

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
HON'BLE SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं  
माननीय श्री अमिताभ शुक्ला, ँखा सदस्य के समक्ष

आयकर अपील सं./ITA No.120/Chny/2025  
निर्धारण वर्ष/**Assessment Year: 2014-15**

Adhi Kumara Guru, No.8, Vadivel Street, West Tambaram, Chennai Tamil Nadu 600045	<b>v.</b>	The Deputy Commissioner of Income Tax, Non Corporate, Circle 22(1) Tambaram, CHENNAI-600045, Tamil Nadu
[ <b>PAN: AAKPK1444N</b> ]		
<b>(अपीलार्थी/Assessee)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Assessee by	:	Mr. P.M. Kathir, Advocate for Mr.G.Baskar, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R Anitha, Addl.CIT
सुनवाई की तारीख/Date of Hearing	:	08.10.2025
घोषणा की तारीख /Date of Pronouncement	:	05.01.2026

**आदेश / ORDER**

**PER MANU KUMAR GIRI, JM:**

The present appeal has been preferred by the assessee against the order passed by the Id.CIT(A) on 03.12.2024, whereby the



reassessment order dated 13.12.2019, passed u/s. 143(3) read with section 147 of the Income Tax Act, 1961 ['ACT' in short], for the Assessment Year 2014-15, was confirmed.

2. Briefly stated, the assessee is an individual who filed his Return of Income for the relevant assessment year on 19.02.2015. During the year under consideration, the assessee sold certain immovable properties and derived Long Term Capital Gains amounting to Rs.82,46,084/-. The assessee had earlier claimed exemption in respect of capital gains arising from the sale of vacant land on 14.09.2012 in his return for A.Y. 2013-14. As the newly acquired property was sold within a period of three years, the exemption earlier claimed amounting to Rs.20,08,500/- was offered to tax. Consequently, the total Long Term Capital Gains for the year aggregated to Rs.1,02,54,584/-. Against this, the assessee claimed exemption u/s. 54F of the Act in respect of the property proposed to be constructed. The computation of Long Term Capital Gains for AY 2014-15 has been placed at page 7 of the paper book.

3. The return was selected for limited scrutiny u/s. 143(2) of the Act, inter alia, to verify the issue of "large deduction claimed u/s.s 54B, 54C, 54D, 54G, and 54GA." A scrutiny assessment order was subsequently passed on 28.11.2016, assessing the total income at Rs.61,77,060/- after disallowing the cost of improvement of Rs.15,00,000/- claimed by the assessee while computing 'Short Term Capital Gains'.

4. Thereafter, the assessment was reopened for the first time through issuance of a notice u/s. 148 of the Act dated 27.03.2018.



The reasons recorded for reopening the assessment are placed at page 15 of the paper book (as provided by the letter dated 08.05.2918) and are reproduced hereunder:

*It is seen from the return of income filed for the assessment year 2014-15, that there is a claim of exemption u/s.54F of the Income-tax Act, 1961 amounting to Rs.1,02,54,584/- under the head 'Income from Long Term Capital Gain'. It is also seen that rental income under the head 'income from house property' in respect of 3 properties other than a self-occupied property is offered in*

*the return of income. As per the conditions laid down in section 54F of the Act, the claim of exemption u/s.54F of the Act in respect of the property sold during the financial year 2013-14, is not proper, as the assessee owns more than one residential property on the date of transfer. As there is incorrect allowance of exemption to the extent of Rs. 102.54 lakh which has resulted in short levy or tax demand of Rs.23.24 lakh excluding interest, the same needs to be disallowed in relation to A.Y.2013-14.*

5. A reassessment order was passed on 12.12.2018, wherein the total income was once again assessed at Rs.61,77,060/-, being the same income as determined earlier under the scrutiny assessment order dated 28.11.2016.

6. Subsequently, within a month, the assessment was reopened for the second time through issuance of a notice u/s. 148 of the Act dated 11.01.2019. The reasons recorded for this reopening are placed at page 25 of the paper book, and the observations of the AO in paragraph 5, as well as the basis for forming the "reasons to believe" in paragraph 6 thereof, are reproduced hereunder:

*4. Enquiries made by the AO as sequel to information collected/received: Enquiries are not necessary since the escapement could be established based on the materials available on record.*

*5. Findings of the AO: It is observed from the records that the property situated at Old no.22. New no.694/1, Block-RA. Puram on which deduction u/s.54F was claimed during the A.Y.2013-14 was*



*sold on 19.06.2013. Further the property situated at old No. 167, New No.28, Old Perungalathur, S.No.443/3, Plot No.485 on which capital gains come accrued during the year was also sold on 19.06.2013. Since the two properties were sold on the same date, it not be ascertained which property was sold earlier and which was sold later. Further, the assessee cannot claim deductions u/s 54F second time on the deemed capital gains accrued u/s.54F(3) on account of selling the property on which deduction u/s.54F was claimed earlier.*

*It is also observed from the records that the assessee offered short term capital gains on account of selling the property purchased in order to claim deduction u/s.54F for the A.Y.2013-14. From the perusal of the computation of STCG, it is observed that the assessee claimed cost of improvement of Rs.15,00,000/-. However, no evidence, whatsoever, is furnished to substantiate the said improvement.*

*6. Basis of forming reasons to believe and details of escapement of income: The details with regards to sale consideration of the capital gains on which deduction u/s 54F was claimed in the A.Y.2013-14 and offered during the year under consideration (for the A.Y 2014-15) are not furnished by the assessee. As such the deduction claimed u/s 54F on the total amount of Rs. 1,02,54,584/- was not correct. Further, the capital gains accrues to the assessee for the year under consideration on 19.06.2013 on the date on which the property was sold. But on that day, he owns one more property on which deduction u/s 54F claimed for the A.Y.2013-14. Surprisingly, this property was also sold on the same date i.e. on 19.06.2013. Since it is not known which property was sold earlier and which was sold later, it may concluded that the assessee owns more than one residential property as on 19.06.2013. As such, the assessee is not eligible for claiming deduction u/s.54F. Besides, the income offered under capital gains includes deemed income u/s.54F(3) arisen on account of selling the property on which deduction u/s.54F was claimed for the A.Y.3-14. The deemed capital gains income is not eligible for deduction u/s.54F again.*

*The cost of improvement of Rs.15,00,000/- claimed by the assessee against STCG offered was not substantiated. Therefore, I have reason to believe that income chargeable to tax has escaped assessment.*

7. In the assessment order, the AO (AO) observed that the assessee had sold, on 19.06.2013, the property in respect of which deduction u/s.54F had been claimed in A.Y.2013-14. It was further noted that the property giving rise to capital gains during the year



under consideration was also sold on the same date, i.e., 19.06.2013. Since the AO was unable to determine whether the assessee had sold or purchased the property first on that date, he concluded that the assessee owned more than one residential house on 19.06.2013 and was therefore not eligible to claim deduction u/s.54F of the Act. The AO further held that deduction u/s.54F could not be claimed in respect of a property for which such deduction had already been claimed in an earlier year. Accordingly, the AO proceeded to disallow the exemption of Rs.1,02,54,584/- claimed u/s.54F of the Act.

8. In appeal, the assessee, in addition to contesting the matter on merits, raised a specific ground challenging the validity of the reopening of the assessment on the ground that it was based purely on a change of opinion, which is impermissible in law. However, the Id.CIT(A) rejected this contention, holding that the original scrutiny assessment was a limited scrutiny and did not involve examination of the deduction claimed u/s.54F of the Act. He further observed that it was not evident whether the first reassessment proceedings were initiated to examine the claim of deduction u/s.54F. On this basis, the Id.CIT(A) dismissed the ground and upheld the reopening of the assessment.

9. The assessee now submits that the reopening of the assessment is illegal, as it has been carried out solely on account of a change of opinion. It is contended that even during the original scrutiny assessment, various deductions claimed by the assessee were examined. Although the case was selected for limited scrutiny, the AO made an addition of Rs.15,00,000/- to the assessee's Short



Term Capital Gains by disallowing the cost of improvement, thereby demonstrating application of mind. Further, from the reasons recorded for the first reopening, it is evident that the assessment was reopened specifically to examine the claim of deduction u/s.54F of the Act. The AO had expressly recorded that the deduction was not allowable on the ground that the assessee owned more than one residential house on the date of transfer. This issue was duly examined during the first reassessment proceedings, which culminated without any addition, as the deduction u/s.54F was ultimately allowed. In effect, the reassessment proceedings were dropped. This clearly establishes that the first reopening was initiated specifically to examine the claim u/s.54F, rendering the observations of the Id.CIT(A) incorrect.

10. The assessee further submits that the reasons recorded for the second reopening also pertain to examination of the same claim of deduction u/s.54F, based on the very same material that was already available with the AO during the earlier assessment and reassessment proceedings. In fact, in the reasons recorded for the second reopening, the AO himself acknowledged that the relevant material was already on record. It is thus contended that no new tangible material had come into the possession of the AO prior to initiating the second reopening. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC), to submit that the second reopening, being based on a mere change of opinion, is unsustainable in law and liable to be quashed. The AO had already applied his mind to the material on record during the earlier two proceedings and had consciously allowed the deduction claimed



u/s.54F of the Act. Having examined the issue and formed an opinion that the deduction was allowable, the AO passed the first reassessment order granting the deduction in full. Since the AO has no power to review his own order, the present reassessment, which amounts to a review of the earlier reassessment order, is without jurisdiction and deserves to be set aside.

11. The learned Departmental Representative (Id. DR), on the other hand, supported the order of the Id.CIT(A) and submitted that the reopening of the assessment was valid. She contended that although various deductions were examined during the limited scrutiny assessment, the deduction claimed u/s.54F of the Act was not among them, and therefore no opinion was formed by the AO on this issue at that stage. Further, during the first reassessment proceedings, the AO examined the claim u/s.54F only from the limited perspective of whether the assessee owned more than one residential house on the date of transfer. According to her, the examination was confined solely to this aspect. Referring to the reasons recorded for the second reopening, the Ld. DR submitted that the AO reopened the assessment on the ground that the assessee had claimed deduction u/s.54F in respect of capital gains arising from a property for which deduction u/s.54F had already been claimed in A.Y.2013-14. It was contended that the AO reopened the assessment for the second time on the premise that deduction u/s.54F was not allowable on deemed income and therefore required disallowance. She accordingly argued that the reopening was valid and did not amount to a change of opinion with respect to the deduction claimed u/s.54F of the Act.



12. After carefully considering the facts on record, the reasons recorded for reopening, the orders of the lower authorities, the rival submissions, paper books and case law citations, we find that it is an undisputed fact that the assessee's case for A.Y. 2014-15 was originally subjected to scrutiny assessment u/s. 143(3) of the Act. Subsequently, the assessment was reopened for the first time by issuance of notice u/s. 148 dated 27.03.2018, specifically to examine the allowability of exemption claimed u/s. 54F of the Act on the ground that the assessee allegedly owned more than one residential house on the date of transfer. This issue was thus squarely before the AO during the first reassessment proceedings. The first reassessment culminated in an order dated 12.12.2018, wherein the AO, after examining the material available on record, chose not to make any addition or disallowance in respect of the claim u/s. 54F and assessed the income at the same figure as determined in the original scrutiny assessment. This clearly indicates that the AO had applied his mind to the issue of deduction u/s. 54F and had consciously accepted the assessee's claim. The second reopening of the assessment, initiated within a short span by notice dated 11.01.2019, is based entirely on the very same set of facts and materials which were already available on record and which had been considered by the AO during the original assessment as well as the first reassessment proceedings. In fact, the reasons recorded for the second reopening themselves acknowledge that the escapement of income was sought to be inferred from the existing records and that no further enquiry was considered necessary. The grounds cited for the second reopening, namely, (i) that deduction u/s. 54F was allegedly claimed twice, and



(ii) that deduction u/s. 54F was not allowable on deemed capital gains u/s. 54F(3), are only different facets of the same issue relating to the allowability of exemption u/s. 54F. These aspects could very well have been, and in substance were, examined during the earlier reassessment proceedings. No new tangible material came into the possession of the AO subsequent to the completion of the first reassessment so as to justify initiation of fresh proceedings. The Hon'ble Supreme Court in the case of Commissioner of Income-tax, Delhi vs. Kelvinator of India Ltd. [2010] 187 Taxman 312 (SC)/[2010] 320 ITR 561 (SC)/[2010] 228 CTR 488 (SC)[18-01-2010] held as under:

*4. On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1-4-1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post 1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987,*



*Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549 , dated 31-10-1989, which reads as follows :*

*"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section 147. —A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989 , has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same." [Emphasis supplied]*

*5. For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs.*

13. In view of the settled legal position laid down by the Hon'ble Supreme Court in *CIT v. Kelvinator of India Ltd.* (320 ITR 561), reassessment proceedings cannot be initiated merely on account of a change of opinion. Once the AO has applied his mind to an issue and taken a conscious decision, he has no power to review the same under the guise of reopening the assessment. In the present case, the second reopening clearly amounts to a review of the earlier reassessment order, which is impermissible in law. The action of the AO lacks jurisdiction and is therefore invalid. Consequently, the reassessment order dated 13.12.2019 passed u/s. 143(3) read with section 147 of the Act is hereby quashed. Since the reassessment



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itself is held to be invalid, we do not deem it necessary to adjudicate the issues raised on merits.

14. In the result, the appeal filed by the assessee is allowed.

*Order pronounced on 05<sup>th</sup> January, 2026 at Chennai.*

**Sd/-**  
(अमिताभ शुक्ला)  
**(Amitabh Shukla)**

**लेखा सदस्य / Accountant Member**

**Sd/-**  
(मनु कुमार गिरि)  
**(Manu Kumar Giri)**  
न्यायिक सदस्य / **Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 05<sup>th</sup> January, 2026.

EDN, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF