

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

**BEFORE SHRI.LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI. KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1181/Bang/2025
Assessment Year : 2013-14

ACIT, Central Circle, Bellary.	Vs.	M/s. Virgo Properties Pvt. Ltd., No.5, Plaza House, Thirumurthy Street, T. Nagar, Chennai – 600 017. <b>PAN : ANOPS 2178 Q</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Sridhar, CA
Revenue by	:	Shri. Muthu Shankar, CIT(DR)(ITAT), Bangalore.

Date of hearing	:	29.10.2025
Date of Pronouncement	:	21.11.2025

**ORDER**

***Per Laxmi Prasad Sahu, Accountant Member :***

This is an appeal filed by the Revenue against the Order passed by the learned CIT(A) - 2, Panaji, vide DIN : ITBA/APL/M/250/2024-25/1073435738(1) dated 19.02.2025 on the following grounds:

<p>(A) The Ld. CIT(A)-2, Panaji however has erred in not observing the fact that the AO made an addition of Rs.10,60,50,057/- on account of Long term capital gains by making re-calculation based on the material / documentary evidence available with the department in the reopened assessment order u/s 143(3) r.w.s 147 of the IT Act, 1961 dated 06/12/2019.</p>
<p>(B) The Ld. CIT(A)-2, Panaji however has erred in not observing the fact that the assessee company has not furnished any proofs/documents/details for cost of improvement claimed Rs.2,38,49,698/- &amp; Rs.10,31,416/- for the F.Y: 2011-12 and 2012-13 respectively either at the time of assessment proceedings u/s 143(3) or at the time of re-opened assessment proceedings u/s 143(3) r.w.s 147 of the IT Act, 1961.</p>
<p>(C) Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was correct in estimating the cost of improvement claimed Rs.2,38,49,698/- &amp; Rs.10,31,416/- for the F.Y: 2011-12 and 2012-13 respectively on the basis of additional evidence filed by the assessee during appellate proceedings without following the procedure laid down in Rule 46A of the IT Rules?</p>
<p>(D) Appellant craves leave to modify, amend or revise the above grounds of appeal and add further grounds of appeal, if necessary.</p>

2. Briefly stated facts of the case are that assessee company is in the business of property development, filed return of income on 29.03.2013 admitting income of Rs.5,29,40,890/-. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee and assessment was completed under section 143(3) of the Act on 29.03.2016 determining the income at Rs. 5,67,23,386.. Subsequently, on giving effect to CIT(A)'s Order dated 04.01.2018 in ITA Nos.11 and 257/CIT(A)-11/2016-17 assessed income was determined at Rs.5,29,40,890/- vide Order dated 27.02.2018. On perusal of records, it was found that the long term capital gain computed by the assessee company was not in order. Further, assessee company had sold vacant land to an extent of 30 cents situated at Perumbakkam village to M/s. Virgo Realtors Private Limited within 6 months from the date of purchase, which is liable for short term capital gain was not disclosed in the return filed for Assessment Year 2013-14. To assess the income escaped assessment, the case was reopened under section 148 of the Act after obtaining the approval/sanction from the Principal Commissioner of Income Tax - 3, Chennai. A notice under section 148 of the Act was issued to the assessee on 30.3.2019 requiring the assessee to file a return in the prescribed form for the said Assessment Year. Since, no return of income was filed by the assessee in response to notice under section 148 of the Act, a notice under section 142(1) dated 09.08.2019 issued calling for details. In response, assessee filed return of income under section 148 of the Act on 05.09.2019 declaring an income of Rs. 5,29,40,890/-. It was noted that assessee company sold vacant land to an extent of 1.265 acres situated at Kovilambakkam for Rs.23,05,21,200/-to M/s. Virgo Realtors Pvt. Ltd., vide sale agreement dated 03.05.2010. The whole amount and possession was handed over in financial year 2012-13 as per assessee's letter dated 19.03.2016. The sale deed for the above transaction was registered vide document No. 2408/2016 dated 09.03.2016. Since the possession was handed over and total amount received in the Financial Year

2012-13, the assessee admitted and offered Long Term Capital Gain to the tune of Rs.6,48,41,697/- after considering the Indexed Cost of Acquisition for Rs.13,87,62,210/- and Indexed Cost of Improvement for Rs.2,58,85,277/- in Financial Year 2011-12 and in Financial Year 2012-13 for Rs.10,31,416/-. After discussing the issue in detail, AO made addition to Long Term Capital Gain of Rs.10,60,50,057/- and accepted the issue regarding short term capital gain.

3. Aggrieved from the above Order, assessee filed appeal before learned CIT(A). The learned CIT(A), relying on the judgment in the case of CIT Vs. Kovai Maruthi Paper and Board P. Ltd., (294 ITR 0057), allowed appeal of the assessee observing that reopening issue was on the same materials which were available with the AO to pass Order under section 143(3) r.w.s. 147 of the Act and it is complete change of opinion without any tangible materials and also accepted additional documents and allowed the appeal of the assessee.

4. Aggrieved from the above Order, Revenue is in appeal before the Tribunal. The learned DR relied on the Order of AO and he has filed written synopsis which is as under:

**Para-1:** The appellant produced observation of the CIT(A)-2, Panaji wherein the CIT(A) allowed the appeal in respect of LTCG holding that the reassessment proceedings was initiated based on mere change of opinion without bringing any tangible material.

*"In view of the above, I am of the considerate opinion that it is a settled position that reassessment under sec.147 is only permissible if there is some fresh tangible material and not merely a change in the assessing officer's opinion on the same facts. The Doctrine of change of opinion refers to the situation where the assessing officer tries to reassess the income based on a different interpretation of the same 'facts and documents' which the assessing officer has*

already assessed in the original assessment. In the impugned case as well, the Ld. AO has carried out addition to Book profit which resulted into enhancement of tax base of the appellant and said enhancement was on account of same long term capital only. Thus, reopening assessment proceedings, on very same issue amounts to mere change in opinion and not permitted by law.

Accordingly, additional grounds of appeal are allowed'.

**Revenue's Response:**

In the course of original assessment proceedings, the AO called for basis and evidence for the working of LTCG for the land transferred claimed in the computation of total income which is reproduced as below:

Date	Particulars	Amount Rs.	Amount Rs.
26-01-2013	Date of sale of land(GLV-22,04,13,600/-)		23,05,21,200
22-03-2007	Date of purchase of land – cost of acquisition	8,45,28,050	
	Indexed cost of acquisition 852 / 519		13,87,62,810
	Cost of improvement – Indexation	2,58,85,277	2,69,16,693
	F.Y.2011-12 – Rs.2,38,49,698/- X 852/785	10,31,416	
	F.Y.2012-13 – Rs.10,31,416/- Nil		
	Long Term Capital Gain		6,48,41,697

1. In response, the appellant had furnished a copy of the same statement as mentioned above and a copy of four purchase deeds amounting to Rs.4,42,20,000/- but did not produce any evidence as to how it claimed cost of acquisition at Rs.8,45,28,050/- in place of Rs.4,42,20,000/- reflected in purchase documents. Further, the appellant did not produce any documentary evidence for incurring cost of improvement for two Financial Years.

2. The above facts cumulatively indicate that the appellant, in the course of original assessment, had failed to disclose fully and truly all material facts as per the first proviso to section 147 of the Income-tax Act, 1961 which is reproduced below:

“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 under sub-section (1) of section 142 or section 148 or **to disclose fully and truly all material facts necessary for his assessment, for that assessment year;**”.

3. In the instant case, the appellant failed to furnish the documentary evidences in respect of:- (a) cost of acquisition of land- Rs.8,45,28,050/- & (b) cost incurred for improvement – Rs.2,38,49,698/-(in F.Y.2011-12) & Rs.10,31,416/- (in F.Y.2012-13). Thus, the Assessing Officer reopened the assessment as he had reason to believe that income representing cost of acquisition and cost of improvement had escaped assessment within the meaning of the provisions of section 147. Moreover, in the original assessment, this aspect was not examined by the AO since the AO directly took the profit arising on sale of the land amounting to Rs.11,36,07,036/- to the Profit & Loss Account. While doing so, the AO did not verify the appellant’s claim of cost of acquisition and cost of improvement as contained in the Explanation-1 to Section 147 which is reproduced as below:

“*Explanation 1.*– Production before the Assessing Officer of account books or other evidences from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of forgoing proviso.”

4. In view of the forgoing, it is evident that since the appellant had failed to produce the evidence in support of cost of acquisition and cost of improvement claimed by it in the return of income before the Assessing Officer in the course of original assessment proceedings, the Assessing Officer is justified in reopening the assessment u/s.147.

5. It is pertinent note that in the original assessment, there is no discussion on the issue (i.e.) cost of acquisition & cost improvement and no details were called for. The AO added the net LTCG to Profit & Loss Account as provided by the appellant. No verification of the issues relating to cost of acquisition or cost of improvement was caused.

6. It is pertinent to note that the appellant had claimed cost of acquisition at Rs.8,45,28,050/- and cost of improvement at Rs.2,38,49,698/- and Rs.10,31,416/- respectively. Hence the onus of proving the above claim rests on the appellant. But the appellant failed to discharge the onus cast on it both in the course of original assessment and reopened assessment.

7. Thus, the observation of CIT(A)-2, Panaji for deleting the Long Term Capital Gain arising on sale of land is contrary to the facts available on record. The CIT(A) omitted to consider the fact that the appellant had failed to furnish evidences in support of claims made in the computation of LTCG as mentioned supra. Thus, it is not the change of opinion as averred by the CIT(A).

Further, in case the CIT(A) had admitted the evidence in support of cost of acquisition and cost of improvement which were not furnished before the AO and tantamount to additional evidences. Accordingly, the CIT(A) was bound to furnish the additional evidences to the AO as provided under Rule 46A and called for a remand report on the same. Thus, the principle of natural justice was rendered to the AO.

8. Further, the reassessment proceedings were initiated as per the proviso to section 147 of the Income-tax Act, 1961.

5. He further submitted that during the course of assessment proceedings, assessee did not furnish any single document to substantiate cost of improvement claimed. Still in the proceedings under section 143(3) r.w.s. 147 of the Act, nothing was furnished and the very basis for reopening was for not

furnishing the documents at the time of assessment proceedings for expenses claimed towards cost of improvements. There was no fully and truly disclosed income. During the course of proceedings under section 143(3) of the Act there was failure on the part of the assessee to make return under section 139 of the Act and in response to notice under section 142(1) or section 148 of the Act to disclose fully and truly all material facts necessary for assessment for that Assessment Year. Therefore the case was rightly reopened by the AO. The learned CIT(A) has wrongly allowed appeal of the assessee.

6. On the other hand, learned Counsel for the assessee relied on the Order of learned CIT(A) and he has filed written synopsis which is as under:

*“The Department is in appeal against the order passed by CIT(A)-2, Panaji in No.CIT(A)-2/M/PNJ/10091/2019-20, Dt.19.02.2015. The CIT(A) had cancelled the Assessment on the basis of the additional grounds filed by the Respondent which is at Page 6 which as under :*

*“In view of the above, I am of the considerate opinion that it is a settled position that reassessment under sec.147 is only permissible if there is some fresh tangible material and not merely a change in the assessing officer’s opinion on the same facts. The Doctrine of Change of Opinion refers to the situation where the assessing officer tries to reassess the income based on a different interpretation of the same ‘facts and documents’ which the assessing officer has already assessed in the original assessment. In the impugned case as well, the Ld. AO has carried out addition to Book profit which resulted into enhancement of tax base of the appellant and said enhancement was on account of same long term capital only. Thus, re-opening assessment proceedings, on very same issue amounts to mere change in opinion and not permitted by law.*

*Accordingly, additional grounds of appeal are allowed”.*

*As can be seen from the grounds of appeal by the Department, the Department has not challenged the cancellation of the Assessment by the CIT(A).*

*The notice issued U/s 148, dt.30.03.2019 (copy enclosed **Annex-XII**) does not specify whether the AO / The approval granted by the Pr. CIT / CIT – 3 wants to assess / re assess the income chargeable to tax for the relevant Assessment Year since the irrelevant portion has not been struck down in notice. The assessment has been re-opened on 30.0.2019 beyond 4 years from the end of the relevant Assessment Year i.e., 31.03.2014 where the assessment was completed U/s 143(3), dt.29.03.2016.*

*The reasons for re-opening as communicated in the notice U/s 142(1), dt.18.11.2019 does not even state or alleged that there was a failure on the part of the respondent to disclose fully and truly all the materials facts necessary for the said assessment. The Respondent relies on the following decision in support of the above submission.*

*i.CIT Vs Kelvinator of India Ltd. 320 ITR 561 (SC)*

*ii.CIT Vs Canara Bank 456 ITR 316 (Karnataka) Departmental SLP dismissed in 460 ITR 6 (SC) (copy of the decision in ITA No.288 & 289 of 2018, dt.14.12.2022 and SLP orders are enclosed as **Annex – I.**)*

*iii.Eurofins Peenya Resources Private Limited Vs DCIT, Circle 2(1)(1) In ITA No.1113 & 1114/Bang/2023, dt.13.12.2024 (copy enclosed as **Annex-II**)*

*The Department is in appeal against the above order of the CIT(A). The grounds of the Departmental appeal are dealt as under :*

*(A). The Ld. CIT(A)-2, Panaji however has erred is not observing the fact that the AO made an addition of Rs.10,60,50,057/- on account of Long term capital gains by making re-calculation based on the material / documentary evidence available with the department in the reopened assessment order u/s 143(3) r.w.s. 147 of the IT Act, 1961 dated 06/12/2019.*

*The Respondent vide reply dt.19.03.2016 (copy already enclosed as Annex - VII) furnished the details of cost of land and cost of improvements made F Y 2011-12 & 2012-13. The AO in the assessment order 143(3), dt.29.03.2016 (copy enclosed as Annex VIII) computed capital gains taking into consideration the submissions made. Hence, it is not correct to say that the capital gain re calculation was based on materials / documentary*

*evidences submitted during the re-opening procedure U/s 143(3) r.w.s. 147.*

*(B). The Ld. CIT(A)-2, Panaji however has erred in not observing the fact that the assessee company has not furnished any proofs / documents / details for cost of improvement claimed Rs.2,38,49,698/- & Rs.10,31,416/- for the F.Y. 2011-12 and 2012-13 respectively either a the time of assessment proceedings u/s 143(3) or the time of re-opened assessment proceedings u/s 143(3) r.w.s 147 of the IT Act, 1961.*

*The details of improvement made during FYs 2011-12 and 2012-13 were already furnished by the Respondent vide letter dt.19.03.2016 and deduction expenses were allowed by the AO without indexation in the original assessment order u/s 143(3), dt.29.03.2016. It is not correct on the part of the Department to allege that the details were not produced either before Original assessment proceeding U/s 143(3) or in reassessment proceedings U/s 143(3) r.w.s. 147.*

*(C). Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was correct in estimating the cost of improvement claimed Rs.2,38,49,698/- & Rs.10,31,416/- for the F.Y 2011-12 and F.Y. : 2012-13 respectively on the basis of additional evidence filed by the assessee during appellate proceedings without following the procedure laid down in Rule 46A of the IT Rules?*

*Since, the details of improvement made to the assets were available vide letter dt.29.09.2016 the ground of additional evidence before the Appellate Authorities and application of Rule 46A of the Income Tax Rules does not arise.*

*(D). Appellant craves leave to modify, amend or revise the above grounds of appeals and add further grounds of appeal, if necessary.*

*General Ground :*

*The Respondent brings to your kind notice the sequence of events.*

*The Respondent filed a return of income on 29.09.2013 (copy enclosed as Annex-III) admitting an income of Rs.5,29,40,890/-. The details of income offered under capital gains are as under :*

<i>Particulars</i>	<i>Cost</i>	<i>Indexed Cost</i>	<i>Amount</i>
<i>Sale Value of Land</i>			<i>23,05,21,200</i>

<i>Particulars</i>	<i>Cost</i>	<i>Indexed Cost</i>	<i>Amount</i>
<i>Less : Indexed cost of Acquisition</i>	<i>8,45,28,050</i>	<i>13,87,62,810</i>	
<i>Cost of Improvement FY 2011-12</i>	<i>2,38,49,698</i>	<i>2,58,85,277</i>	
<i>Cost of improvement FY 2012-13</i>	<i>10,31,416</i>	<i>10,31,416</i>	<i>16,56,79,503</i>
<b><i>Capital gain on Sale of Land</i></b>			<b><i>6,48,41,697</i></b>

*After setting of the loss on sale of Shares of Rs.1,52,25,759/- the Respondent offered net capital gain of Rs.4,96,15,938/-. The return was selected for scrutiny under CASS, the Respondent filed a replies from time to time.*

*During the course of assessment proceedings the AO vide letter dt.17.07.2015 (copy enclosed as Annex-IV) sought details for assessment. The Respondent vide letter dt.27.02.2016 (copy enclosed as Annex-V), on 14.03.2016 (copy enclosed as Annex-VI) and on 19.03.2016 (copy enclosed as Annex-VII) furnished the details called for by the AO. The Respondent brings to your kind notice that in the reply dt.19.03.2016 the Respondent furnished details the computation of capital gain wherein it will clear the details of improvement made during the financial year 2011-12 and 2012-13 were furnished. The AO after going through the details re computed the capital gain accepting the improvements made financial year 2011-12 and 2012-13 but denied the benefit of Indexation claimed on the property including on the original cost of acquisition of the property. The assessment was completed u/s 143(3), dt.29.03.2016 (copy enclosed as **Annex-VIII**) by making the following additions to the income returned.*

<i>Sl. No.</i>	<i>Particulars</i>	<i>Rs.</i>	<i>Rs.</i>
<i>1</i>	<i>Income as admitted in return of income</i>		<i>5,29,40,890/-</i>
<i>2</i>	<i>Add : Disallowance u/s 14A as discussed in Para 3 above</i>		<i>37,82,496/-</i>
<i>3</i>	<i>Assessed income as per this order</i>		<b><i>5,67,23,389/-</i></b>
<i>4</i>	<i>Deemed income u/s 115JB as admitted in the return of income</i>		<i>63,03,360/-</i>

5	<i>Add : Disallowance u/s 14A as discussed in Para 3 above Net capital gains earned from the sale of land and from sale of shares as discussed in Para 4 above</i>	37,82,496/-  11,66,07,036/-	12,03,89,532/-
6	<i>Assessed deemed income u/s 115JB as per this order</i>		<b>12,66,92,892/-</b>
	<i>Since the tax payable u/s 115JB is more than the tax payable under normal provisions of the Act, the same is adopted.</i>		
7	<i>Tax payable as per this order as mentioned in the calculation sheet enclosed</i>		<b>3,40,81,270/-</b>

*The Respondent filed appeal before CIT(A)-11, Chennai who by his order in ITA No.11 & 257 / CIT(A)-11/2016-17, dt.04.01.2018 (copy enclosed as **Annex-IX**) allowed the appeal in favour of the Respondent.*

*The Department filed appeal before Hon'ble Income Tax Appellant Tribunal, Chennai on 25.04.2018, copy of the Grounds of Appeal filed before ITAT, Chennai is enclosed **Annex-X**. The Respondent during the course of pendency of appeal before Hon'ble ITAT filed application under VSVS 2020 and the appeal of the Department was dismissed as withdrawn vide order dt.07.07.2021 (copy enclosed as **Annex-XI**).*

*During the course of the appeal which was pending before Hon'ble ITAT, the Department issued notice u/s 148 dt.30.03.2019 (copy enclosed as **Annex-XII**). The notice u/s 148 was issued beyond 4 year from end of the relevant Assessment Year i.e., 31.03.2014. The Respondent in response to notice u/s 148 filed a return of income on 05.09.2019 returning the original income as was returned in the return of income filed on 29.09.2013. The reasons for re-opening as mentioned in the notice u/s 142 dt.18.11.2019 (copy enclosed as **Annex-XIII**) issued by the DCIT, Corporate Circle 3(2), Chennai are as under :*

- 1. The long term capital gain on sale of land was calculated taking into account the "cost of improvement in FY 2011-12 amounting to Rs.2,58,85,277/- and in FY 2012-13 that the assessee had entered into an agreement with M/s Virgo Realtors Pvt. Ltd. on 03.05.2010*

for a sale consideration fixed at Rs.23,05,21,200 (126.5 Cents). The whole amount and possession was handed over in FY 2012-13. The sale deed also shows that the schedule property was. All the peace and parcel of vacant land”.

2. On verification of the computation of Long term Capital Gain, it was noticed that the assessee had valued the cost of the land as Rs.8,45,28,050/- instead of Rs.3,63,23,571/- (Rs.4,42,20,000 \* 126.5/154) and indexed cost Acquisition worked out to Rs.13,87,62,210/- instead of Rs.5,96,29,446/- (3,63,23,571\*852/519). If this is considered the correct long term capital gain worked out to Rs.17,08,91,754/-.

Sale Consideration	Rs.23,05,21,200/-
Less : Cost of Acquisition	Rs. 5,96,29,446/-
Long term Capital Gain	Rs.17,08,91,754/-

As the assessee had sold vacant land only, the indexation benefit availed towards cost of improvement by the assessee company is not in order. Moreover on verification of the records of the Virgo Realtors Pvt. Ltd. it was noticed that a sum of Rs.14,91,29,370/- (Land cost Rs.9.08 crores + development expenses 5.82 crores) was claimed by the company towards land cost and development expenditure.

But the assessee company has shown only Rs.6,48,41,697/- has long term capital gain from the said transaction. Hence, it is proposed to tax the balance amount of Rs.10,60,50,057/- under the head long term capital gain.

The Respondent filed reply dt.20.11.2019 (copy enclosed as **Annex-XIV**) objecting to the proposed re-opening of assessment, the AO even after referring to the letter in the Assessment Order has not rebutted objection of the Respondent. The Respondent filed reply dt.09.10.2019 and 29.11.2019, the AO after considering the reply concluded the assessment U/s 143(3), r.w.s. 147 on 06.12.2019 (copy enclosed as **Annex-XV**). The reasons for re computation of capital gain as mentioned by the AO at page 3 is as under:

On verification of the computation of Long term Capital Gain, it was noticed that the assessee had valued the cost of the land as Rs.8,45,28,050/- instead of Rs.3,63,23,571/- (Rs.4,42,20,000\*126.5 cents /154 cents) and the Indexed cost Acquisition worked out to Rs.13,87,62,210/- instead of Rs.5,96,26,446/-

(Rs.3,63,23,571\*852/519). As the assessee has sold vacant land only, the indexation benefit availed towards cost of improvement by the assessee company is not in order. However, the assessee was required to furnish bills and vouchers to substantiate their claim of cost of improvement vide notice u/s. 142(1) dated 29.11.2019. But the assessee has not submitted these crucial proof for claiming Rs.2,38,49,698 as cost of improvement in FY 2011-12 and Rs.10,31,416/- as cost of improvement in FY 2012-13 neither during the assessment proceedings u/s 143(3) nor during this reassessment proceedings u/s.148. Therefore, the indexation for cost improvement is disallowed and the long term capital gain on sale of land is reworked as below :

Sale Consideration	Rs.23,05,21,200/-
Less : Cost of Acquisition	Rs. 5,96,29,446/-
Long term Capital Gain	<b>Rs.17,08,91,754/-</b>

Considering the above, the taxable Long Term Capital Gain assessed in the order is :

Long Term Capital Gain on shares returned	Rs.(-) 1,52,25,759
Long Term Capital Gain on land as discussed above	Rs. 17,08,91,754
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Net Long Term Capital Gain assessed	Rs. 15,56,65,995
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**(Addition to LTCG : Rs.10,0,50,057/-)**

*Comparative chart of working of Capital Gain*

Particulars	As per return of income filed on 29.09.2013	As per Assessment Order U/s 143(3), dt.29.03.2016	As per Assessment Order U/s 143(3) r.w.s 147, dt.06.12.2019
Cost of Asset including other cost	8,45,28,050	8,45,28,050	3,63,23,571

<i>Cost of improvement in FY 2011-12</i>	2,38,49,698	2,38,49,698	NIL
<i>Cost of improvement in FY 2012-13</i>	10,31,416	10,31,416	NIL
<i>Total Cost</i>	10,94,09,164	10,94,09,164	3,63,25,571
<i>Indexed cost of Acquisition</i>	16,56,79,503	10,94,09,164	5,96,29,446
<i>Sale Consideration</i>	23,05,21,200	23,05,21,200	23,05,21,200
<i>Less : Indexed cost of Acquisition / Cost as above</i>	16,56,79,503	10,94,09,164	5,96,29,446
<i>Long Term Capital Gain on Sale of Land</i>	6,48,41,697	12,11,12,036	17,08,91,754
<i>Less : Long Term Capital loss on Sale Shares</i>	1,52,25,759	45,05,000	1,52,25,759
<i>Net Long Term Capital Gain</i>	4,96,15,938	11,66,07,036	15,56,65,995

*From the above it will be clear that the AO in the original assessment U/s 143(3), dt.29.09.2016 allowed cost of assets amounting to Rs.10,94,09,164/- without indexation including the improvement cost incurred during the FY 2011-12 and FY 2012-13 amounting to Rs.2,38,49,698/- & Rs.10,31,416/- respectively. This is a classic example of change of opinion which is not permitted for reopening u/s 148 on 30.03.2019 beyond 4 years from the end of the Financial Year 31.03.2024.*

*In view of the above submission the Departmental Appeal may kindly be dismissed.*

### **Additional Written Submission**

*The Respondent as per the directions of the Hon'ble Members during the course of hearing on 29.10.2025 enclosing hereby copy of the Financial Statements relevant Assessment Year 2013-14. The asset situated at Kovilambakkam in which a part has been sold during the year has been shown as Fixed Assets with opening balance of Rs.12,03,94,543/-. The cost of asset sold upto 31.03.2012 amounting to Rs.10,83,77,748/- (cost*

*Rs.8,45,28,050 + cost of improvement Rs.2,38,49,698/-) was reduced from the Fixed Schedule – Please refer to the Fixed Assets Schedule note 1.9 to the Financial statements and the balance consideration of Rs.12,11,12,036/- was credited to the reserves and surplus – please refer to note No.1.2 of the Financial statements. The working is as under :*

<i>Sale consideration</i>	-	<i>Rs.23,05,21,200</i>
<i>Less : Cost as per Fixed Assets Sch.</i>	-	<i>Rs.10,83,77,748</i>
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<i>Balance</i>	-	<i>Rs.12,21,43,452</i>
<i>Less : Cost incurred during the year</i>	-	<i>Rs. 10,31,416</i>
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<i>Balance Transfer to Capital Reserve A/c.</i>		<i>Rs.12,11,12,036</i>
<i>Refer Note 1.2 to the Financial statements</i>	=====	

*The AO in the assessment order 143(3), dt.29.03.2016 already enclosed as Annex-VIII – Page 48 to 53 re-computed the book profit for income tax purpose as under :*

<i>Profit as per P &amp; L A/c</i>	-	<i>Rs.63,03,360</i>
<i>Add : 1). Disallowance U/s 14A</i>	-	<i>Rs.37,82,496</i>
<i>2). Net Capital Gain earned from Sale of Land and from Sale Of shares as discussed para 4 Of the assessment order i.e., Amount credited to Capital Reserve (12,11,12,036-45,05,000) -</i>		<i>Rs.11,66,07,036</i>
		-----
		<i>Rs.12,03,89,532</i>
		-----

<i>Deemed Income as per Section 115JB</i>	<i>Rs.12,66,92,892</i>
	=====

<i>Normal computation of income</i>	
<i>Income as admitted in the return of income</i>	<i>Rs. 5,29,40,890</i>
<i>Add : Disallowance U/s 14A</i>	<i>Rs. 37,82,496</i>
	-----

<i>Taxable Income under normal computation</i>	<i>Rs. 5,67,23,386</i>
	=====

*As can seen from above computation of income the AO during the course of original assessment U/s 143(3) for working income under normal*

*computation allowed the indexation on the original cost of Rs.8,45,28,050/- and also on the cost of improvement during the financial year 2011-12 amounting to Rs.2,38,49,698/- and also cost incurred during financial year 2012-13 amounting to Rs.10,31,496/- and accepted the capital gain returned based on the computation of income and also based on the explanation submitted vide letter dt.19.03.2016.*

*The AO in the original Assessment Order U/s 143(3) recomputed the book profit U/s 115JB holding at the amount credited to Reserve account on sale of property and shares should have been routed through P & L A/c and recomputed the book profit at Rs.12,66,92,892/- and taxed the higher being income computed U/s 115JB of the I.T. Act.*

*From the above it will clear AO in the original Assessment order U/s 143(3)dt.29.03.2016, considered cost of the assets including improvements made during the Financial year 2011-12 & 2012-13 which is evident from re-computation of income under normal computation and taxed the book profit U/s 115JB which higher than the normal computation of income.*

*With regards to other issue on the basis of which the assessment was reopened namely the non-disclosure of sale value of land at Perumbakam Village for Rs.3,52,76,800/-. The Respondent brings to your kind notice since the land sold was within 6 months the entire sale consideration of Rs.,352,76,800/- has been shown as revenue from operations in note No.1.17 to the Financial statements as sale of land.*

*The re-opening which is beyond 4 years from the end relevant Assessment year 31.03.2014, as already submitted the reasons for re-opening does not allege that there was a failure on the part of the Respondent to disclose truly fully all material facts necessary for assessment on the basis of the Hon'ble Jurisdictional High Court decision and Hon'ble Supreme Court decisions referred in the submission the re-opening assessments on both the grounds is not correct, the Departmental Appeal kindly be dismissed.*

7. In addition to the above, learned Counsel strongly contested that the case of the assessee was reopened beyond the period of 4 years. Originally the case of the assessee was completed under section 143(3) of the Act on 29.03.2016 and notice was issued on 30.03.2019 which is beyond the period of 4 years and there is no allegation upon the assessee to disclose fully and truly all the material facts necessary for the completion of assessment and

there was no tangible materials for reopening he case of the assessee. The very basis for reopening assessment was submitted on 19.03.2016 during the 143(3) proceedings which is also the part copy of reasons recorded. The details were furnished and AO accepted submission of the assessee which is placed at Paper Book Page Nos.45 to 47. Therefore, it is clear change of opinion which is not permitted as per the decision of the Hon'ble Apex Court as cited by the learned CIT(A).

8. Considering the rival submissions and on perusal of the material available on record and Orders of authorities below, we noted that the assessment was completed under section 143(3) of the Act originally on 29.03.2016 accepting the submissions of the assessee and alter on passing of Order by the learned CIT(A) on returned income originally filed by the assessee under section 139(1) of the Act of Rs.5,29,40,890/- was accepted and the capital gain detail of the computation filed by the assessee on 19.03.2016 was also accepted and MAT computation made by the AO. During the course of hearing, the learned Counsel was agitated as reopening made by the AO is beyond the due date of 4 years since the case was scrutinized under section 143(3) of the Act. For the sake of convenience copy of the reasons recorded which is placed at Paper Book Page Nos.72 to 73 is reproduced below:

## Annexure to notice u/s.142(1).

Your case has been reopened for the following reasons

1. The long term capital gain on sale of land was calculated taking into account the "cost of improvement" in FY 2011-12 amounting to Rs.2,58,85,277 and in FY 2012-13 amounting to Rs.10,31,416. It was noticed from the letter dated 19.03.2016 that the assessee had entered into an agreement with M/s. Virgo Realtors pvt Ltd. on 3.05.2010 for a sale consideration fixed at Rs.23,05,21,200(126.5 cents). The whole amount and possession was handed over in FY 2012-13. The sale deed also shows that the schedule property was "All the peace and parcel of vacant land".
2. On verification of the computation of Long term Capital Gain, it was noticed that the assessee had valued the cost of the land as Rs.8,45,28,050/- instead of Rs.3,63,23,571/-(Rs.4,42,20,000\*126.5/154) and the Indexed cost Acquisition worked out to Rs.13,87,62,210/- instead of Rs.5,96,29,446/-(3,63,23,571\*852/519). If this is considered the correct long term capital gain worked out to Rs.17,08,91,754/-.

Sale Consideration	Rs.23,05,21,200/-
LESS: Cost of Acquisition	Rs. 5,96,29,446/
Long term Capital Gain	Rs. 17,08,91,754/--

As the assessee had sold vacant land only, the indexation benefit availed towards cost of improvement by the assessee company is not in order. Moreover on verification of the records of the Virgo Realtors Pvt. Ltd., it was noticed that a sum of Rs.14,91,29,370/-( Land cost Rs.9.08 crores + development expenses Rs.5.82 crores) was claimed by the company towards land cost and development expenditure.

But the assessee company has shown only Rs.6,48,41,697/- has long term capital gain from the said transaction. Hence it is proposed to tax the balance amount of Rs.10,60,50,057/- under the head long term capital gain.

1. The assessee company entered an 'Agreement to sell' dated 14-08-2012 with Virgo Realtors Private Ltd., for the vacant land to an extent of 30 cents situated in Survey No.310/1 in Perumbakkam Village for Rs.3,52,76,800/-. In para 4 of the Agreement, it was stated that the sale deed/or General Power of Attorney empowering to sell the Schedule Property shall be registered and the sale completed on or before 9 months of Execution of this Agreement.

On verification of the records of the Virgo Realtors for AY 2013-14, it was noticed that there was an addition of Rs.26,57,98,000/- in the Fixed Assets Schedule under the head 'Land' during the FY 2012-13 which is nothing but

Purchase of land at Kovilambakkam	Rs.23,05,21,200
Purchase of land at Perumbakkam	Rs. 3,52,76,800
	_____
Total Addition shown in Fixed Asset	Rs.26,57,98,000
	_____

From the above Fixed Assets Schedule, it is evident, that the the assessee company had sold the vacant land to an extent of 30 cents situated Perumbakkam Village to M/S Virgo Realtors Private Ltd for Rs.3,52,76,800/- The assessee had purchased the above property vide deed of sale dated 09/03/2012 vide DOC.No.1757/2012 and the value of the property as per TNREGINET is Rs.90,000/-. Since the assessee company had sold the said land within 6 months from the date of purchase, is liable for Short term capital gain for the above transaction of Rs.2,62,76,800/-(3,52,76,800-90,00,000). However, this transaction was not disclosed to the department during the AY 2013-14. Hence there is escapement of income to the tune of Rs.2,62,76,800/-.

With regard to the above, you are required to submit your explanation on or before 20.11.2019. If no explanation is submitted before the due date, this office is constrained to believe that you have no explanation to offer and will proceed to tax.

9. On going through the above copy of reasons it is noted that reference is made of the assessee's submissions letter dated 19.03.2016 too. On going through the same which is placed at Paper Book Page Nos.45 to 47 it is noticed that the detail of the sale of land and computation of long term capital gain is given in the table where the cost of improvement for Financial Year 2011-12 amounting to Rs.2,38,49,698/- and for 2012-13 is Rs. 10,31,416 was claimed by the assessee in its computation has not been disputed by the AO and no further questions were asked regarding claim of cost of improvement or for any other. We also noted that as per the above reasons recorded there is no

allegation upon the assessee for not disclosing fully and truly material facts in the reasons recorded since it was disclosed by the assessee for completion of assessment and there is no new tangible materials established by the Revenue. we further noted from the copy of reasons recorded that the Order is barred by limitation because the entire facts were disclosed during the course of assessment proceedings and no allegation upon the assessee, therefore the notice could have been issued within four years. From the documents of the learned DR we noted that the assessee is unable to produce documentary evidence for claim of cost of improvements. During the assessment proceedings it was not asked by the AO. The learned DR could not point out regarding additional evidence as alleged in the grounds of appeal. Accordingly we hold that the learned CIT(A)'s Order is correct and. We do not find any infirmity in the Order of the learned CIT(A).

10. In the result, appeal filed by the Revenue is dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(KESHAV DUBEY)**  
**Judicial Member**

**Sd/-**

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Bangalore.

Dated: 21.11.2025.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.