

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 2541/Kol/2024
(Assessment Year 2008-2009)**

DCIT, Central Circle-1(4), Kolkata,
Aayakar Bhawan Poorva, 110,
Shantipally, Kolkata- 700107 **Appellant**

vs.

Murlidhar Ratanlal Exports Ltd.,
15B, Hemanta Basu Sarani,
Kolkata - 700001
[PAN: AABCM8371Q] **Respondent**

Appearances by:

Assessee represented by : Robin Maheshwari, ACA

Department represented by : Mangtinlen Haokip, Sr. DR

Date of concluding the hearing : 28.08.2025

Date of pronouncing the order : 02.09.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. This appeal arises from order dated 26.06.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter "the Ld. CIT(A)].

2 In this case, the Ld. AO recorded the following reasons for issuing a notice u/s 148 of the Act.

"It was observed that the agreement in connection with the jute Manufacturing Unit) entered into between the assessee company (Purchaser) and the Hooghly Mills Company Ltd. (Vendor), that effective from 21.06.2007, the assessee company would run, manage and operate the said Jute Manufacturing Unit until payment of entire amount. After payment of the entire consideration money, the vendor would not have any claim, or charge and/or hen and the Purchaser would be entitled to all the rights attached to the said jute Manufacturing Unit

as the sole and absolute owner thereof The Hooghly Mills Company Ltd. agreed to grant a Lease for the interim period of three years under execution of a Deed of Lease in favour of the assessee at the lease rent of Rs. 10,000/- per month whereby the assessee would be entitled to run, manage and operate the said Jute Manufacturing Unit. Consideration amount which was apportioned between sale of moveable and immovable properties in the following manner:

a) Immovable Properties- Rs. 4,00,00,000/-(Including Land of 1,00,00,000)

b) Movable Properties-Total-Rs. 15,05,00,000/-

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| Total | 19,05,00,000/- |
|-------|----------------|

Earnest Money of Rs 3,00,00,000/- was paid to The Hooghly Mills Company Ltd. and the balance would be paid in three years (Interim arrangement for Lease) in quarterly instalment and first instalment would be paid on or before 30th day of September 2007.

In view of the above facts, it was apparent that the properties acquired by the assessee company were under the arrangement of lease for three years effected from the previous year 2007-08 and for that period ownership retained with the lessor. Hence under the provisions of the section 32 of the Act, depreciation on such properties would not be allowable to the assessee. This resulted in excess allowance of depreciation at Rs 2,55,75,000/- (Dep@10% R-3,00,00,000/- +@15% on Rs 15,05,00,000/-).

Therefore, I have the reason to believe that this amount of Rs. 78,70,194/-has escaped assessment and the case is a fit case for imitation of proceedings u/s 147 of the I.T. Act, 1961"

Thereafter, the Ld. AO proceeded to add an amount of Rs. 2,55,75,000/- as unjustified claim of depreciation on property.

2.2 The assessee carried this matter before the Ld. CIT(A), where he could succeed on the basis of following findings:

"4.3.2 The appellant has contested the assessment of the AO u/s 147 of the Act. both on legal/ technical ground as well as on ground of merit. As per the appellant, the issue of claim of depreciation on the impugned assets were duly examined in first round of assessment completed u/s 143(3) of the Act on 02.11.2010. The assessee had submitted/produced all relevant details/documents pertaining claim of depreciation to AO in said assessment. The AO after examining relevant details took a conscious decision of not taking any adverse view on the issue of claim of deprecation on the said assets. So no addition was made by the AO on the issues of claim of depreciation on the assets of Jute mill. Not only that the claim of depreciation on the said assets have been allowed by the AO in the subsequent year of A.Yrs. 2009-10 & A.Y. 2010-11, by the giving specific finding on the merit of the claim of depreciation on the said assets.

4.3.3 Therefore, there is merit in the submission of the appellant that the decision of the AO in making reassessment of an issue which was not only examined in the earlier assessment u/s 143(3) of the Act. But has been

constantly followed in the subsequent A.Yrs. 2009-10 & 2010-11. The action of AO is nothing but 'change of opinion'. The cases cited by the appellant of Hon'ble Supreme Court of India & various High Courts including the jurisdiction Calcutta High Court, clearly stipulates the law on this subject. The cases cited by the appellant are very much applied to the facts and circumstances of this case, The Hon'ble Supreme Court of India in the case of CIT v. Kelvinator of India Ltd. in [2010] 187 taxman 312 (SC) clearly stipulates that concept of change of must be treated test to check abuse an inbuilt of power by the AO.

One needs to give a schematic interpretation to the words 'reason to believe', failing which section 147 would give arbitrary powers to the AO to reopen assessments on the basis of mere 'change of opinion' which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review, he has power to reassess, but the reassessment has to be based on fulfillment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening the assessment, review would take place.

4.3.4 Further, there is equal merit is the submission of the appellant, when it states that the AO has wrongly assumed the jurisdiction for reassessment u/s 147 after expiry of four years from the end of the relevant Assessment Year, in a case where assessment u/s 143(3) of the Act has already been completed. The appellant has stated that, its case for A.Y. 2008-09 is protected from any further reassessment u/s 147 of the Act under the first provision of 147 of the Act unless/until there is material in the possession of AO giving him reason to believe that any income chargeable to tax has escaped assessment due to failure on the part of assessee to disclose fully or truly all material facts necessary for assessment. The provision to section 147 clearly stipulates as under:

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

4.3.5 As per appellant, its case pertains to AY 2008-09 and assessment u/s 143(3) of the act was completed on 02/11/2010, at the total income of Rs. 3,02,09,330/-. The Ld. AO has issued notice u/s 148 of the Act on 16/04/2014 i.e. after and more than 5 years without having any new facts or material in its possession. The AO has not mentioned any facts or material in the reason to believe, the onus which can cast on assessee as its failure to disclose the income fully and truly. The relevant facts and material on the basis of which the reassessment proceedings u/s 147 was made were part of the record and duly examined in the first round of assessment completed u/s 143(3) on 02/11/2010. The cases cited by the appellant are very relevant in the facts and circumstances of this case. They stipulate the correct position of law in initiation of reassessment proceeding u/s 147, after expiry of 4 years from end of relevant assessment year, in a case where assessment u/s already been completed.

4.3.12 Therefore, in view of the facts and circumstances as discussed above and relevant laws applicable in this case, I am of firm view that the depreciation claim of Rs. 2,55,75,000/- on the assets of M/s India Jute Mills acquired from M/s Hooghly Co. Ltd. is allowable u/s 32 of the Act. Furthermore, the AO's initiation of proceedings u/s. 147 of the Act is a 'change of opinion' which is not permissible under the provision of the Act as held by Hon'ble Supreme Court in the case CIT v. M/s Kelvinator India Ltd.

4.3.13 Further, the AO has also failed to bring out any material evidence on record to blame the assessee for its failure in disclosing fully and truly the income chargeable to tax. So, the decision of initiating the proceeding u/s 147 after the expiry of four years from the end of relevant assessment year in this case, cannot be justified.”

2.3 The Revenue is aggrieved with this action of Ld. CIT(A) and has filed the present appeal with the following grounds:

“1. That on the facts and circumstances of the case, whether the Ld. CIT(A) is correct in deleting the disallowance of depreciation to the tune of Rs. 2,55,75,330/-ignoring the fact that the assessee, being a lessee company, in the material period was not entitled for its legal right to claim depreciation on such asset u/s 32 of the Act.

2. That on the facts and circumstances of the case, whether the Ld. CIT(A) is justified in not remanding back the additional evidence, which were not produced before the AO, in the interest of revenue.

3. That on the facts and circumstances of the case, whether the Ld. CIT(A) taking reliance upon the judgment of the Hon'ble Apex Court in case of CIT v. kelvinator of India Ltd. in [2010] 187 taxman 312(SC) is correct in treating the action of the AO for reopening the case as mere 'change of opinion' where recently Hon'ble Kerala High Court in case of Sree Narayana Guru Memorial Education and Cultural Trust Vs. Assistant Commissioner of Income Tax [2024] 160 taxmann.com 727 (Kerala) has held that where revenue audit raised an objection that assessment was not completed in accordance with provisions of Act, it could not be treated as a change of opinion because this was statutory prescription and statutory ground/reason for reopening assessment.

4. That whether on the facts and circumstance of the case, Ld. CIT(A) is correct in holding that the Re-opening of the case by the Assessing officer is a mere change of opinion and therefore, the subsequent assessment order passed by the AO is void-ab-initio, ignoring the fact that the assessee has failed to disclose fully and truly all material facts necessary for his assessment.

5. That the appellant craves leave to add/alter/amend /withdraw any or all grounds of appeal or at the time of appeal proceedings.”

3. Before us, the Ld. DR argued that the Ld. AO had worked out escapement of income on the basis of some facts which were evident from the records themselves. The Ld. DR took us through various portions of the Ld. AO's order to canvass the point that the properties in question would

be owned by the lessor and not by the lessee (being the assessee). Thereafter, the Ld. DR averred that the Ld. AO has rightly concluded that depreciation (impugned) would not be allowable to the assessee. The Ld. DR submitted that the assessee had claimed excessive depreciation which was clearly not allowable as per law. Finally, the Ld. DR relied on the case of Shree Narayan Guru Memorial Educational and Cultural Trust reported in 160 taxmann.com 727 (Kerala), to canvass the point that reopening, as has been done by the Ld. AO, was justified.

3.1 Per contra, the Ld. AR stated that in the first-round proceedings, which were conducted u/s 143(3) of the Act, vide order dated 02.11.2010, the allowability of depreciation was duly considered by the then Ld. AO and it was on identical set of facts, as were before the original AO, that the present AO has invoked the provisions of section 147 of the Act. The Ld. AR relied on the order of Ld. CIT(A) and stated that the case of Kelvinator of India Ltd. reported in 187 taxmann.com 312 (SC) was squarely applicable in favour of the assessee as it was clear from the reasons recorded by the Ld. AO (supra), that it was merely a change of opinion. The Ld. AR relied on a number of authorities which have been filed in the shape of paper book running to 28 pages.

4. We have carefully considered the rival submissions and have also gone through the records before us. We have also perused the case laws relied upon by both the sides. It is clear that the case of Kelvinator of India Ltd. (supra) would squarely apply to the facts of this case since on the same set of facts, the present AO has sought to review the decision of the earlier AO who had also examined the impugned issue. To this extent, the findings of Ld. CIT(A) are legally correct and deserve to be upheld.

4.1 Regarding the case of Shree Narayan Guru Memorial Educational and Cultural Trust (supra), it deserves to be mentioned that it pertains to the Assessment Year 2016-17 when the new procedure was squarely applicable (w.e.f. 01.04.2022). In the present case, however, the Assessment Year

involved is 2008-09 and the proceedings have been completed under the un-amended provisions. Thus, this case law cannot help the Revenue as far as the present matter is concerned.

4.2 Since we have upheld the action of Ld. CIT(A) in allowing the assessee's appeal on the ground of assumption of jurisdiction, we do not deem it fit to venture forth for adjudicating on the merits of the case.

5. In result, appeal of the Revenue is dismissed.

Order pronounced on 02.09.2025

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 02.09.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

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