

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.1590/Kol/2024  
(Assessment Year 2012-13)**

**&**

**I.T.A. No.1591/Kol/2024  
(Assessment Year 2013-14)**

**West Bengal Electronics Industry Development  
Corporation Limited,**

Block -EP, GP, WEBEL Bhawan,  
Bidhannagar, Salt Lake City,  
Sector-V, Kolkata - 700091  
[PAN: AAACW2411Q]

.....**Appellant**

**Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC),  
Delhi**

..... **Respondent**

**Appearances by:**

Assessee represented by : Pratyush Jhunjunwala, Advocate

Department represented by : Manas Mondal, Addl. CIT-DR

Date of concluding the hearing : 16.10.2025

Date of pronouncing the order : 07.01.2026

**ORDER**

The present appeals filed by the assessee arise from order dated 29.05.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereafter "the Ld. CIT(A)]. Since these appeals relating to same assessee and are involving common issues, therefore, these are being disposed of by this consolidated order for the sake of brevity and convenience. We would first take up the appeal ITA No. 1590/Kol/2024.

**ITA No. 1590/Kol/2024**

2. The issue has raised in Ground No. 1 is against the order of Ld. CIT(A) upholding the reopening proceedings u/s 147/148 of the Act which is based on mere change of opinion and also without satisfying the conditions as provided in proviso to section 147 of the Act.

3. The facts in brief are that the assessee is a Govt. Company and is nodal agency of Govt. of West Bengal for development of Information Technology and Information Technology enable services sectors in the state of West Bengal. Its books of accounts are audited by the Comptroller and Auditor General of India. The assessee during the year filed the return of income on 28.09.2012 declaring total income at Rs. 6,17,45,925/-. The case of the assessee was selected for scrutiny and assessment u/s 143(3) of the Act was framed vide order dated 28.03.2015. Thereafter, the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act which was complied with by e assessee by filing the return of income declaring income of Rs. 5,40,87,294/-. The case of the assessee was selected for scrutiny on the ground that the assessee has claimed standard deduction @ 30% u/s 24(1) of the Act not only on the rent receipt but also on the electricity charges, services charges and permission fees etc thereby claiming excess deduction and thus has escaped the assessment to that extent. Finally, after taking into account the submissions and contention of the assessee , the AO framed the assessment by making addition of Rs. 1,67,29,175/- vide order passed u/s 143(3)/147 of the Act dated 26.11.2019.

4. In the appellate proceedings, the Ld. CIT(A) has dismissed the appeal of the Revenue on the legal issue thereby upholding the re-opening of assessment.

5. After hearing the rival contention and perusing the material on record, we find that the case of the assessee was reopened u/s 147 of the

Act for the reason that the assessee has claimed standard deduction @ 30% u/s 24(1) of the Act from the electricity charges recovery, service charges and permission fee etc and thus income has escaped assessment. The reasons recorded are extracted below:

*“Sir/Madam,*

*Sub: Forwarding of reason of reopening proceedings u/s 147 in your case for the A.Y. 2012-13 matter regarding-*

*Ref: Your letter filed on 26.04.2019*

*Please refer to the above*

*With reference to the above this is to inform you that the following reason your case was re-opened.*

*On perusal of materials on record, it has been observed that in computation of income, the assessee calculated the income from House Property by taking into account of Rs. 12,56,11,008/- as Gross Rent, from which Rs.20,67,655/ was deducted for proportionate Municipal Tax to arrive at Net Rent of Rs. 12,35,43,352/-. During assessment, inadvertently the same was allowed. Scrutiny of the assessment folder revealed that the Gross Rent ie. House Property Income of Rs. 12,69,08,978/ was aggregate of the rent (Rs.6,98,47,091), Electricity Recovery (Rs.1,16,92,957), Service Charges (Rs. 1,69,77,352) and Permission fee (2,97,85,826) It has also been noted that these receipts were shown as other operating Revenue at Note 19, of the profit & loss Account.*

*As per the I.T. Act, 1961, Income from House Property is only possible in the cases of (a) Rental income on a let out property (b) Annual Value of a property which is 'deemed to be let out for income tax purposes (when own more than one house property and (c) Annual Value of the property which is self occupied (which is Nil). Section 24 of the I.T. Act, 1961 allows making certain deduction from the Net Annual Value of certain House property. Net Annual Value is Gross Annual Value less Municipal Taxes paid. In case the property is let out, its rent received is Gross Annual Value,*

*In view of the above, it is clear that standard deduction@ 30% is available u/s 24 of the IT Act, 1961 only on Rent received and not on Electricity Recovery. Service Charges and Permission fee. However, the assessee, in its computation of income, apart from the rent of Rs. 12,56,11,008/-, the assessee claimed Standard Deduction of Rs.3,70,63,006/- on Electricity Recovery, Service Charges and Permission Fee respectively totalling of Rs.5.84,56,135/[Rs. 1,16,92,957 +1,69,77,352 + Rs.2,97,85,826 | which is not at all allowable.*

*The above fact clearly shows that the assessee did not make true and full disclosure of material facts in the return of income for the A.Y.2012-13 and thereby the assessee has prima facie understated its income which resulted in excess allowance of Standard Deduction of Rs. 3,70,63,006/- which has escaped assessment for the A.Y.2012-13.”*

6. We find from the perusal of above reasons that the in the very first para, the AO had mentioned about re-opening being based upon the perusal of the materials available on record. The AO noted that it has been observed from the computation of income that the assessee had shown gross rental receipts of Rs. 12,56,11,008/- from which Rs. 20,67,655/- was deducted as proportionate municipal tax and net rent was arrived at Rs. 12,35,43,352/-. Thereafter, the AO noted that assessment framed revealed that the gross rent was aggregate of rent, electricity charges recovery, service charges and permission fee and thus the assessee has claimed excess standard deduction u/s 24 of the Act @ 30% on the receipts other than the rent also and thus income has escaped assessment. We note that all these information were available with the AO in the original assessment proceedings and no new information was there before the AO to form belief. Therefore, this is nothing but mere case of change of opinion of the AO. In our opinion, the assessment cannot be reopened on the ground based on the same facts/records which are available before the AO in the original assessment proceedings. If this is allowed it would amount to review of order which is not permissible under the Act. The case of the assessee finds from the decision of Hon'ble Apex Court in the case of CIT vs. Kelvinator of India Limited (2010) (2) SCC 723, wherein the Hon'ble Court has held as under:

*"2. To answer the above question, we need to note the changes undergone by Section 147 of the Income Tax Act, 1961 (for short, "the Act"). Prior to the Direct Tax Laws (Amendment) Act, 1987, Section 147 read as under: "147. Income escaping assessment.-II-*

*(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that b year, or*

*(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,*

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153. referred to as the relevant assessment year)." (emphasis supplied)

3. After enactment of the Direct Tax Laws (Amendment) Act, 1987 i.e. prior to 1-4-1989, Section 147 of the Act reads as under:

"147. Income escaping assessment. If the assessing officer, for reasons to be recorded by him in writing, is of the opinion that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):" (emphasis supplied)

4. After the Amending Act, 1989, Section 147 reads as under:

"147. Income escaping assessment If the assessing officer has reason! to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 9 to 153 referred to as the relevant assessment year):" (emphasis supplied)

5. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the 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-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 a assessment, confers jurisdiction to reopen 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 reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

6. 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 precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. 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, the 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 d 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 reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer.*

8. 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 'reason to believe' in the 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)*

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

7. Similarly, the decision of the Hon'ble Supreme Court in the case of Mangalam Publications Vs. Commissioner of Income Tax reported in (2024) 461 ITR 159 (SC) has held in absence of any new tangible material, initiating of the reassessment proceeding on the basis of primary documents already on record showed that the impugned assessment proceedings have been initiated on the basis of mere change of opinion and are in the nature of review and not reassessment. The Hon'ble Apex Court made reliance on the decision of CIT Vs. Kelvinator of India Limited (supra). Therefore, considering the facts and circumstances in light of the aforesaid decisions, we are inclined to hold that reopening of assessment has been made on the basis of existing material available before the AO during the assessment proceeding which culminated u/s 143(3) of the Act and there is no new tangible material before the AO to form belief that

income has escaped assessment. Therefore, this is a review of an earlier assessment order by the AO. Consequently, we quash the reopening as well as the consequent assessment framed by the AO. The appeal of the assessee is allowed.

**ITA No. 1591/Kol/2024**

8. Since the facts and issues involved in the appeal are identical, except variances in figures or calculations, Therefore, our decision given above in ITA No. 1590/Kol/2024 would, mutatis mutandis, apply to ITA No.1591/Kol/2024 as well. Consequently, the appeal of the assessee is allowed.

9. In result, appeals of the assessee are allowed.

Order pronounced on 07.01.2026.

**Sd/-**  
**(Pradip Kumar Choubey)**  
**Judicial Member**

**Sd/-**  
**(Rajesh Kumar)**  
**Accountant Member**

Dated: 07.01.2026  
AK, Sr. P.S.

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches