IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'B', LUCKNOW

BEFORE SHRI KUL BHARAT, VICE PRESIDENT
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. No.194/Lkw/2020
Assessment Year: 2012-13

L. H. Sugar Factories Ltd., Civil Lines, Pilibhit-262001 PAN:AAACL4597L	Vs.	Dy.C.I.T., Circle-II, Bareilly.
(Appellant)		(Respondent)

Appellant by	Shri Akshay Gupta, C.A.
Respondent by	Shri Punit Kumar, CIT (D.R.)

O R D E R

PER ANADEE NATH MISSHRA:A.M.

(A) This appeal vide I.T.A. No.194/Lkw/2020 has been filed by the assessee for assessment year 2012-13 against impugned appellate order dated 26/02/2020 of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The assessee has raised the following grounds:

"*1. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the assumption of jurisdiction by the learned AO u/s 147 read with section 148 of the income Tax act, 1961:*

a. *Because the issues raised in the reasons recorded were already considered and adjudicated during the assessment proceedings u/s 143 (3) of the Act and reasons recorded are mere change of opinion.*

b. *Because the reason to believe recorded by the learned AO are not the view of the AO himself but based on the view of the revenue audit party.*

c. *Because the sanction of the competent authority, i.e. JCIT was not obtained as prescribed in section 151 of the Income Tax Act, 1961.*

2. *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the assessment proceedings and assessment order without appreciating that the learned AO did not dispose the objections raised by the assessee against the proceeding u/s 147/148 of the Act by a speaking order.*

3. *The learned Commissioner of Income tax (Appeals) has erred in law and on facts in confirming the addition of Rs.73,00,052/- on account of revaluation of Keyman Insurance Policies without appreciating the fact that the amount was neither received nor receivable during the year."*

(B) In this case the original assessment order was filed by the assessee on 19/09/2012 declaring total income of Rs.15,66,11,220/-. Original assessment order was completed u/s 143(3) of the Act on 23/03/2015 at an assessed income of Rs.19,83,58,004/-. Subsequently, reassessment proceedings u/s 147 of the Act were initiated by the Assessing Officer by issuing notice dated 29/03/2016 u/s 148 of the Act. Before issuing the aforesaid notice u/s 148, the Assessing Officer had recorded reasons. One of the reasons behind the reopening of the assessment u/s 147 read with section 148 related to Keyman Insurance Policies taken by the assessee. The relevant portion of the reasons recorded by the Assessing Officer befire issue of notice u/s 148 is as under:

Further on perusal of P&L account, computation chart of income of the assessee company and other relevant records placed on file assessing officer noticed that assessee company had credited as income in its profit and loss account Rs.73,00,052/- being surrender value (increase in value for financial year 2011-12 as on 31.03.2012) of the 5 key man insurance policies which was receivable but while computing income, it reduced the income by the same amount in the computation of income. As per provisions of section 28(vi) of the Income Tax Act, 1961, any sum received on account of key man insurance policy is to be treated as income of the assessee. The assessee had credited the amount of key man insurance policies in profit and loss account but deducted the same from the profit shown as per Profit and Loss Account in the statement of computation of income and thus taxable income was reduced by Rs.73,00,052/-.

(B.1) Assessment order was passed u/s 143(3)/147 of the Act wherein an addition of Rs.73,00,052/- was made by the Assessing Officer on account of surrender value of Keyman Insurance Policies. The relevant portion of the order of the Assessing Officer is reproduced as under:

5. In the profit and loss account assessee has credited surrender value of Key Man Insurance Policies Rs.73,00,052/- as on 31.03.2012 on due basis and the same was deducted from the profit as per profit and loss account in the computation of total income. Thus, total income was reduced by Rs.73,00,052/-. It is replied that surrender value of Key Man Insurance Policies for the F.Y. (2010-11) as on 31.03.2012 was credited in the books of account of assessee on due basis to show the healthy position of the company. It is also replied that assessee is consistently following this system of taking into account surrender value of Key Man Insurance Policies receivable as on 31st march of every previous year starting from the previous year ending on 31.03.2009 relevant to the A.Y. 2009-10. In this regard it is to be noted that as per provision of section 28(vi) of the Income tax Act, 1961 "any sum received" under a Key Man Insurance Policy shall be chargeable to income tax. Therefore, assessee should have credited the sum of Key Man Insurance Policies only on receipt basis and if once accounting entries were passed the amount of surrender value of Key Man Insurance Policies should have not been deducted from net profit in the computation of income. Needless to say

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when the amount will be actually received it will not become income of the assessee as the same is already existed in the books of account. On actual receipt of amount one asset will take place of another asset only by the same amount. Therefore, Surrender value of Key Man Insurance Policies Rs.73,00,052/- which has been deducted in computation of income is added back to the total income of the assessee. Penalty proceedings u/s.271(1)(c) of the Income tax Act, 1961 are initiated for concealment of income and furnishing inaccurate particulars of income.

(C) The assessee filed appeal in the office of the learned CIT(A) which was disposed of vide impugned appellate order dated 26/02/2020 of the learned CIT(A). The learned CIT(A) confirmed the aforesaid addition of Rs.73,00,052/- in the aforesaid impugned appellate order. The present appeal has been filed by the assessee against the aforesaid impugned order dated 26/02/2020 of the learned CIT(A).

(D) In the course of appellate proceedings in Income Tax Appellate Tribunal, following particulars were filed from the assessee's side:

Index to Paper Book :-

Serial No.	Description
1	Copy of Reason to Believe
2	Copy of Notice u/s 148
3	Copy of letter for providing Reason to Believe
4	Copy of reply of Notice u/s 148
5	Copy of reply on Keyman Insurance Policies during assessment proceedings u/s 143(3)
6	Copy of letter in which we had objected the reason as preliminary objection
7	Copy of written submissions
8	Copy of Computation of Income
9	Copy of Balance Sheet as at 31.03.2011
10	Copy of order of High Court of Gujarat in the case of Vodafone West Ltd. vs ACIT
11	Copy of order of High Court of Gujarat in the case of Cadila Healthcare Ltd. vs ACIT & ANR.
12	Copy of order of High Court Gujarat in the case of Jagat Jayantilal Parikh vs DCIT
13	Copy of order of Supreme Court of India in the case of CIT vs Kelvinator of India Ltd.
14	Copy of order of ITAT, Lucknow AY 2009-10 in the own case of assessee
15	Copy of order of ITAT, Lucknow AY 2010-11 in the own case of assessee
16	Copy of Reason to Believe for AY 2009-10 on similar reason
17	Copy of Reason to Believe for AY 2010-11 on similar reason
18	Copy of order of Hon'ble ITAT in the own case of assessee for AY 2011-12 adjudicated on similar ground of AY 2012-13

(D.1) At the time of hearing before us, learned A.R. for the assessee contended that reopening of the assessment vide aforesaid notice dated 29/03/2016 u/s 148 of the Act was unjustified and invalid. He further contended that the aforesaid assessment order u/s 143(3)/147 of the Act, which was passed in consequent upon reassessment proceedings, which were invalid, should be annulled. In this regard he placed reliance on order dated 28/08/2017 of Coordinate Bench of ITAT, Lucknow in assessee's own case vide I.T.A. No.119/Lkw/2017, for assessment year 2009-10, relevant portion of which is reproduced as under:-

3. It is pertinent to note that the present appeal was heard alongwith ITA No.119/LKW/2017 for AY 2009-10, which was disposed of vide Tribunal order dated 28.07.2017; however, for some reasons, the present appeal could not be adjudicated upon. We find that the facts, issues and grounds raised by the assessee in the present appeal are identical to the case of assessee for AY 2009-10 and we also observe that the Tribunal has quashed the reassessment order framed by the Assessing Officer under Section 143(3)/251/147 of the Act for Assessment Year 2009-10, vide its order dated 28th July 2017 in ITA No.119/LKW/2017, by observing as under:-

"8. We have heard the rival contentions and perused the material placed on record. We observe that the reassessment proceedings have been initiated by the Revenue authorities mainly on the basis of remarks of audit party. We find that after receipt of notice under Section 148 of the Act, the assessee-company requested the Assessing Officer to furnish reasons recorded for issuance of notice under Section 148 of the Act and in response thereto, the assessee was served with the copy of the "reasons recorded" dated 30.03.2014 by the ld. Assessing Officer and the relevant paragraph of the same reads as under:-

"In view of the Revenue Audit Party and facts of the case I have reason to believe that income of Rs.29,96,86,196/- chargeable to tax in the case of the assessee has escaped assessment. Therefore, proceedings u/s 147 of the Income-tax Act, 1961 is initiated against the assessee to assess the escaped

income. In this regard approval for issue of notice u/s 148 of the Income-tax Act, 1961 has been obtained from Ld. Commissioner of Income-tax, Bareilly vide his officer letter F.No. CIT/Bly/approval u/s 148/2013-14 dated 28.03.2014. Issue notice u/s 148 of the Income-tax Act, 1961 to the assessee for the Assessment Year 2009-10."

From the above, it is clear that the reopening of the assessment under Section 147 of the Act was solely made on the basis of objection of audit party. Therefore, the judgment of Hon'ble Supreme Court in the case of Indian & Eastern Newspaper Society vs. CIT [1979] 119 ITR 996 (SC), as relied upon by the assessee, is squarely applicable to the case of the assessee for the proposition that the opinion of an internal audit party of the income-tax department on a point of law cannot be regarded as "information" within the meaning of s. 147(b) of the I.T. Act, 1961, for the purpose of reopening an assessment. Further, the above view gets fortified by the judgment of Hon'ble Delhi High Court in the case of Sun Pharmaceuticals Industries Limited vs. DCIT, [2016] 381 ITR 387 (Delhi) and judgment of Hon'ble Bombay High Court in the case of Reliance Industries Limited [2016] 382 ITR 574 (Bom). The relevant held portions of the aforesaid judgments are as under:-

i) ***Indian & Eastern Newspaper Society vs. CIT, [1979] 119 ITR 996 (SC)***

REASSESSMENT – IN CONSEQUENCE OF "INFORMATION" – INFORMATION AS TO "LAW" – OPINION OF INTERNAL AUDIT PARTY ON A POINT OF LAW – DOES NOT AMOUNT TO "INFORMATION" – INCOME-TAX ACT, 1961, s. 147(b) – COMPTROLLER AND AUDITOR-GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971, s. 16 – CIRCULAR OF CENTRAL BOARD NO. 14/19/56-II DATED JULY 28, 1960, PARAS. 2, 4.

The opinion of an internal audit party of the income-tax department on a point of law cannot be regarded as "information" within the meaning of s. 147(b) of the I.T. Act, 1961, for the purpose of reopening an assessment. But although an audit party does not possess the power to pronounce on the law, it nevertheless may draw the attention of the ITO to it. Law is one thing, and its communication another. If the distinction between the source of the law and the communication of the law is carefully maintained, the confusion which often results in applying s. 147(b) may be avoided. While the law may be enacted or laid down only by a person or body with authority in that behalf, the knowledge or awareness of the law may be communicated by anyone. No authority is required for the purpose. That part alone of the note of an audit party which mentions the law which escaped the notice of the ITO constitutes "information within the meaning of s. 147(b); the part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be

taken into account by the ITO. In every case, the ITO must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. the basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. The true evaluation of the law in its bearing on the assessment must be made directly and solely by the ITO.

In every case, a declaration or exposition to be law, must be a creation by a formal source, either legislative or judicial authority. A statement by a person or body not competent to create or define the law cannot be regarded as law. The suggested interpretation of enacted legislation and the elaboration of legal principles in text books and journals do not enjoy the status of law. They are merely opinions and, at best, evidence in regard to the state of law and in themselves possess no binding effect as law. The forensic submissions of professional lawyers and the seminal activities of legal academics enjoy no higher status.

The assessee society registered under the Companies Act, a professional association of newspapers established with the principal object of promoting the welfare and interest of all newspapers, owned a building in which a conference hall and rooms were let out on rent to its members as well as to outsiders and also provided certain services to its members. All along the assessee's income from that source was assessed to tax as income from business and it was so assessed for the assessment years 1960-61 to 1963-64 also. In the course of audit, an internal audit party expressed the view that the money realised by the assessee on account of the occupation of its conference hall and rooms should have been assessed under the head "Income from property" and not as business income. Treating the contents of the audit report as "information", the ITO initiated reassessment proceedings for those four years under s. 147(b). On appeal, the AAC held that it could not in law be said that the ITO had any "information" in his possession enabling him to take action under s. 147(b), but, on further appeal, the Tribunal, after noticing a difference of opinion between the High Courts, followed the decision of the Delhi High Court in the case of Smt. Chand Kanwarji [1975] 84 ITR 584, and held that an internal audit report could be regarded as "information". On a direct reference to the Supreme Court:

Held, that the opinion of the audit party on a point of law could not be regarded as "information" enabling the ITO to initiate reassessment proceedings under s. 147(b). The ITO had, when he made the original assessment, considered the provisions of Ss. 9 and 10 of the Indian I.T. Act, 1922. Any different view taken by him afterwards on the application

of those provisions would amount to a change of opinion on material already considered by him.

The proposition in the decision of the Supreme Court in the case of Kalyanji Mavji and Co. [1976] 102 ITR 287, to the effect that a case where income had escaped assessment due to "oversight, inadvertence or mistake" of the ITO must fall within s. 34(1)(b) of the Indian I.T. Act, 1922, is stated too widely and travels farther than the statute warrants in so far as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the ITO discovers that he has committed an error in consequence of which income has escaped assessment, it is open to him to reopen the assessment. An error discovered on a reconsideration of the same material (and no more) does not give him that power.

ii) ***Sun Pharmaceuticals Industries Limited vs. DCIT, [2016] 381 ITR 387 (Delhi)***

Held that …

- *In the present case, the assessee had already made a full and true disclosure of all the relevant materials in the first instance when the original assessment was framed. This included the books of account, tax audit reports etc. The return was picked up for scrutiny and after questionnaire was answered to the Assessing Officer's satisfaction by the assessee, the assessment was framed under section 143(3). In the circumstances, the reference by the Assessing Officer to Explanation 1 to section 147, was misconceived for the simple reason that once the original return was picked up for scrutiny and the accounts and other documents were subjected to a detailed examination by the Assessing Officer, the question of there being no full and true disclosure of the material facts did not arise. Significantly, the reasons for re-opening fail to mention which material was failed to be disclosed by the assessee. [Para 29]*

- *A reason for reopening of the assessment is that despite the assessee earning dividend which was treated as exempt under section 10(34), no disallowance of expenditure was made under section 14A. It is alleged that the assessee failed to produce details to show that no expenditure was incurred on earning of the said exempt income. [Para 30]*

- *It is seen that during the original assessment proceedings under section 143(3), there was a specific query raised by the Assessing Officer in the letter addressed to the assessee. The question required the assessee to give details of dividend exempt under section 10(34) received from HDFC along with copies of accounts. The assessee submitted detailed replies in this regard. [Para 31]*

- *Here again it requires to be observed that the reason for re-opening the assessment, fails to spell out the material that was failed to be fully and truly disclosed by the assessee. It is therefore, not possible to conclude that the jurisdictional 'trigger' for re-opening the assessment was present. [Para 32]*

- *In the present case apart from a bald statement at the end of the reasons that the assessee failed to truly disclose the material particulars, it is not pointed out which material particular was not disclosed in the course of the original assessment by the assessee. Consequently, the Court has no hesitation in holding that reason for reopening the assessment is based merely on a change of opinion and not on any tangible material warranting reopening of the assessment under section 147/148. [Para 34]*

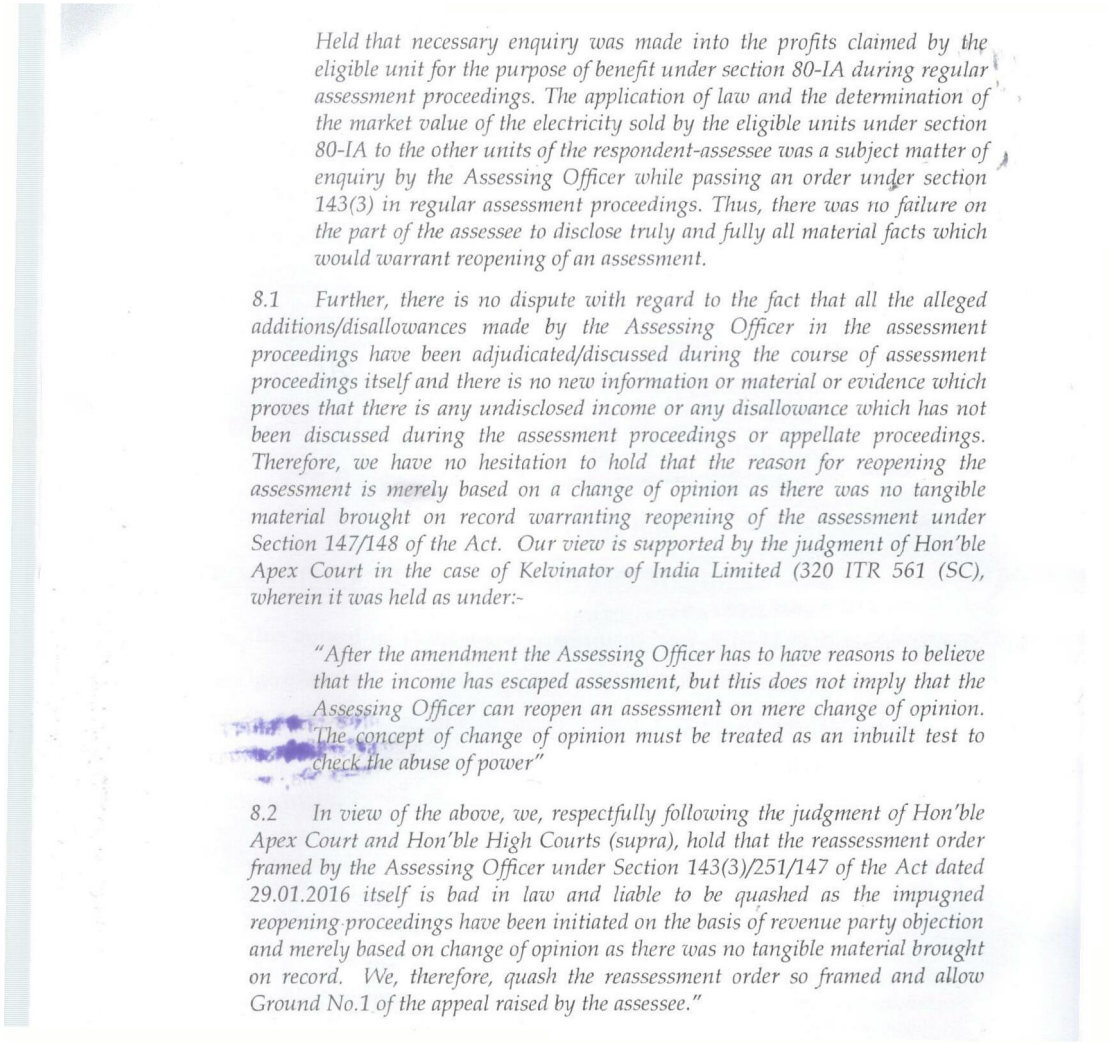
- *Another reason is that the assessee was unable to reconcile the receipts of USD 10369250 from 'R' USA despite various opportunities. In this regard the Assessing Officer had sought an explanation from the assessee by issuing a notice even prior to issuance of the notice under section 147/148. This information had been furnished to the Assessing Officer by the assessee by its letter. It was explained that USD 1,03,69,250/- was a total of six of the seven receipts and was, therefore, included in the sum of USD 1,13,17,472/-. A certificate was also provided from 'R' USA to the effect that no other amount was paid by them during the relevant period.*

- *The explanation offered by the assessee in its reply that the said amount was included in the amount already disclosed was obviously overlooked while seeking to re-open the assessment. Consequently, there appears to be no basis in the conclusion of the Assessing Officer that assessee was unable to reconcile the receipts from 'R' USA. Therefore, this reason is also unsustainable in law. [Para 35]*

- *For the above reasons, the impugned notice issued under section 148 and all proceedings consequential thereto are hereby quashed. [Para 36]*

(iii) *CIT vs. Reliance Industries Limited – [2016] 382 ITR 574 (Bom)*

The assessee-company had established captive power plants which generated and supplied power to its manufacturing unit. Deduction under section 80-IA in respect of profits on account said power plants was granted in original assessment year. Thereafter, the Assessing Officer reopened the assessment of the assessee in respect of deduction under section 80-IA on the ground the assessee had shown excess profit from generation of electricity than fixed by State Electricity Board to avail higher deduction under section 80-IA.



Held that necessary enquiry was made into the profits claimed by the eligible unit for the purpose of benefit under section 80-IA during regular assessment proceedings. The application of law and the determination of the market value of the electricity sold by the eligible units under section 80-IA to the other units of the respondent-assessee was a subject matter of enquiry by the Assessing Officer while passing an order under section 143(3) in regular assessment proceedings. Thus, there was no failure on the part of the assessee to disclose truly and fully all material facts which would warrant reopening of an assessment.

8.1 Further, there is no dispute with regard to the fact that all the alleged additions/disallowances made by the Assessing Officer in the assessment proceedings have been adjudicated/discussed during the course of assessment proceedings itself and there is no new information or material or evidence which proves that there is any undisclosed income or any disallowance which has not been discussed during the assessment proceedings or appellate proceedings. Therefore, we have no hesitation to hold that the reason for reopening the assessment is merely based on a change of opinion as there was no tangible material brought on record warranting reopening of the assessment under Section 147/148 of the Act. Our view is supported by the judgment of Hon'ble Apex Court in the case of Kelvinator of India Limited (320 ITR 561 (SC), wherein it was held as under:-

"After the amendment the Assessing Officer has to have reasons to believe that the 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 inbuilt test to check the abuse of power"

8.2 In view of the above, we, respectfully following the judgment of Hon'ble Apex Court and Hon'ble High Courts (supra), hold that the reassessment order framed by the Assessing Officer under Section 143(3)/251/147 of the Act dated 29.01.2016 itself is bad in law and liable to be quashed as the impugned reopening proceedings have been initiated on the basis of revenue party objection and merely based on change of opinion as there was no tangible material brought on record. We, therefore, quash the reassessment order so framed and allow Ground No.1 of the appeal raised by the assessee."

(D.2) Learned A.R. for the assessee submitted that identical view was taken by Coordinate Bench of the ITAT, Lucknow in assessee's own case for assessment year 2010-11 also in order dated 28/08/2017 in I.T.A. No.120/Lkw/2017. The learned A.R. for the assessee also took support of Vodafone West Ltd. vs ACIT354 ITR 520 (Guj) and Cadila Healthcare Ltd. vs. ACIT 335 ITR 393 (Guj) for the proposition that reopening of assessment proceedings beyond a period of four years from the end of the relevant assessment year was invalid when there was full and true disclosure on the part of the assessee. The learned A.R. for the assessee also placed reliance on Jagat Jayantilal Parikh vs. Dy.CIT 355 ITR 400 (Guj) for the proposition

that the assessment proceedings based on audit objection without independent application of mind and without absence of satisfaction of the Assessing Officer leading to independent belief of the Assessing Officer; were invalid. The learned A.R. for the assessee also drew support from CIT vs. Kelvinator of India Ltd. 228 CTR 488 (SC) for the proposition that reassessment proceedings based on "change of opinion" were invalid and that reasons recorded must have a live link with the formation of belief.

(D.3) On merits, learned A.R. for the assessee submitted that the addition has been made on the basis of lack of understanding of Keyman Insurance Policies. Under this policy, some key persons of the assessee are insured by the assessee company, and such insurance has a specified surrender value. The surrender value is received at the time of maturity of the insurance policy. The assessee received money against surrender value of such Keyman Insurance Policies, which matured during the year; and accounted for it in computation of income of the assessee. The learned A.R. for the assessee drew our attention to computation of income (placed at page 24 of the paper book) wherein receipt of Rs.10,80,70,726/- is included as assessee's income on account of receipts against surrender value of Keyman Insurance Policies which matured during the year. The learned A.R. for the assessee also submitted that this has been consistent method adopted by the assessee which was accepted by Department in earlier years as well as in later years. When the assessee offers the receipts against surrender value of Keyman Insurance Policies for tax at the time of maturity, the surrender value of Keyman Insurance Policies that have not matured could not be separately taxed, the learned A.R. for the assessee submitted. The learned A.R. for the assessee submitted that the addition of Rs.73,00,052/- being surrender value of Keyman Insurance Policies was totally unjustified and against law as it pertained to surrender value of policies which have not yet

matured during the year; when the assessee has already offered Rs.10,80,70,726/- as income on account of receipts against surrender value of Keyman Insurance Policies, which matured during the year. In this regard, he also drew our attention to submissions made before the Assessing Officer during assessment proceedings, which are reproduced below for the ease of reference:

7. We have to inform that we had taken 5 Kayman Insurance Policies in the name of our Directors during the Financial Year 2004-05 (A.Y. 2005-06) and since then and upto A.Y. 2010-11 we had paid Insurance Premium as under:-

Assessment Year	Premium paid (Rs.)	
2005-06	6,99,56,922.00	See Annexure '5'
2006-07	6,99,26,494.00	See Annexure '6'
2007-08	2,02,56,922.00	See Annexure '7'
2008-09	4,00,00,000.00	See Annexure '8'
2009-10	5,50,00,000.00	See Annexure '9'
2010-11	5,03,00,000.00	See Annexure '10'

The relevant pages of our Profit & Loss A/c showing above expenditure are enclosed herewith for your ready reference (as per **Annexures 5 to 10)** mentioned above).

