismissed by the learned CIT(A).*

*Appellate Grounds 1-2: That the reassessment order passed by the learned AO u/s. 147 of the Act dated 31-03-2022 is ab initio void, ultra vires and null in law.*

*Coming to Grounds No. 1. and 2 dismissed by the learned CIT(A), it is humbly submitted that in the present case, notice u/s 148 of the Act was issued and served on the assessee on 31-03-2021. As per section 153 of the Income Tax Act'1961, the reassessment order u/s 147 of the Act should have been passed within 12 months from the end of the financial year in which the notice under section 148 was served i.e. within 31-03-2022.*

*Here, your kind attention is invited to section 153 of the Act which reads as under:*

*2) No order of assessment, reassessment or re-computation shall be made under section-147 after the expiry of nine months from the end of the financial year in which the notice under section-148 was served:*

*Provided that where the notice under section-148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.*

*However, in the present case, attention is drawn to the fact that the assessment order passed u/s. 147/143(3) of the Act is though dated*

31-03-2022, however the same was not uploaded on the portal on 31-03-2022. The letter intimating the 'Online Service of Orders - Letter' dated 31-03-2022 was uploaded on the income tax portal of the assessee only on 01-04-2022. The digital signature of the learned AO was also dated 01-04-2022. Assessment Order was not enclosed with this letter. To substantiate the same, please find enclosed the screen shot of income tax portal of the assessee enclosed at page 1-3 of the paper book. On perusal of the same, it is evident that only the letter of Online Service of Order was actually uploaded on 01-04-2022. Therefore, it is further clear that the assessment order was not really passed on 31.3.2022 and has been antedated to somehow make it seem to be within time.

Moreover, the assessment order was served on the assessee at its registered email id only on 16-04-2022, thus the assessment order was clearly ante-dated and thus barred by limitation and hence not as per law. Furthermore, there is no digital signature of the learned AO on the said assessment order which is mandatory in law. Even, there is no manual signature. Even the computation sheet and the demand notice were not digitally signed. Hence, it cannot be said that the assessment order was dated 31-03-2022.

Furthermore, the assessment order was uploaded on the portal only on 19-04-2022 as evident from the income tax portal of the assessee, refer page 4 of the paper book.

Thus, the date on which the unsigned assessment order was actually passed is clearly after 31-03-2022 i.e beyond the period of limitation.

To buttress the contention of the assessee reliance is placed on the following judicial precedents:

> The Hon'ble SC in the case of Kalyankumar Ray [1991] 191 ITR 634 (SC) held that "Judicial decisions also emphasize that all that is needed is that there must be some writing initialed or signed by the ITO before the period of limitation prescribed for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled as the "assessment order" should itself contain the computation of tax as well"

> Relying on the above judgment of the Hon'ble Apex Court in the case of Kalyankumar Ray (supra), the Hon'ble Supreme Court again in the case of Sint. Kilasho Devi Burman vs CIT [1996] 85 Taxman 346 (SC) held that,

"The High Court could not look at evidence that was not before the Tribunal when it reached the impugned findings to hold that the findings were perverse. In the instant case, the High Court had placed reliance upon the acknowledgement slip dated 25-4-1958 signed by P and held that 'records show this P has received a number of notices on behalf of the assessee on widely separated dates The 'records' which the High Court referred to was a statement of facts which are admitted and/or found by the Tribunal and which are necessary for

*drawing up a statement of the case'. The statement of 'admitted 'facts was placed by the revenue before the Tribunal as an annexure to its reference application. That the statement of case did not state that P had received earlier notices on behalf of the assessee showed that the Tribunal had not so found; that there was no mention of this at all suggested that the revenue did not place this argument and the supporting material before the Tribunal the High Court could have required the Tribunal to ascertain whether P had received earlier notices on behalf of the assessee and prepare a supplemental statement of case but the High Court could not, upon those 'admitted 'facts, have reached the conclusion that the Tribunal findings of fact were perverse. The High Court did not give due importance to the fact that upon the record produced by the revenue before the Tribunal, there was no signed assessment order nor a signed assessment form. An assessment order has to be signed. A valid assessment upon the IIUF for the assessment year 1955-56 was central to the case of the revenue. Since it was unable to establish it, by the production of a signed assessment order for that year, that there was such valid assessment, its case fell and the Tribunal was right in so holding. The High Court was in error in conducting that the findings of the Tribunal on the record were perverse.*

*Therefore, the judgment of the High Court was set aside and that of the Tribunal was restored."*

*The Hon'ble ITAT Mumbai in the case of Bennett Coleman & Co Ltd. vs NFAC (I.T.A. No. 1387/Mum12023) pronounced on 30-09-2024 relied on the judgment of the Hon'ble SC in the case of Kalyan kumar Ray [1991] 191 ITR 634 (SC) and held that,*

*1118. In the light of the judicial decisions discussed hereinabove, we are of the considered view that the signing of the assessment order is an integral part of order generation in e-assessment and the assessment proceedings conclude only after the order is digitally signed, therefore, signing of the assessment order should not be brushed aside lightly. Therefore, the signing of the assessment order is a mandatory requirement and not a procedural formality unless the order is signed assessment does not complete.*

*19. As per the Faceless Assessment Scheme 2019 which was substituted for e-assessment by Notification No. S.0.2745(E) dated 13/08/2020 w. e.f 13/08/2020 as per Clause xiv, the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order and then as per Clause xvi, the National e-Assessment Centre shall examine the draft assessment order and finalize the assessment within the period of limitation. In the instant case the assessment order finalized by NFAC is dated 01/10/2021 which is obviously beyond the period of limitation.*

*20. In the light of the report of the Officer mentioned hereinabove, we have no hesitation to hold that the impugned assessment order dated 28/09/2021 was not made till 30/09/2021 and it was not digitally*

*signed and was an incomplete assessment order which was completed on 01/10/2021 and hence, barred by limitation.*

21. *As we have held the assessment order barred by limitation, we do not find it necessary to dwell into the merits of the case."*

> *The Hon'ble ITAT Mumbai in the case of Reuters Asia Pacific Ltd vs DCIT [20231 157 laxmann.com 705 (Mumbai - Trib.) held that,*

*"Signing of an assessment order by the Assessing Officer is a mandatory requirement and not merely a procedural formality. Unless, the order is signed it cannot be said to be complete. Once the order is signed digitally or manually, as required, the order is complete and the date of signature on the order shall be the date of passing of the order. The provisions from the Code of Civil Procedure, 1908 (CPC) explaining the requirement of signing the judgments. Order-XX Rule-3 of CPC mandates that the judgment shall be dated and signed by the Judge at the time of pronouncing it and when once signed, shall not afterwards be altered. The signing of an order is thus, not a mere formality, it is a mandatory requirement. It is not a curable procedural defect that can be fixed by signing the order after service of the same on the assessee. If an unsigned order or notice is served on the assessee, the same is invalid. [Para 14]*

*Lastly, the revenue has tried to take shelter under section 292B. The said section cures the procedural defects or omissions. The section does not grant immunity from non-compliance of statutory provisions. Non-signing of an assessment order is not a procedural flaw that can be cured subsequently. The order is complete only when it is signed and released. The date on which the order is signed by the Assessing Officer is the date of order. If revenue's contention is accepted and the Assessing Officer is allowed to sign the assessment order now considering it to be procedural deficiency, still the order would suffer from the defect of limitation and would be without jurisdiction. [Para 17]*

> *The Hon'ble HC of Punjab and Haryana in the case of FinDoc Finvest (P.) Ltd vs DCIT [2025] 172 taxmann.com 773 (Punjab & Haryana) held that,*

*"31. The another contention raised on behalf of the revenue that since the order was made on 31.03.2024, the same is in terms of the limitation prescribed under Section 153 of the Act and the judgment passed by the Hon'ble Supreme Court in Mohammed Meeran Shahul Hameed case (supra) and the order cannot be set aside on that count, in our opinion, is misconceived.*

32. *Firstly as noticed above, there is no date mentioned on the assessment order, hence, it cannot be presumed that the order was made on 31.03.2024. We also notice that portal of the assessee was active as on 01. 04.2024 and it reflected therein that no assessment has been made, as is apparent from the screen shots placed on record by the petitioner which have not been disputed by the respondents. While the assessment order is reflected on portal on 04.04.2024 in order*

to further verify, we ask the counsel for the revenue to place on record the email sent by them to the petitioner on 31.03.2024, relating to having passed the assessment order but the revenue filed evasive application, wherein details of dates when emails were sent have been shown but from the chart placed before us along with the application, it is apparent that no email was sent to the assessee containing the assessment order on 31.03.2024. A flimsy attempt has been made to cover up the mistake.

33. It is a fact that for covering one mistake you make more mistakes one after the other. However, we are satisfied after examining all the documents placed before us that there has actually been no order made on 31.03.2024 and, therefore, the judgment passed by the Hon'ble Supreme Court in the case of Mohammed Meeran Shahul Hameed case (supra), would have no application and would not save the time barred order of assessment. We also find that so far as the party who is effected by the order or decision would only consider the limitation from the date it acquires the knowledge and for him the limitation would start from the said date. Be that as it may, since we have reached to the conclusion that order passed was not made upto 31.03.2024, the period in terms of proviso added vide Finance Act, 2022 w. e.f 01.04.2022, will apply to the facts of the case and the order is to be termed as time barred and beyond the period of limitation prescribed therein.

34. In view of the aforesaid discussion, the order of assessment is found to be non-est and not sustainable in the eyes of law. Accordingly, order of assessment is quashed and set aside. Consequences thereof shall follow. Writ petition is allowed accordingly."

Reliance is also placed on the judgment of the Hon'ble HC of Bombay in the case of Ramani Suchit Malushte Vs. Union of India & Others in Writ Petition No. - 9331 of 2022 wherein it was held that "unless digital signature is put by the issuing authority on the order, that order will have no effect in the eyes of law."

In view of the above facts of the case, it is humbly requested before Your Honours to quash the assessment order since the same is clearly unsigned, ante-dated, barred by limitation and hence not as per law.

Appellate Ground 3-4: the AO's assumption of jurisdiction u/s.147 of the Act on the same set of facts available before the preceding learned AO is a mere change of opinion which is not permissible u/s 147 of the Act.

Now coming to Grounds No.3. and 4 dismissed by the learned CIT(A), it is submitted that in the present case, the original assessment was completed u/s 143(3)/153A of the Act on 28-12-2018 at a total income of Rs.2,48,33,890/-. Audited Accounts, Tax Audit Report, computation of income, ITR Form were all placed before the then learned AO. In the Profit & Loss Account of the company, under the head 'Profit before

*exceptional and extraordinary items and tax", the claim of loss of Rs.2668.98 lakhs arising on full and final settlement of insurance claim was duly shown.*

*The said loss was also stated at point 1 (iii) of Notes to Financial Statements for the year ended 31st March, 2016, relevant extract of which reproduced as under:*

*"Insurance of claim of Rs. 108.08 crores received from Universal Sompo Insurance Company during the current year. The same has been adjusted against the insurance claim receivable of Rs.134.77 crores and remaining loss of Rs. 26.69 crores recognized as an extraordinary item during the year."*

*The then learned AO duly perused the same and accepted the same. No addition was made by him in the assessment order passed u/s 143(3)/153A of the Act.*

*This fact of loss of Rs.2668.98 lakhs on account of insurance claim was duly recorded in the audited accounts and was well within the knowledge of the predecessor AO at the time of assessment, who after considering the same passed the assessment order u/s.143(3)/153A of the Act. The present reopening has been done on the basis of material already available on record at the time of original assessment. Therefore, clearly there is no question of suppression of facts, rather, it is a clear case of review with an intention to re-examine the books of accounts of the company. The original assessment having been completed u/s. 143(3)/i 53A of the Act for the relevant assessment year based on the material on record and since no new material or information was received by the learned AO subsequently after the completion of assessment u/s. 143(3)/153A of the Act, the proceedings initiated u/s.147 of the Act by the learned AO merely tantamount to change of opinion which cannot form the basis for reopening a completed assessment. Even in the reasons recorded the Ld. AO has nowhere recorded that any new material had come to his possession after the completion of original assessment. The reopening has been made based on the material already available on records Such reopening on change of opinion is not permissible in law specially when no new facts have been come to light after completion of original assessment and the reopening is based on material already on record and duly disclosed by the us in the course of original assessment.*

*In a plethora of judgments, it has been held that a case of mere change of opinion does not provide justification to the Assessing Officer to initiate proceedings under section 147 of the Act. The power of reassessment is different from the power of review.*

*Here, your kind attention is drawn to the judgment of the Hon'ble Apex Court in the case of Calcutta Discount Co. Ltd. vs ITO [1961] 41 ITR 191 (SC) wherein what constitutes disclosure of primary facts was discussed and it was held that,*

*"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet the possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the ITO might have discovered, the Legislature has put in the Explanation to section 34(1).*

*The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else - far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences - whether of facts or law - he would draw from the primary facts.*

*If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?*

*It may be pointed out that the Explanation to the sub-section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the ITO could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose "inferences" -- to draw the proper inferences being the duty imposed on the ITO.*

*Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.*

*The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of "under-assessment", that would be sufficient to give jurisdiction to the ITO to issue the notices under section 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non-disclosure of material facts would not be open for the court's investigation.*

*Clearly it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the ITO had no material at all before him for believing that there had been such non-disclosure. To*

*establish this, the assessee had relied on the statements in the assessment orders for the three years in question and on the statement of the ITO in the report made by him to the Commissioner for the purpose of obtaining sanction to initiate proceedings under section 34 and also on his statement on the affidavit on oath in reply to the writ petition.*

*The fact that the assessment orders had already been made did not affect the assessee's right to obtain relief under article 226 In view, however, of the fact that the assessment orders had already been made, it was proper that in addition to an order directing the ITO not to take any action on the basis of the impugned notices, a further order quashing the assessment made be also issued."*

*In this case, the Hon'ble Lordships held that once all primary facts are disclosed before assessing authority, it is for the first Assessing Officer to decide what inferences of facts can be reasonably drawn. The second Assessing Officer proposing to reopen the case of an assessee has to inform what primary facts were not disclosed by the assessee during original assessment proceedings to invoke the rigors of section 147 of the Act. In the present case, evidently, the issue of loss of Rs.26.68 crores was duly reported in the audited accounts and the same is not even disputed by the second learned AO since the reasons recorded and the assessment order duly mentions that audited accounts were part of the assessment records. The relevant extract of the assessment order is reproduced below:*

*I. Subsequently, the case was re-opened u/s-147 of the I. TAct, 1961 on the basis of perusal of assessment records, and on perusal of assessment records ,it is found that assessee company had debited Rs. 2668.98 lakh as exceptional & Extraordinary items in the P&L Account for the year ended 31st March 2016 (F. Y-2015-16). It was further noticed from the notes to the Financial Statement [Point 1(111)] that the assessee had received Rs. 108.08 Crores from universal Sompo Insurance Company during the year. The same has been adjusted against the insurance claim receivable of Rs. 134. 77 Crore and the remaining loss of Rs.26 69 Crore recognized as an extraordinary items during the year.*

*II. It was seen from the Notes to Financial Statement [Point 1(111)] appear with the P&L Account and Balance Sheet for the year ended 31st March 2015 (F. Y-2014-15) i,e A. Y 2015-16 "that a devastating fire broke out at company 's flexible packaging unit at Dakuni, West Bengal in October 2014, which resulted in huge loss of assets and records inside premises of the unit. The Factory was adequately covered with the Insurance Policy of MIs. Univeral Sompo General Insurance Company and the latest claimed amount provisionally recognized at Rs. 134.77 Crores. The claim was not yet freeze by the insurance company and any difference between the final claim and the estimated settled amount will be dealt with in the year of receipt. The insurance claim receivable of Rs. 134.77 Crores was kept under the*

*head Short Term Loans and Advances in Balance sheet of the assessee for the year ended 31st March 2015(F. Y-2014-15)."*

*In the present case, what material fact was not disclosed by the assessee during original assessment has not been spelt in the reasons recorded or in the assessment order. Thus, the present reopening on a mere change of opinion is invalid in law.*

*Reliance in this regard is also placed on the full bench of Delhi High Court in the case of CIT vs Kelvinator Of India Ltd (2002) 256 ITR 0001 wherein the entire law on reopening of proceedings u/s 147 of the Act and the effect of assessment u/s 143(3) of the Act was discussed in detail and it was held that,*

*"To confer jurisdiction under section 147(a) two conditions were required to be satisfied, viz., (1) the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment; and (2) he must also have a reason to believe that such escapement occurred by reason of either (a) omission or failure on the part of the assessee to make a return of his income under section 139; or (b) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. The aforementioned requirements of law must be held to be conditions precedent for invoking jurisdiction of the Assessing Officer to reopen the assessment under section 147. Both the conditions aforementioned are cumulative. It is also a well-settled principle of law that, in the event, it is found that any of the said two conditions is not fulfilled, the notice issued by the Assessing Officer would be wholly without jurisdiction.*

*The expression 'reason to believe' mandates that before jurisdiction under section 147 is invoked by the Assessing Officer, he is to record his reasons for doing so or before issuing any notice under section 147. The formation of reason to believe and recording of reasons are imperative before the Assessing Officer can reopen a completed assessment. Since assessment had been reopened on 20-4-1990, section 147 as amended with effect from 1-4-1989 would apply.*

*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. 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). Thus, when the Assessing Officer or the Tribunal 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.*

*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 empowers the Commissioner to review an order which is prejudicial to the revenue.'*

*A mere change in the opinion would not confer jurisdiction upon the Assessing Officer to initiate a proceeding under section 147."*

*The above case was affirmed by the Hon'ble Apex Court in the case of CIT vs Kelvinator Of India Ltd reported in 120101 320 ITR 561 (SC) and it was held that,*

*"The concept of "change of opinion" on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of section 147 of the Income-tax Act, 1961, by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment, the Assessing Officer has to have reason to believe that income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of "change of opinion" must be treated as an in-built test to check the abuse of power. Hence after April 1, 1989, the Assessing Officer has power to reopen an assessment, provided there is "tangible material" to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief"*

*Further reliance is placed on the following judicial precedents:*

*ITO vs TechSpan India (P.) Ltd [2018] 92 taxmann.com 361 (SC)*

*The language of section 147 makes it clear that the Assessing Officer certainly has the power to re-assess any income which has escaped assessment for any assessment year subject to the provisions of sections 148 to 153. However, the use of this power is conditional upon the fact that the Assessing Officer has some reason to believe that the income has escaped assessment. The use of the words 'reason to believe' in section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the Assessing Officer who may even initiate such re-assessment proceedings merely on his change of opinion on the basis of same facts and circumstances which have already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and*

*escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order. [Para 8]*

*Section 147 does not allow the re-assessment of an income merely because of the fact that the Assessing Officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the Assessing Officer the power of review and section 147 confers the power to re-assess and not the power to review. [Para 91]*

*CIT vs Feather Foam Enterprises P. Ltd. [2008] 296 ITR 342 (Del)*

*"Facts which could have been discovered by the Assessing Officer but were not discovered at the time of original assessment, will not constitute new information. Where no new material has come on record nor new information 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 to the Assessing Officer to initiate proceedings under section 147 of the Income-tax Act, 1961. 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. The Assessing Officer 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."*

*Thus, the present reopening on the basis of change of opinion is not sustainable in law and thus the present reopening is void ab-initio.*

*Appellate Ground No. 5: Objections not disposed of by the learned AO.*

*It is humbly submitted that in response to the reasons recorded, the assessee filed its objections on 15-09-2021. In the objections the assessee stated the facts of the case and also submitted that the present proceedings is purely based on a change of opinion, since the said issue of loss of Rs.26.69 crores was duly explained at the time of original assessment. Such reopening on change of opinion is not permissible in law specially when no new facts have been come to light after completion of original assessment and the reopening is based on material already on record and duly disclosed by the assessee in the course of original assessment. Copy of the objections is enclosed at page 26-33 of the paper book.*

*However, the learned AO summarily disposed of the objections of the assessee. Copy of the order disposing the objections is enclosed at page 42-47. On perusal of the same, it may kindly be noted that objections raised by the assessee were not at all discussed. The objections were summarily disposed of by the learned AO for the mere sake of disposing the objections. In the objections to the reasons*

recorded, the assessee specifically submitted that the a sum of Rs.5 crores, being Loss of Profit Policy had already been added to the computation of income and the sum of Rs.2. 18 crores, being sale of scrap, was duly offered to tax, hence adding the same again will tantamount to double addition. However, these objections were not disposed by the learned AO. In the order disposing the objections, he has merely copy pasted the reasons recorded.

Disposal of the objections by the learned AO by passing a speaking order is a sine qua non in reassessment proceedings by virtue of the judgment of the Hon'ble Apex Court judgment in the case of GKN Driveshafts India Limited reported in (2003) 259 ITR 19 wherein the procedure to challenge the reassessment proceedings has been laid down is reproduced below:

"When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action is to file the return and, if he so desires, to seek reasons for issuing the notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee 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."

Further reliance was also placed on the judgment of the Delhi High Court in the case of Sabh Infrastructure Limited vs ACIT [2017] 398 ITR 198 (Delhi) wherein guidelines to be followed in matters of reopening of assessments is discussed and it was held that,

(i) the exercise of considering the assessee 's objections to the reopening of assessment is not a mechanical ritual. It is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

Against this order, SLP was filed by the Department before the Hon'ble High Court. The said SLP was dismissed by the Hon'ble Apex Court vide order dated 01-02-2024 [20241 159 taxmann.com 184 (SC), copy enclosed.

- The Hon'ble Delhi High Court in the case of PCIT vs. Tupperware India (P.) Ltd. reported in [2016] 236 Taxman 494 (Del) held the following:

1. "The Court is of the considered view that after having correctly understood the

decision of the Supreme Court in GKN Driveshafts (India) Ltd. (supra) as mandatorily requiring the AO to comply with the procedure laid down therein and to dispose of the objections to the reopening order with a speaking order, the CIT (A) committed an error in not quashing the reopening order and the consequent assessment.

7. The CIT (A) in the order dated 28th January 2011 proceeded to examine on merits the challenge by the Assessee (in Ground No. 4) to the order of the AO disallowing the management service L'e. The CIT (A) agreed with the submissions of the Assessee and held that in view of the 'Nil' withholding certificate issued by the DDIT Circle 1 (2) of the International Tax Division in favour of the Assessee in terms of the Double Taxation Avoidance Agreement ('DTAA 2 between the India and the USA, there was no need for the Assessee to charge tax or withhold tax under Section 195 of the Act. Therefore, on merits the CIT (A) deleted the disallowance of the above deduction. The CIT (A) also noted that the said expenses were not disallowed in AY 2004-05 "even when the assessment for the said order so completed with the disallowance of this order."

8. The above findings on merits in Ground 4 by the CIT (A) in favour of the Assessee, was not challenged by the Revenue before the ITA T in ITA No. 2 140/Del/201 1 f6r 2003-04. With the Revenue not having challenged the order of the CIT (A) deleting the disallowance made by the A 0 pursuant to the reopening of the assessment, the challenge by the Revenue only to that portion of the order u/s. 114 holding that the reopening was not legally sustainable, renders the issue academic.

9. Consequently, for both the aforementioned reasons, viz., that there was a failure by the AU to comply with the mandatory requirement of disposing of the objections of the Assessee to the reopening in terms of the law explained by the Supreme Court in GKN Driveshafis (India) Ltd. (supra) as well as on account of the failure of the Revenue to challenge before the ITAT the order of the CIT (A) deleting on merits the disallowance made by the AU of the management service fee consequent upon reopening of the assessment, there appears to be no need to examine the issue projected by the Revenue in this appeal viz., the justification for re-opening the assessment under Section 147/148 of the Act."

Hence, in view of the above submissions, the order disposing the objections of the assessee is clearly not as per Law.

Now, rebutting the ground of appeal so taken by the Revenue, the assessee submits as follows:

Ground taken by the Revenue:

1. Whether on facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of deduction of Rs.21.69 crore, being exceptional loss due to fire, where there is no adjustment entry of closing stock was made in the preceding financial year.

In this regard, it is humbly submitted that on 31-03-2025 i.e immediately preceding year, the assessee has reduced the stock of

Rs. 19.51 crores by crediting the Purchases A/c. The entry made in the books is reproduced below:



(1)

**Kalpena Industries Limited(Dankuni Unit)**

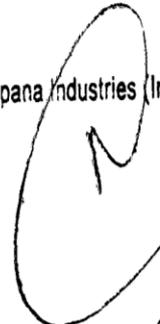
**Insurance Claim Receivable**

Ledger Account

1-Apr-2014 to 31-Mar-2015

Date	Particulars	Vch Type	Vch No./Excise Inv.No.	Debit	Page 1 Credit
31-3-2015	To <b>Fixed Assets</b> BEING THE INSURANCE CLAIM RECEIVABLE & LOSS OF ASSETS DUE TO FIRE ENTRY PASSED DUE TO FIRE IN FACTORY.	Journal	JN002819	1,10,28,54,578.00	
	To <b>PURCHASE</b> BEING THE AMOUNT RECEIVABLE ON ACCOUNT OF STOCK BURNT IN FIRE	Journal	JN002824	19,50,95,227.00	
	To <b>LOSS OF PROFIT</b> BEING THE AMOUNT RECEIVABLE ON ACCOUNT OF LOP CLAIM.	Journal	JN002825	5,00,00,000.00	
				1,34,77,49,805.00	
	By <b>Closing Balance</b>				1,34,77,49,805.00
				1,34,77,49,805.00	1,34,77,49,805.00

For Kalpana Industries (India) Limited

  
Director

The above entry made in the immediately preceding year i.e FY 2014-15 duly evidences that Purchases A/c was reduced by Rs.19.51 crores and consequently closing stock of that year was reduced. Credit of Purchases A/c in the Profit and Loss A/c in the immediately preceding year means that the assessee has reduced Purchases in FY 2014-15 and hence claimed less deduction of Rs.19.51 crores. Thus, adding the sum of Rs.19.51 will tantamount to double addition since the sum of Rs.19.51 crores was duly credited in the Profit and Loss A/c in FY 2014-15.

Also find enclosed with the submissions, the statement showing the reconciliation of raw materials and finished goods wherein it is evident that there was loss of raw materials due to fire of 1354 MT amounting to Rs.19.51 crores.

Kkalpana Industries (India) Ltd.  
Statement showing details of Raw material Reconciliation  
For The FY 2014-15

Particulars	Opening Qty (In MT)	Opening Value (In Lacs)	Purchase Qty (In MT)	Purchase Value (In lacs)	Loss due to fire Qty (In MT)	Loss due to fire Value (in Lacs)	Closing Qty (In MT)	Closing Value (In Lacs)	Consumption Qty (In MT)	Consumption Value (In Lacs)
	4,535.14	5,784	67,029	83,238	283	392	1,474	1,371	69,808	87,259
PVC RESIN	1,077.18	917	24,539	18,292	-	-	611	458	25,005	18,750
Plastic Scrap	-	-	265	125	20	2	-	-	245	123
Others	3,648.70	3,288	65,874	52,307	1,051	1,557	2,864	2,260	65,609	51,777
<b>TOTAL</b>	<b>9,261</b>	<b>9,988</b>	<b>1,57,708</b>	<b>1,53,962</b>	<b>1,354</b>	<b>1,951</b>	<b>4,949</b>	<b>4,089</b>	<b>1,60,667</b>	<b>1,57,911</b>

Kkalpana Industries (India) Ltd.  
Statement showing details of FG Reconciliation  
For The FY 2014-15

Particulars	Opening Qty (In MT)	Opening Value (In Lacs)	Closing Qty (In MT)	Closing Value (In Lacs)	Change in Inventory Qty (in MT)	Change in Inventory Value (in Lacs)
PE COMPOUND	1,313	1,635	5,675	6,742	-4,362	-5,107
PVC COMPOUND	282	227	562	479	-281	-252
AGGLOMERATES	69	36	59	42	10	-5
OTHERS	1,039	639	332	105	706	534
<b>TOTAL</b>	<b>2,703</b>	<b>2,537</b>	<b>6,629</b>	<b>7,367</b>	<b>-3,926</b>	<b>-4,831</b>

For Kkalpana Industries (India) Limited

Director

The same was also checked and certified by a practicing Chartered Accountant vide his certificate dated 12-11-2014, refer page 21-23 of the paper book. Your kind attention is also invited to the audited Balance Sheet, Profit and Loss A/c and the relevant Schedules of FY 2014- 15 which evidences that the loss of stock due to fire of Rs. 19.51 crores was adjusted with the closing stock in FY 2014-15, copy enclosed with the submissions.

As such, the loss of stock due to fire was duly adjusted with the closing stock of FY 2014-15.

It is reiterated that the assessee has incurred Loss of Stock due to fire at Rs.19.51cr. However, the said claim was not reimbursed by the Insurance Company and hence was treated as Loss in the current year by debiting Profit and Loss A/c as part of the Extraordinary Item. Loss of stock due to fire is a revenue loss and was thus rightly claimed by the assessee. Thus, disallowing the same is not warranted.

Furthermore, the sum of Rs.2. 18 crores being Sale of Scrap was duly included in Sales and accordingly offered for tax in the current year. The invoices for sale of scrap is enclosed at Page 36-39 of the paper book.

As such, the learned CIT(A) has rightly allowed this ground of appeal and deleted the addition of Rs.21.69 crores.

Hope the above submissions is in order and to your satisfaction.

Thanking You, 'Yours faithfully,

5. Ld. AR submitted that the assessment order which is alleged to have been passed on 31.03.2022 u/s.147 of the Act was, at the outset, sent by email on 16.04.2022. The Id.AR drew our attention to the letter dated 31.03.2022 issued by the Assessing Officer, which reads as follows :-



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT  
COMMISSIONER OF INCOME TAX  
CENTRAL CIR 1(4), KOLKATA

3

To, KKALPANA INDUSTRIES INDIA LIMITED 2B,PRETORIA STREET PRETORIA STREET KOLKATA 700071,West Bengal India			
PAN: AABCK2239D	Assessment Year: 2016-17	Dated: 31/03/2022	DIN & Letter No : ITBA/COM/F/17/2021-22/1042365537(1)

Sir/ Madam/ M/s,

Subject: Online service of Orders - Letter

The assessment order 147/143(3) of the IT Act for A.Y 2016-17 has been passed on 31.03.2022. The copy of Assessment order, Computation sheet and demand notice are issued to the assessee. This DIN may be treated as Common DIN for the relevant order and all its annexure.

PRAVEEN DAS CHOWDHURY  
CENTRAL CIR 1(4), KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.  
AAYAKAR BHAWAN, 110 SHANTIPALLY, E.M.BYPASS, KOLKATA, West Bengal, 700107  
Email: KOLKATA.DCIT.CEN1.4@INCOMETAX.GOV.IN, Office Phone:9332442092

This document is digitally signed

Note:- The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in)  
\* DIN-Document identification No.

Signer: PRAVEEN DAS CHOWDHURY  
Date: Friday, April 1, 2022 6:25 PM  
Location: DIRECTORATE, India

6. It was the submission that the digital signature of the Assessing Officer is of Friday 1<sup>st</sup> April, 2022 at 6.25 PM. Ld. AR further drew our attention to the Income Tax Portal of the assessee wherein it shows that the assessment proceedings were closed on 19.04.2022. The screenshot is shown as follows :-

The screenshot displays the e-Filing portal interface for PAN AABCK2239D. It shows a list of proceedings under the heading 'Rectification Proceeding u/s 154 r.w.s 147' for the assessment year 2016-17. Three proceedings are listed, each with its status, dates, and closure order details.

Proceeding Name	Status	Proceeding Limitation Date	Proceeding Closure Date	Financial Year	Proceeding Closure Order
Rectification Proceeding u/s 154 r.w.s 147	Closed	11-Jan-2024	-	2015-16	256112447
Rectification Proceeding u/s 154 r.w.s 147	Closed	5-Jul-2022	05-Jul-2022	2015-16	226567246
Assessment Proceeding u/s 147	Open	31-Mar-2022	31-Mar-2022	2015-16	225321727

Additional details for all proceedings: PAN: AABCK2239D, Name of Assessee: KKALPANA INDUSTRIES INDIA LIMITED, Assessment Year: 2016-17.

8. Ld. AR further placed before us the copy of email received by the assessee, which reads as follows :-

10:39 AM  
Mail - hitesh - Outlook

[TBA]Order under section 147 of the Income Tax Act, 1961

kolkata <kolkata@kkalpana.co.in>  
Sat 16/04/2022 10:30 AM

To: spoddar <spoddar@kkalpana.co.in>; hitesh <hitesh@kkalpana.co.in>; Abhishek Kanoria <a.kanoria@kkalpana.co.in>  
Cc: icdakalia <icdakalia@kkalpana.co.in>; abothra <abothra@kkalpana.co.in>

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From: KOLKATA.DCIT.CEN1.4@INCOMETAX.GOV.IN <KOLKATA.DCIT.CEN1.4@INCOMETAX.GOV.IN>  
Sent: 16 April 2022 00:25  
To: kolkata <kolkata@kkalpana.co.in>  
Subject: [TBA]Order under section 147 of the Income Tax Act, 1961

Dear KKALPANA INDUSTRIES INDIA LIMITED,

Please find attached the AST\_ComputationSheet, AST\_DemandNotice, AST\_Order for PAN:AABCK2239D and AY:2016-17.

Please quote your PAN in all future correspondences.

Note:

- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

The information contained in this communication is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. It may contain confidential or legally privileged information. If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution or taking any action in reliance on the contents of this information is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by responding to this email and then delete it from your system. The Organization is neither liable for the proper and complete transmission of the information contained in this communication nor for any delay in its receipt.

9. It was the submission that the said email clearly shows that the order was sent on 16.04.2022 at 00.25. It was further submitted that the assessment order which was sent by email was also unsigned. The last two pages of the said assessment order reads as follows :-

Report(form 3CD) for the Financial year 2014-15. So it is clear that there is no loss of stock in fire as apparent from the books of accounts where no loss has been shown in the closing stock as if any loss due to fire had occurred to the assessee, he would have surely reduced the said stock from the closing stock for the Financial year 2014-15, which is not apparent from the books of the assessee. Thus the loss claimed by the assessee in the profit and loss account for the financial year 2015-16 as loss on assets destroyed by fire is found to be bogus and hence such alleged claim of loss due to fire is nothing but a bogus claim by the assessee and has been reduced by making a false claim to reduce the income. A sum of **Rs.5 crores** had already been added back in the **computation of income** for the F.Y. 2015-16.Hence the loss claim as extraordinary items by the assessee of **Rs. 21,68,98,000(26,68,98,000-50000000)** is disallowed and added to the total income as business income.

**[Addition : Disallowance of extraordinary loss claim Rs. 21,68,98,000]**

Penalty initiated separately u/s. 271(1)(c) of the I.T.Act,1961 for furnishing of inaccurate particulars of the income.

6. Having regard to the above observations, the total income of the assessee company is re-computed as under:

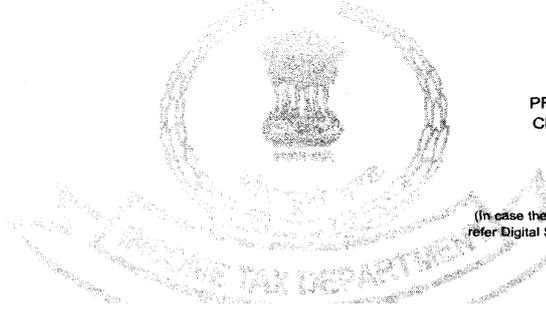
		Assessed income u/s. 153A/143(3) of the I.T.Act,1961 dated 28.12.2018	Rs.	2,48,33,890/-
Less	:	Relief allowed u/s 154/251/254/264	Rs.	0
Add	:	Addition on account of disallowance of extraordinary loss claim	Rs.	21,68,98,000/-
		<b>Total income assessed</b>	<b>Rs.</b>	<b>24,17,31,890/-</b>
		Assessed MAT income u/s. 153A/143(3) of the I.T.Act,1961 dated 28.12.2018		17,03,12,929/-

7. Assessed under section 147/143(3) of the Income-tax Act,1961. Credit for prepaid taxes are given. Demand notice along with a copy of the Assessment Order, Income Tax computation sheet generated from system is issued to the assessee.

PRAVEEN DAS CHOWDHURY  
CENTRAL CIR 1(4), KOLKATA

Copy to:

Assessee



PRAVEEN DAS CHOWDHURY  
CENTRAL CIR 1(4), KOLKATA

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10. It was the further submission that the demand notice and the computation of total income was also unsigned. The same read as follows:-



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT  
COMMISSIONER OF INCOME TAX  
CENTRAL CIR 1(4), KOLKATA

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To, KKALPANA INDUSTRIES INDIA LIMITED 2B,PRETORIA STREET PRETORIA STREET KOLKATA 700071,West Bengal India	
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PAN: AABCK2239D	Date: 31/03/2022	Status: COMPANY	DIN & Notice No: ITBA/AST/S/156/2021- 22/1042403625(1)
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**Subject: Notice of demand under section 156 of the Income-Tax Act, 1961**

1. This is to give you notice that for the assessment year **2016-17** a sum of **Rs. 12,05,38,920**, details of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager, authorised bank/State Bank of India within 30 days of the service of this notice. A challan is enclosed for the purpose of Payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one per cent for every month or part of a month from the date commencing after the end of the period aforesaid in accordance with section 220(2).
4. If you do not pay the amount of the tax within the period specified above, penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with section 221.
5. If you do not pay the amount within the period specified above, proceedings for the recovery thereof will be taken in accordance with sections 222 to 227, 229 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment, you may present an appeal under Part A of Chapter XX of the Income-tax Act, 1961, to the **CIT(A), Kolkata- 20** within thirty days of the receipt of this notice, in Form No. 35, duly stamped and verified as laid down in that form.

PRAVEEN DAS CHOWDHURY  
CENTRAL CIR 1(4), KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME  
TAX  
CENTRAL CIR 1(4), KOLKATA**

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**Computation Sheet**

Details			
<b>PAN</b>	AABCK2239D	<b>Assessment Year</b>	2016-17
<b>Name</b>	KKALPANA INDUSTRIES INDIA LIMITED	<b>Address</b>	2B ,PRETORIA STREET PRETORIA STREET KOLKATA 700071 ,West Bengal India
<b>Residential Status</b>	Resident	<b>DIN &amp; Document Number</b>	ITBA/AST/S/116/2021-22/1042403648(1)
<b>Order Section</b>	147	<b>Order Date</b>	31/03/2022

Sl. No.	Reporting Heads	Amount as per Current Order (in Rs.)
	<b>HEADS OF INCOME</b>	
1.	INCOME FROM HOUSE PROPERTY	45,500
2.	INCOME FROM BUSINESS OR PROFESSION	7,15,92,290
3.	INCOME FROM CAPITAL GAINS	0
4.	INCOME FROM OTHER SOURCES	23,59,98,590
5.	INTRA HEAD ADJUSTMENTS	0
6.	TOTAL(AFTER INTRA HEAD ADJUSTMENT) 6=(1+2+3+4)-5	30,76,36,380
7.	LOSSES OF CURRENT YEAR SETOFF AGAINST 6	0
8.	BROUGHT FORWARD LOSSESS SET OFF AGAINST 8=(6-7)	6,59,04,492
9.	GROSS TOTAL INCOME (INCLUDING SPECIAL INCOME) 9=6-(7+8)	24,17,31,888
10.	INCOME CHARGEABLE TO TAX AT SPECIAL RATE	0
11.	DEDUCTION U/S 10A or 10AA	0

<b>DEDUCTIONS UNDER CHAPTER VI A</b>		
12.	TOTAL DEDUCTIONS UNDER CHAPTER (VIA)	0
13.	TOTAL INCOME AFTER DEDUCTIONS (10A/10AA AND CHAPTER VIA) 13=(9-11-12)	24,17,31,890
14.	INCOME CHARGEABLE TO TAX AT SPECIAL RATES	21,68,98,000
15.	INCOME CHARGEABLE TO TAX AT NORMAL RATES	2,48,33,888
16.	NET AGRICULTURAL INCOME	0
17.	AGGREGATE INCOME 17=(15+16)	2,48,33,890
18.	LOSS IN CURRENT YEAR TO BE CARRIED FORWARD	0
19.	DEEMED TOTAL INCOME U/S 115JB	17,02,66,841
<b>TAX DETAILS</b>		
20.	TAX PAYABLE ON DEEMED TOTAL INCOME UNDER SECTION 115JB	3,14,99,366
21.	SURCHARGE (ON ABOVE 20)	37,79,924
22.	EDUCATION CESS (ON 20 +21 ABOVE)	10,58,379
23.	TOTAL TAX PAYABLE U/S 115JB (23=20+21+22)	3,63,37,669
24.	TAX AT NORMAL RATES (INCLUDED. AGRICULTURAL INCOME)	74,50,167
25.	TAX AT SPECIAL RATES	6,50,69,400
26.	TAX PAYABLE ON TOTAL INCOME 26=(24+25)	7,25,19,567
27.	SURCHARGE (ON ABOVE 26)	87,02,348
28.	EDUCATION CESS on (26 + 27)	24,36,657
29.	GROSS TAX LIABILITY (29=26+27+28)	8,36,58,572
30.	GROSS TAX PAYABLE (HIGHER OF 23 OR 29)	8,36,58,572
31.	CREDIT UNDER SECTION 115JAA OF TAX PAID IN EARLIER YEARS	0
32.	TAX PAYABLE AFTER CREDIT UNDER SECTION 115JAA	8,36,58,572
<b>TAX RELIEF</b>		
33.	RELIEF U/S 90/90A	0
34.	RELIEF U/S 91	0
35.	TOTAL TAX RELIEF 35=(33+34)	0
<b>TOTAL INCOME TAX LIABILITY</b>		
36.	NET TAX LIABILITY 36=(32-35)	8,36,58,572
<b>INTEREST PAYABLE</b>		
37.	FOR DEFAULT IN FURNISHING THE RETURN ( SECTION 234A)	18,92,440
38.	FOR DEFAULT IN PAYMENT OF ADVANCE PAYMENT ( SECTION 234 B)	3,42,25,428
39.	FOR DEFERMENT OF ADVANCE TAX (SECTION 234C)	10,13,834
40.	INTEREST U/S 234D	0
41.	TOTAL INTEREST LIABILITY	3,71,31,702

	41=(37+38+39+40)	
42.	AGGREGATE INCOMETAX LIABILITY 42=(36+41)	12,07,90,274
	<b>PRE-PAID TAXES</b>	
43.	TDS	2,51,358
44.	TCS	0
45.	ADVANCE TAX	0
46.	SELF ASSESSMENT TAX	0
47.	REGULAR TAX PAID	0
48.	TOTAL TAXES PAID 48=(43+44+45+46+47)	2,51,358
	<b>TAX PAYABLE/REFUND</b>	
49.	AMOUNT PAYABLE /REFUND AMOUNT 49=(42-48)	12,05,38,916
50.	INTEREST U/S 244A ON CURRENT AMOUNT	0
51.	INTEREST U/S 244A(1A)	0
52.	TOTAL AMOUNT PAYABLE/ REFUND AMOUNT 52= (49+50+51)	12,05,38,916
53.	REFUND ALREADY ISSUED (incl. interest u/s 244A and interest u/s 244A(1A) if any)	-26,972
54.	BALANCE AMOUNT PAYABLE/REFUNDABLE (incl. provisional Interest u/s 244A till current order and interest u/s 244A(1A) - if any) 54 = (52-53)	12,05,65,888
55.	INTEREST U/S 220(2) CHARGED (In Rs.)	0
56.	AMOUNT PAYABLE/REFUNDABLE 56=(54+55)	12,05,65,888
57.	DEMAND IDENTIFICATION NO AGAINST ORIGINAL DEMAND	2021201637005432025C
58.	DEMAND IDENTIFICATION NO AGAINST INTEREST U/S 220(2)	NA

**59. DIVIDEND DISTRIBUTION TAX (DDT) COMPUTATION**

Sl. No.	Reporting Heads	As per Current Order
	<b>DDT</b>	
1.	DDT PAYABLE U/S 115O	0
2.	SURCHARGE ON DDT	0
3.	EDUCATION + SECONDARY & HIGHER EDUCATION CESS	0
4.	TOTAL DDT PAYABLE	0
5.	INTEREST U/S 115P	0
6.	TOTAL DDT LIABILITY	0
7.	TAX AND INTEREST PAID	0
8.	DDT AMOUNT PAYABLE/REFUNDABLE (6-7)	0
9.	INTEREST U/S 244A (till order date or accounting closure date)	0
10.	TOTAL DDT AMOUNT PAYABLE/REFUNDABLE (8+9)	0
11.	DDT REFUND ALREADY ISSUED	0

12.	BALANCE DDT AMOUNT PAYABLE/REFUNDABLE(10-11)	0
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60. DETAILS OF TAX ON DISTRIBUTED INCOME OF A DOMESTIC COMPANY ON BUY BACK OF SHARES(BBS), NOT LISTED ON STOCK EXCHANGE		
Sl. No.	Reporting Heads	As per Current Order
	<b>BBS</b>	
1.	TAX ON DISTRIBUTED INCOME ON BUY BACK OF SHARES U/S 115QA	0
2.	SURCHARGE ON ABOVE	0
3.	EDUCATION+SECONDARY & HIGHER EDUCATION CESS	0
4.	TOTAL TAX ON DISTRIBUTED INCOME ON BUY BACK OF SHARES PAYABLE	0
5.	INTEREST U/S 115QB	0
6.	ADDITIONAL INCOME TAX AND INTEREST PAYABLE 6=(4+5)	0
7.	TAX AND INTEREST PAID	0
8.	BBS AMOUNT PAYABLE/REFUNDABLE 8=(6-7)	0
9.	INTEREST U/S 244A (till order date or accounting closure date)	0
10.	TOTAL BBS AMOUNT PAYABLE/REFUNDABLE 10= (8+9)	0
11.	BBS REFUND ALREADY ISSUED	0
12.	BALANCE BBS AMOUNT PAYABLE/REFUNDABLE 12= (10-11)	0

61. AGGREGATION OF REFUND & DEMAND ARISING OUT OF ASSESSMENT ORDER (AFTER ROUNDING OFF AND CROSS ADJUSTMENTS)		
HEADS	REFUND AMOUNT	DEMAND PAYABLE
INCOME TAX	0	12,05,65,888
DDT	0	0
BBS	0	0
BALANCE REFUND/DEMAND AFTER CROSS ADJUSTMENTS	0	12,05,38,920

\*In case of refund, Refund Intimation cum Adjustment sheet will be issued subsequently and separate communication will be sent for that.

**Note:** Fields from 9 to 12 in DDT (Point No. 59) and BBS (Point No. 60) and Cross Adjustments (Point No.61) Panel will be displayed at time of passing order.

PRAVEEN DAS CHOWDHURY  
CENTRAL CIR 1(4), KOLKATA

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

11. It was the submission that the assessment order was liable to be quashed as being unsigned and barred by limitation.

12. In reply, the Id.CIT-DR placed before us the reply as received from the AO. The revenue has also filed the letter of online service of the order which admittedly is the same as the letter produced by the assessee signed on Friday 1<sup>st</sup> April, 2022 at 6.25 PM. Ld.CIT-DR also placed before us the copy of signed assessment order, the last two pages along with demand notice and the computation sheet, which read as follows :-

AABCK2239D- KKALPANA INDUSTRIES INDIA LIMITED  
A.Y. 2016-17  
ITBA/AST/S/147/2021-22/1042403487(1)

Report(form 3CD) for the Financial year 2014-15. So it is clear that there is no loss of stock in fire as apparent from the books of accounts where no loss has been shown in the closing stock as if any loss due to fire had occurred to the assessee, he would have surely reduced the said stock from the closing stock for the Financial year 2014-15, which is not apparent from the books of the assessee. Thus the loss claimed by the assessee in the profit and loss account for the financial year 2015-16 as loss on assets destroyed by fire is found to be bogus and hence such alleged claim of loss due to fire is nothing but a bogus claim by the assessee and has been reduced by making a false claim to reduce the income. A sum of **Rs.5 crores** had already been added back in the **computation of income** for the F.Y. 2015-16.Hence the loss claim as extraordinary items by the assessee of **Rs. 21,68,98,000(26,68,98,000-50000000)** is disallowed and added to the total income as business income.

[Addition : Disallowance of extraordinary loss claim Rs. 21,68,98,000]

Penalty initiated separately u/s. 271(1)(c) of the I.T.Act,1961 for furnishing of inaccurate particulars of the income.

6. Having regard to the above observations, the total income of the assessee company is re-computed as under:

	Assessed income u/s. 153A/143(3) of the I.T.Act,1961 dated 28.12.2018	Rs.	2,48,33,890/-
Less	: Relief allowed u/s 154/251/254/264	Rs.	0
Add	: Addition on account of disallowance of extraordinary loss claim	Rs.	21,68,98,000/-
	<b>Total income assessed</b>	<b>Rs.</b>	<b>24,17,31,890/-</b>
	Assessed MAT income u/s. 153A/143(3) of the I.T.Ac. 1961 dated 28.12.2018		17,03,12,929/-

7. Assessed under section 147/143(3) of the Income-tax Act,1961. Credit for prepaid taxes are given. Demand notice along with a copy of the Assessment Order, Income Tax computation sheet generated from system is issued to the assessee.





13. All contain the physical signature of the Assessing Officer. The Id. CIT-DR submitted that the Id. CIT(A) has rejected assessee's claim in respect of time barring of the assessment. It was the prayer that the order of the Id. CIT(A) rejecting the claim of time barring, the assessment order be upheld. It was the submission that the assessee has not filed any appeal against the said finding of the Id. CIT(A). It was further submitted that on merits in the revenue's appeal the assessee had incurred a loss of devastating fire at the factory of the assessee and the closing stock loss was to an extent of Rs.134.77 crores, an insurance claim had been made and the insurance had settled the claim of the assessee at Rs.108.08 crores. There was a difference of Rs.26.69 crores. It was the submission that out of Rs.26.69 crores, Rs.5 crores related to the loss in profit and Rs.21.69 crores related to the loss of stock not paid by the insurance

company. The assessee had claimed the same in its profit and loss account as an exception and extraordinary item. The Assessing Officer was of the view that the said loss of Rs.21.69 crores was liable to be set off against the closing stock and not against the profit and loss account. It was the submission that if this was done then the value of the closing stock would reduce and consequently in the next year the opening stock would also stand reduced and the profit adjustment would automatically take place computing the closing stock for the subsequent assessment year. It was the submission that the Id. CIT(A) had accepted the claim of the assessee. It was the submission that the order of the Id. CIT(A) was liable to be reversed on this issue.

14. Ld. AR submitted that in the written submission that the assessee has categorically shown how the amount of the loss had been claimed. It was the submission that out of Rs.134 crores, Rs.108 crores was reimbursed by the Insurance company. Rs.5 crores related to the loss on profit and Rs.21.69 crores related to the adjustment to the profit and loss account on account of the loss which was not settled. It was the submission that the Assessing Officer was wrong in assessing that the amount of Rs.21.68 crores was liable to be disallowed. It was the submission that the Assessing Officer took the stand that out of balance of Rs.26.69 crores that the insurance company had not allowed, the assessee had already added back in the computation of income Rs.5 crores in the financial year 2015-2016 and had consequently taken the claim that Rs.21.69 crores was not allowable to the assessee. It was the submission that the order of the Id.

CIT(A) is liable to be upheld on the merits and the order of the Id.CIT(A) in respect of the issue of the time barring of the assessment order is liable to be reversed.

15. We have considered the rival submissions. A perusal of the facts of the present case clearly show that the assessment order, computation of income and the demand notice issued to the assessee have been served on the assessee by email only on 16.04.2022. A perusal of the letter alleged to have been sent to the assessee attaching the assessment order, which is similar to the document which has been submitted by the revenue also in its paper book clearly shows that the same has been digitally signed on Friday 1<sup>st</sup> April, 2022 at 6.25 PM. The said letter dated 31.03.2022 which has been sent on Friday 1<sup>st</sup> April, 2022 at 6.25 PM having been digitally signed, we failed to understand as to why the assessment order and the demand notice and the computation of the total income now contains the physical signature of the Id. Assessing Officer. Admittedly, below each of the signature which is specifically mentioned that “in the case the document is digitally signed please refer Digital Signature at the bottom of the page”. There is no digital signature in regard to the assessment order, demand notice or the computation of income in either the copy provided to the assessee nor is it available in the assessment order, copies which have been submitted before the Bench by the revenue but the letter dated 31.03.2022 mentioning online service of the order contains digital signature and even that unfortunately is of Friday 1<sup>st</sup> April, 2022 at 6.25 PM. This being so, at the outset, we are of the view that the assessment order as

passed by the Assessing Officer dated 31.03.2022 is, *prima facie*, barred by limitation and the assessment order is quashed on that count.

16. In regard to the assessment order, demand notice and the computation sheet, as the same does not contain digital signature as is required for validating the same, the said impugned assessment order, computation of income and the demand notice is found to be invalid and consequently quashed on this ground also.

17. Coming to the merits of the revenue's appeal, a perusal of the order of the Id. CIT(A) clearly shows that the Id. CIT(A) has considered the submission of the Id. AR as also the evidence submitted and the revenue has not been able to dislodge any of the finding of fact on merits as has been arrived by the Id. CIT(A). This being so, we find no reason to interfere in the order of the Id. CIT(A) and consequently the appeal of the revenue stands dismissed.

18. Here we may extract the grounds of appeal which have been filed by the revenue which read as under :-

**GROUND OF APPEAL**  
**KKalpana Industries India Limited**  
**Against order dated: 13.11.2024 in appeal no. CIT(A), Kolkata-**  
**20/13953/2015-16**  
**PAN: AABCK2239D**  
**ASSESSMENT YEAR: 2016-17**

1. *Whether on the facts and circumstances of the case and law, the Ld. CIT(A) in disallowance of deduction of Rs. 21.69 Crore, being exceptional loss due to fire, where there is no adjustment entry of closing stock was made in the preceding financial Year.*

2. That the revenue reserves its rights to substantiate, modify delete supplement and/or alter any or all ground of appeal at any the time of appeal proceedings.



(Swaralipi Roy )  
Deputy Commissioner of income tax,  
Central Circle-1(4), Kolkata

स्वरालिपि रॉय, भा.रा.से.  
SWARALIPi ROY, I.R.S.  
उप आयकर आसुत, केंद्रिय वरुंडल-1(4), कोलकाता  
Dy. Commissioner of Income Tax  
Central Circle-1(4), Kolkata

SWARA  
LIPI ROY

Digitally signed by SWARALIPi ROY  
DN: c=IN, o=INCOME TAX KOLKATA, ou=RCC  
KOLKATA,  
2.5.4.20=ec12631c8b01ecd6a35a968350c021  
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postalCode=700069, st=WEST BENGAL,  
serialNumber=03273CF8E2C67799C82C2B4D  
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AD06, cn=SWARALIPi ROY  
Date: 2025.02.28 13:17:24 +05'30'

19. A perusal of the same clearly shows that even the said grounds of appeal have been digitally signed and physically signed and digital signature contains the date and time thereby giving validity to the signature which unfortunately is absent in respect of the copies of the assessment order, computation of total income and the demand notice as submitted by the revenue.

20. In view of the above, the appeal of the revenue is dismissed and the grounds raised by the assessee by invoking Rule 27 of the ITAT Rules, 1963 stand allowed.

21. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 25/06/2025.

Sd/-  
**(SANJAY AWASTHI)**

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-  
**(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कोलकाता** Kolkata; दिनांक Dated 25/06/2025

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,  
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)  
Income Tax Appellate Tribunal, Kolkata