All the premium paid by us from the assessment year 2005-06 till 2010-11 was claimed by us as deduction from our income and the same was allowed by the Assessing Officer.

Withdrawal/Settlement of Claims:

Assessment Year	Amount (Rs.)	
2008-09	11,30,00,000.00	Settlement of claim due to death of our Director (As per **Annexure–11)**
2009-10	1,60,00,000.00	Withdrawal by us (As per **Annexure-12)**

The above refund/settlement of claim due to death of Director was taken by us in our income in the profit and loss account of the concerned year. In support of this we are enclosing the relevant page of our Profit & Loss A/c for the concerned assessment year as per **Annexure-13 & 14** mentioned above.

As we had credited the above amount received from Insurance Company in our income, we had not deducted the same from the computation of income of the concerned assessment year. In other words we had offered the same as income for calculation of Income Tax. The copies of chart showing computation of income for A.Y. 2008-09 **(Annexure-15)** & A.Y. 2009-10 **(Annexure-16)** are enclosed herewith.

From the above it is very clear that we have been claiming the insurance premium as deduction from our income and we have been offering the actual receipts whether by way of settlement of claims or partially redemption of unit as income for calculation of Income Tax.

In respect of keyman insurance policies we have credited in the P & L account amount on the basis of surrender value of keyman policies to show the healthy position of our Company. However, the entire amount had not been received by us. Therefore, entire amount credited in P & L account is not taxable on account of credited the surrender value in our books of accounts. The taxable amount is only to the extent of amount received by us during the previous years. The provision in this regard is very clear. The operative portion of S. 28 vide clause (vi) which deem the amount received as business income reads as follows (with highlights added by us):

D.—Profits and gains of business or profession

Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

From the above clause it is very clear that any sum received under a keyman insurance policy is considered as business income. The precondition is that sum should have been received by the assessee. The receipt can be out of principal sums or bonus allocated in respect of keyman insurance policy.

The keyman insurance is in fact a financial instrument just to allow benefit by way of a tax deferment scheme. Under this scheme the sum paid in one year is allowed, and the sum received under keyman policy is taxable. This is specially useful financing tool for companies which are engaged in cyclical business where profitability is very uncertain. The scheme of keyman policies allowed deduction in the year of payment and taxable receipt in the year of receipt of money under keyman policy.

Therefore, adjustment in our computation of income so as to include only sum received actually and not on notional basis as income is correct. The balance amount has been taken / will be taken as income as and when received. This is as per standard practice consistently followed by us and is also as per clear provisions of S.28 as discussed above.

(D.4) The learned A.R. for the assessee also drew our attention to letter dated 17/06/2016, addressed to the Assessing Officer, containing preliminary objections to proceedings u/s 147/148 of the Act, which is reproduced as under:

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L.H. Sugar Factories Ltd. PILIBHIT U.P.

GMF: 2073

17-06-2016

To,
The Dy. Commissioner Of Income Tax,
Circle – II,
Bareilly (UP)

Dear Sir,

A. Sub.: Preliminary Objection to proceedings U/s 147 / 148 for A.Y. 2012-2013.

Please refer to your Notice U/s 148 of the Income Tax Act 1961 dated 29.03.2016 and the reasons recorded for initiating the proceedings U/s 147/148 of the Act. The proceedings are without valid jurisdiction and are contrary to the provisions of Section 147 and 148 of the Act. We submit as under:-

1. The Notice U/s 148 and the reasons to believe are recorded by the Dy. Commissioner, Income Tax, Circle II, Bareilly (Yourself), while the Assessment Order U/s 143 (3) of the Act was passed by learned Joint Commissioner of Income Tax, Range II, Bareilly on 23rd March 2015. The reason to believe that the income has escaped assessment should be in accordance with the satisfaction of the authority who has passed the assessment order. The satisfaction envisages in Section 147 is an objective satisfaction of the Assessing Officer himself. It cannot be any other authority. In any case an officer who is lower in authority than the officer who has passed the original order cannot revise or form a different view than the senior authority who has passed the assessment order.

2. The reason to believe in the present case is recorded pursuant to audit objections raised by the revenue auditors. The audit objections were duly considered by the Income Tax Department and objections/clarifications were submitted to the revenue auditors by the Department. In this situation it is obvious and clear that the reasons to believe as recorded in the present case does not arise out of the satisfaction / believe of the assessing officer himself but the same is on behest of revenue auditors and other authority. This is not permitted in law as held in large number of case laws including the following:

Indian & Eastern Newspaper Society Vs CIT (1979) 119 ITR 9961 (SC).

Delay 17.06.16

L H Sugar Factories Ltd.
Regd. Office & Works: Civil Lines, Pilibhit,(U.P.) 262001
Phone: 05882 255867 / 256053, Fax: 05882 255518
Email: mail@lhsugar.com
CIN NO. U15422UP1933PLC000489

LHSF

L.H. Sugar Factories Ltd. PILIBHIT U.P.

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3. With reference to excess claim of deduction U/s 80 1A at Rs. 2,98,40,444/- as mentioned in the reason to believe we further submit as under:-

(i) The issue of claim of deduction U/s 80 1A was considered in detail during the assessment proceedings U/s 143 (3) which are detailed as under:

(a) Claim U/s 80 1A of Rs. 16,40,53,644/- was separately claimed in the return of income under the schedule VI-A (deduction under chapter VI –A.)

(b) Separate audit report in Form No. 10 CCB in accordance with rule 10 BBB was submitted during the proceedings which as per inter alia mentioned the Computation of deduction U/s 80 1A, including adjustment of depreciation as per Profit and Loss Account Rs. 5,28,30,621/- and depreciation as per Income Tax return Rs. 67,61,511/-

(c) Separate Balance sheet, Profit & Loss Account and Depreciation Chart of Co-generation unit in respect of which deduction U/s 80 IA was claimed duly certified by Chartered Accountant, was also submitted for your perusal and verification.

(d) Depreciation Chart as per Income Tax Rules was separately submitted as part of Form No. 3 CD, duly certified by Chartered Accountant. This Depreciation Chart also mentioned separately the depreciation related to Co-generation unit.

(e) Specific queries were raised during the assessment proceedings regarding allowability of deductions U/s 80 1A, and all the aforesaid papers, information, computation sheets, audit report etc. were submitted for the consideration of assessing officer which has been duly verified and our claim for deduction U/s 80 1 A was allowed at Rs. 16,40,53,644/-.

following observations were made in the assessment order:-

I. **The claim of assessee is verified with reference to records produced and assessee appears to be eligible for deduction u/s 80 IA as it has complied with the conditions mentioned therein. Report of Chartered Accountant is also filed. Therefore claim of deduction u/s 80 IA is allowed at Rs. 16,40,53,644/- as per the calculation in the report of Chartered Accountant.** In Computation of income claim of assessee

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was lessor on account of having lessor profits. Accordingly the total income is worked out as under:-

Gross Total Income	:	36,24,11,648/-
Less : Deduction u/s 80 IA:		16,40,53,644/-
		19,83,58,004/-

(ii) From the aforesaid observations in the Assessment Order, it is obvious and clear that during the assessment proceedings the calculation of deduction u/s 80 1A as mentioned in the report of Chartered Accountants were duly considered and verified by the learned Assessing Officer with reference to the depreciation chart as per books of accounts and as per Income Tax Rules available on record.

(iii) The reason of believe is based on the same facts, material and information which was duly considered and verified by the learned Assessing Officer and therefore, the present case of proceedings u/s 147 is merely a **Change of Opinion** on the same facts and information. This is not permitted in law.

(iv) In the present case, the cost of Assets, opening WDV of the Assets, Additions made during the year and the rate of depreciation etc are not under dispute. Therefore, the amount of depreciation allowable during the year is just a matter of calculation which is also not in dispute. However, in the reason to believe recorded by you a presumptive hypothesis has been adopted to the affect that the amount of depreciation in respect of Co-generation unit and other units should be in the same proportion under the Companies Act (as per books) and under Income Tax Rules. This presumption is absurd and irrelevant as the depreciation is calculated in accordance with the respective rules under Income Tax Law and the Company Law. The amount of depreciation is bound to be different as the rates of depreciation and the method of depreciation in both the laws are different. It is on record and been duly verified in successive assessment years that the rate of depreciation on Co-generation unit as per tax laws is 80% on WDV basis as compared to company law rate of depreciation which is 5.28% on SLM basis. Thus the opening WDV as per tax laws is substantially lower than the WDV as per Company law (Books). This fact is obvious and been consistently verified by all the successive Assessing Officers. Therefore, it is clear that no reasonable person can form a belief as has been recorded in the present case. The satisfaction recorded is absurd, irrelevant and

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malaise which is recorded just to satisfy the revenue auditors and superior authorities.

4. With reference to deduction of Rs. 73,00,052/- in respect of surrender value of key man insurance policies in the computation of income we submit as under:-

(i) In this respect also the reasons have been recorded on the behest of audit objections raised by revenue auditors and the reason recorded are not independent opinion of the Assessing officer on its own. This is not permissible in the law as narrated in the Para 2 aforesaid .

(ii) The specific query was raised in this respect during the assessment proceedings and a detailed reply was submitted on 05.02.2015 (copy of our submission during assessment proceedings is attached.)After considering the said reply the claim of the assessee regarding non taxability of Key man surrender value was accepted.

(iii) In view of aforesaid it is clear that the issue of deduction of Rs. 73,00,052/- has been duly considered during the assessment proceedings and now there is no new material or information in your possession to form a belief other than that in the assessment order. This is a clear **change of opinion** on the same facts on record. This is not permissible in the law as held in various judicial decisions including by Hon'ble Supreme Court in CIT Vs Kelvinator of India Ltd., (2010) 320 ITR 561 (SC)

B. Without Prejudice to the aforesaid, we submit on merit as under :

1. **Deduction u/s 80 1A:-** The only objection in this respect is that the allocation of depreciation as per books of accounts and as per Income Tax Rules in respect of Co-generation unit and other units of the Company are not proportionate. We once again enclose the calculation of deduction u/s 80 1A, depreciation chart of the Cogeneration. unit as per books of accounts and depreciation chart as per Income Tax Rules. It may be observed that the opening WDV as per books of accounts of co-generation unit was Rs. 62,15,62,804/- while the opening WDV as per Income Tax Rule of the same assets is Rs. 36,93,520/-. It is so because the rate of depreciation as per Income Tax Rules is 80% on WDV method while in the books of accounts the rate of depreciation is generally 5.28% on SLM.

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Since in the Income Tax, major depreciation has already been allowed in early years @ 80%. the opening WDV and consequent depreciation during the year is considerably lower than the depreciation as per books of accounts. The depreciation chart as per books of accounts and as per Income Tax Rules as submitted by us are dully certified by the statutory auditors of the company.

In view of the aforesaid, it is clear that the depreciation is correctly claimed by calculating for Claim U/s 80 1A and therefore, you are requested to drop for reassessment proceedings

2. **Surrender Value of Keyman Insurance Policy:-**

i. We have to submit that we had taken five Keyman Insurance Policies in the name of our Directors during the Financial Year-2004-05 (Assessment Year-2005-06) and since then and upto Assessment Year 2011-12 we had paid Insurance Premium as under :-

Asstt.Year	Premium Paid-(Rs.)
2005-06	6,99,56,922/-
2006-07	6,99,26,494/-
2007-08	2,02,56,922/-
2008-09	4,00,00,000/-
2009-10	5,50,00,000/-
2010-11	5,03,00,000/-
2011-12	2,40,000/-

All the premium paid by us from the Assessment Year 2005-06 till 2011-12 was claimed by us as deduction from our income and the same was allowed by the Assessing Officer;

Withdrawal/ Settlement of Claims :-

Asstt.Year	Amount-(Rs.)
2008-09	11,30,00,000/-
2009-10	1,60,00,000/-
2011-12	9,76,37,688/-
2012-13	10,80,70,726/-
2015-16	11,28,85,441/-

ii. The above refund/ settlement of claim due to death of Director and for our financial needs was taken by us in our income in the profit & loss account of the concerned year and offered the same as income for calculation of income tax.

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The income cannot arise unless the Right in the asset (Policies) is exercised, surrendered, transferred or claimed from the insurance company. No such transaction has entered during the year. Merely entries in the books of accounts does not give rise to any income or expense.

viii. In fact during the year and in subsequent years the amounts received on surrender/ claim of the same policies have been offered to income tax and accepted by the department. The details are as under :-

Asstt.Years	Amount-(Rs.)
2008-09	11,30,00,000/-
2009-10	1,60,00,000/-
2011-12	9,76,37,688/-
2012-13	10,80,70,726/-
2015-16	11,28,85,441/-

ix. In case the surrender value accounted during the year is held to be taxable during the year the same shall result in double taxation of the same amount as it is already taxed as stated aforesaid.

x. Therefore, adjustment in our computation of income so as to include only sum received actually and not on notional basis as income is correct. The balance amount has been taken/ will be taken as income as and when received. This is as per standard practice consistently followed by us and is also as per clear provisions of Sec-28 as discussed above.

In view of our above submissions we request to kindly drop the proceedings U/s 147 / 148 and confirm to us.

Thanking You.

Yours Faithfully
For L.H. Sugar Factories Limited

Y. K. Agarwal
General Manager(Finance)

(D.5) The learned A.R. for the assessee further drew our attention to written submissions filed during appellate proceedings in the office of the learned CIT(A), relevant portion of which is reproduced as under:

ii) It was noticed and observed that the proceedings under Section 147 have been initiated by the learned AO in view of the observations of the Revenue Audit and after obtaining the approval of Joint Commissioner of income tax.

iii) A preliminary objection was raised before the learned AO and it was stated that "we would also like to inform that we are of the view that the reassessment cannot be done on the basis of remarks of audit party". In support of our view we are enclosing herewith the copies of various orders delivered by High Court of Gujarat and Supreme Court of India.

a) Vodafone West Ltd. Vs Assistant Commissioner of Income Tax (2013) 354 ITR 520 (Gujarat)

b) Cadila Healthcare Ltd. Vs Assistant Commissioner of Income Tax & Anr.(2013) 355 ITR 393 (Gujarat)

c) Jagat Jayantilal Parikh Vs Deputy Commissioner of Income Tax (2013) 355 ITR 400 (Gujarat)

The same view has also been upheld by Supreme Court of India in the matter of Commissioner of Income Tax vs Kelvinator of India Ltd.(2010) 320 ITR 561.

From the above orders it is clear that audit party's view regarding interpretation of legal provision would not constitute the reason for the issue of notice. It is the assessing officer issuing the notice under Section 148 who must himself be satisfied about the correctness of audit report.

The learned AO however proceeded and passed the assessment order without considering the preliminary objections and without passing any order to dispose the objection raised by the assessee company. Income Tax Return for assessment year 2012-13 was also filed u/s 148 and copy of return was submitted to the AO.

iv) The following issue was raised by the learned AO for initiating the proceedings under Section 147/148 of Income Tax Act, 1961:-

Assessee credited in profit and loss account an amount of Rs. 73,00,052/- being surrender value of the five Keyman Insurance Policies but while computing the income the assessee reduced the same amount which was allowed by the department. However , now according to the learned AO and the audit party, as per the provisions of Section 28 (vi) surrender value of Keyman Insurance Policy is to be treated as income of the assessee.

v) Therefore, it is clear that the issue now raised by the learned AO under Section-147 has already been adjudicated and accepted by the department.

vi) With reference to the claim of taxability of surrender amount of Keyman Insurance Policy accounted for in our books of accounts as income but deducted in the computation of income, specific querry was raised during the regular assessment proceedings and all the facts were submitted during the proceedings by the letter dt. 5th February, 2015. After due consideration of our submission the assessment order was passed under Section-143(3) of Income Tax Act, 1961 and our claim for deduction of surrender value in the computation of Income was accepted by the learned AO.

vii) In view of aforesaid it may be observed that:-

a) The reasons to belief as recorded under Section-147 of Income Tax Act, 1961 is not the belief of the learned AO himself but the same is based on the view of the Revenue Audit Party.

b) The issue of taxability of the surrender value of Keyman Insurance Policy amounting to Rs. 73,00,052/- has been duly considered by the learned AO during the original assessment proceedings and have been allowed by him. The change of opinion is not permissible for re-assessment under Section-147/148 of the Income Tax Act,1961 and

c) The learned AO has not disposed the objections raised by the assessee company against the proceedings under Section-147/148 of the Act by any speaking order. Thus, the assessment proceedings and the assessment order are void and are liable to be quashed as held by Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd.(2002) 125 Taxman 963 (SC) /(2003) 259 ITR 19 (SC) /(2003) 179 CTR 11 (SC) as under:-**

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

viii) In view of aforesaid facts it is submitted that the jurisdiction assumed by the learned AO under Section- 147 of Income Tax Act, 1961 in the present case is invalid and therefore, the assessment order passed by the learned AO is void ab-initio.

Ground No. 2 read as follows :

(a) Because the learned DCIT has erred in law and on facts by disallowing the deduction of surrender value of Keyman Insurance Policies amounting to Rs. 73,00,052/- without appreciating the facts that the amount was neither received nor was receivable during the relevant previous year.

(b) Because the learned DCIT has erred in law and on facts by not allowing deduction of Rs.10,80,70,726/- by way of deduction in our income towards receipts against Keyman Insurance Policies during the year in our computation of income. The Assessing officer should have allowed the deduction of Rs. 10,80,70,726/- from our income as we had taken the actual receipt of Rs. 10,80,70,726/- in our computation of income. But the Assessing officer has added Rs. 73,00,052/- being the increase in surrender value in his assessment order dated 24th November,2016 therefore he should have deduct Rs. 10,80,70,726/- in his computation of income.

Our submissions as under:-

(2) We have to submit that we had taken five Keyman Insurance Policies in the name of our Directors during the Financial year 2004-05(Assessment Year 2005-06) and since then and up to Assessment Year 2011-12 we had paid Insurance Premium as under:-

Asstt. Year	Premium Paid-(Rs.)
2005-06	6,99,56,922/-
2006-07	6,99,26,494/-
2007-08	2,02,56,922/-
2008-09	4,00,00,000/-
2009-10	5,50,00,000/-
2010-11	5,03,00,000/-
2011-12	2,40,000/-

i) All the premium paid by us from the Assessment Year 2005-06 till 2011-12 was claimed by us as deduction from our income and the same was allowed by the Assessing officer copies of relevant schedules are enclosed;

ii) Withdrawal/ Settlement of Claims :-

We had got amount from the Insurance Company as under during:-

Asstt. Year	Amount-(Rs.)
2008-09	11,30,00,000/-
2009-10	1,60,00,000/-
2011-12	9,76,37,688/-
2012-13	10,80,70,726/-
2015-16	11,28,85,441/-

iii) The above settlement of claim due to death of Director and refund of amount for our financial needs was taken by us in our income in the profit & loss account of the concerned year and we had offered the same as income for calculation of income tax.

iv) From the above it is very clear that we have been claiming the insurance premium as deduction from our income and we have been offering the actual receipts whether by way of settlement of claims or partially redemption of unit as income for calculation of income tax.

v) During the year In respect of Keyman Insurance Policies we have credited in the P & L Account Rs. 73,00,052/- on the basis of surrender value of Keyman Policies to show the healthy position of our company. However, the entire amount had not been received by us. Therefore, entire amount credited in P & L Account is not taxable only on account of credit of the surrender value in our books of accounts. The taxable amount is only to the extent of amount received by us during the previous years. The provision in this regard is very clear. The operative portion of Sec-28 vide Clause (vi) which deem the amount received as business income reads as follows;

"Profits and Gains of Business or Profession :-

28. The following income shall be chargeable to income tax under the head "Profits & Gains of Business or Profession".

(vi) any sum received under a Keyman Insurance Policy including the sum allocated by way of bonus on such policy".

vi) From the above clause it is very clear that any sum received under a Keyman Insurance Policy is considered as business income. The precondition is that sum should have been received by the assessee. The receipt can be out of principal sums or bonus allocated in respect of Keyman Insurance Policy

vii) It was submitted before the learned AO that the Keyman Policies have not been surrendered during the year. Therefore, no amount is receivable or accrued to be received during the year. Thus, the same cannot be taxed in the year under consideration even if it is presumed that the amounts receivable but not received

are to be taxed in respect of Keyman Insurance Policies as the same are not yet receivable or due to be received.

viii) The accounting of the surrender value during the year by debiting to Investment Account and Crediting to Profit & Loss Account is merely revaluation and restatement of a Right in the policies of the assessee company. The credit on account of revaluation of any right or asset is not an income either in economic parlance or in taxation statues. The income can not arise unless the Right in the asset (Policies) is exercised, surrendered, transferred or claimed from the insurance company. No such transaction has entered during the year. Merely entries in the books of accounts does not give rise to any income or expense.

ix) In fact during the year and in subsequent years the amounts received on surrender/ claim of the same policies have been offered to income tax and accepted by the department. The details are as under :-

Asstt.Years	Amount-(Rs.)
2008-09	11,30,00,000/-
2009-10	1,60,00,000/-
2011-12	9,76,37,688/-
2012-13	10,80,70,726/-
2015-16	11,28,85,441/-

x) In case the surrender value accounted during the year is held to be taxable during the year the same shall result in double taxation of the same amount as it is already taxed as stated aforesaid.

xi) Therefore, adjustment in our computation of income so as to include only sum received actually and not on notional basis as income is correct system. The balance amount has been taken/ will be taken as income as and when received. This is as per standard practice consistently followed by us and is also as per clear provisions of Sec-28 as discussed above.

xii) While filing our return of income for the assessment year 2012-13 we had added a sum of Rs. 10,80,70,726/- in our income towards receipts against Keyman Insurance Policies during the year in our computation of income. This was the amount which was received by us from the Insurance companies against redemption of some units / policies against Keyman Insurance Policies taken by us and we had been adopting the accounting system of taking into our income the actual receipt against keyman insurance policies and the increase in surrender value of keyman policies taken by us in our Profit & Loss account in our books of accounts was being deducted in our computation of income. The computation chart for Assessment Year 2012-13 is enclosed.

During the year we had accounted for increase in surrender value of Keyman Insurance Policies for Rs. 73,00,052/- in our Balance Sheet and Profit & Loss account for the year ending 31st March,2012 (A.Y. 2012-13) and therefore we had deducted this amount of Rs. 73,00,052/- from our computation of income as we had taken the actual receipt of Rs. 10,80,70,726/- in our computation of income. But AO have not deducted this amount of Rs. 10,80,70,726/- being actual receipt in our income in assessment order dated 24th November 2016, while AO has added Rs. 73,00,052/- being the increase in surrender value in assessment order dated 24th November 2016. Therefore, you are requested to allow deduction of Rs. 10,80,70,726/- since both the amounts cannot be added in our income. (Actual receipt of Rs. 10,80,70,726/- taken by us in our computation of income at the time of filing of return and increase in value of Rs. 73,00,052/- in surrender value of Keyman Insurance Policies)

(D.6) In view of the foregoing, learned A.R. for the assessee submitted that the addition of aforesaid amount of Rs.73,00,052/- is unjustified even on merits.

(E) Learned Departmental Representative placed reliance on the assessment order and the impugned appellate order of learned CIT(A).

(F) We have heard both sides. We have perused the materials on record. It is not in dispute that the assessee has included the aforesaid amount of Rs.10,80,70,726/- in taxable income being surrender value of Keyman Insurance Policies which matured during the year. Once the receipts against the Keyman Insurance Policies have been brought to tax by Revenue on the basis of surrender value of matured policies; the addition of aforesaid amount of Rs.73,00,052/- on account of surrender value of Keyman Insurance Policies which have not matured; is not justified. Further the surrender value of Keyman Insurance Policies, which would mature in future, has not yet accrued or arisen. Essentially it is a notional figure, and notional income cannot be brought to tax. What is liable to be taxed is the real income of the assessee and not the notional income. Therefore, we are in agreement with the submissions made by learned A.R. for the assessee that on merits the aforesaid addition of Rs.73,00,052/- (being surrender value of policies that are yet to mature) is unjustified, when the aforesaid amount of Rs.10,80,70,726/- has already been brought to tax on account of receipt of surrender value of Keyman Insurance Policies that matured during the year. We, therefore, direct the Assessing Officer to delete the aforesaid addition of Rs.73,00,052/-. Accordingly, ground No. 3 of appeal is allowed.

(G) Ground No. 1 along with sub grounds (a), (b) and (c) are related to validity of the reassessment proceedings u/s 147 read with section 148 of the Act. Further, ground No. 2 of appeal is regarding the objection raised

by the assessee against proceedings u/s 147/148 of the Act. These grounds are now merely academic in nature, in the light of our direction to the Assessing Officer in foregoing paragraph No. (F) of this order to delete the aforesaid addition of Rs.73,00,052/-. Being merely academic, these grounds are not decided.

(H) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 15/10/2025)

Sd/.	**Sd/.**
(KUL BHARAT)	**(ANADEE NATH MISSHRA)**
Vice President	**Accountant Member**

Dated:15/10/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. D.R. ITAT, Lucknow