

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**

**Before Shri Manjunatha G., Accountant Member**  
**and**  
**Shri Ravish Sood, Judicial Member**

आ.अपी.सं /**ITA No.1191/Hyd/2025**  
(निर्धारण वर्ष/Assessment Year:2015-16)

Virchow Petrochemical Private Limited, Hyderabad. PAN: AABCV9294P	Vs.	Assistant Commissioner of Income Tax, Central Circle-8(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri M.V. Prasad, CA	
राजस्व द्वारा/Revenue by:	Ms. U. Mini Chandran, CIT-DR	
सुनवाई की तारीख/Date of Hearing:	28/01/2026	
घोषणा की तारीख/Date of Pronouncement:	26/02/2026	

आदेश / ORDER

**PER. RAVISH SOOD, J.M:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 19/12/2024, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under section 147 r.w.s 144B of the Income Tax Act, 1961 (for short, "the Act"), dated 28/03/2022 for the Assessment Year (AY) 2015-16. The

assessee company has assailed the impugned order of the CIT(A) on the following grounds of appeal:

“1. The order passed by the Learned CIT (Appeals) is against the law as well as on the facts of the case.

2. On the facts and circumstances of the case, the Learned CIT(Appeals) erred in upholding the addition of Rs.2,49,54,091/- towards claim of depreciation on solar plant.

3. On the facts and circumstances of the case, the Learned CIT(Appeals) erred in enhancing such addition to Rs.7,34,14,979/- (i.e. enhancement of Rs.4,84,60,888/-) towards claim of depreciation on Solar Power Plant.

4. On the facts and circumstances of the case, the reopening of the assessment under section 147 of the I.T.Act is invalid in law and consequent issue of notice u/s.148 of the Act is also without jurisdiction in the absence of supply of the reasons to the appellant company in spite of specific request made for supply of such reasons.

5. On the facts and circumstances of the case, the Ld. CIT(Appeals) is not correct in dismissing the contention of the appellant by stating that nothing has been brought on record to demonstrate that the said reasons were asked for by it from the AO. In fact the appellant has produced such copy of request letter before the AO himself.

6. On the facts and circumstances of the case, the Learned CIT(Appeals) is not justified in rejecting the claim of depreciation even though appellant has produced all requisite information/documents viz., inspection report of the Engineer etc.

7. On the facts and circumstances of the case, the Learned CIT(A) is not justified in enhancing the assessment without issue of show cause notice proposing such enhancement. Hence the order u/s.250 of the I.T. Act is not valid in law.

8. Any other legal and factual grounds that may be urged at the time of hearing of the appeal.”

Also, the assessee company has raised the following additional grounds of appeal:

“Ground No.9:

On the facts and circumstances of the case, the Assessing Officer is not having jurisdiction to reopen the assessment under Section 147/148 of the I.T.Act.

Ground No.10:

On the facts and circumstances of the case, reopening of the assessment u/s.147/148 by the Assessing Officer is bad in law.

Ground No.11:

On the facts and circumstances of the case, the notice issued u/s. 147/148 of the Act is invalid since the assessment was reopened on the issue which was already considered at the time of completion of original assessment and therefore reopening of assessment on the same issue is mere a change of opinion and hence invalid.

Ground No.12:

On the facts and circumstances of the case, there is no tangible material before the Assessing Officer during period from original assessment and reassessment to form the belief that the income had escaped assessment and therefore, reopening of assessment under section 147/148 is not valid.”

As the assessee company by raising the aforesaid additional grounds of appeal has sought our indulgence for adjudicating certain legal issues which would not require looking any further beyond the facts available on record, therefore, we have no hesitation in admitting the same. Our aforesaid view is fortified by the judgment of the **Hon’ble Supreme Court in National Thermal power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC).**

2. Succinctly stated, the assessee company, which is engaged in the business of manufacturing of refined petroleum products, had filed its

return of income for AY 2015-16 on 30/11/2015 declaring an income of Rs. 109,21,94,530/-.

3. The AO had vide his order passed under section 143(3) of the Act, dated 11/12/2018, framed the original assessment in the case of the assessee company, wherein its returned income was accepted as such.

4. Thereafter, the concluded assessment of the assessee company was reopened vide notice issued under section 148 of the Act, dated 31/03/2021. In compliance, the assessee company filed its return of income.

5. During the course of the assessment proceedings, the AO observed that the assessee company had claimed 100% depreciation of Rs. 7,34,14,979/- on its solar power plant (80% depreciation + 20% additional depreciation). The AO observed that the assessee company had, during the subject year, not offered in its Profit & loss account any income from the sale of power from its aforesaid power generation plant. Also, it was observed by him that the nature of business of the assessee company had not undergone any change during the year under consideration, wherein, as per its financial statements, it was as in the preceding years, exclusively engaged in the pharmaceutical business segment. Further, the AO observed that though the establishing of a

power generation unit required inspection by the Chief Electrical Inspector, who certifies the same for commercial operation, but as there were no such details available on record in the case of the assessee company, therefore, it could not be gathered as to when the power generation plant was established and had commenced its commercial activities.

6. The AO based on his aforesaid deliberations issued to the assessee company a notice under section 142(1) of the Act, dated 10/03/2022, wherein it was called upon to furnish certain details, viz., (i) that as to whether it had put to use the power plant in the period relevant to AY 2015-16, and further substantiate the same based on documentary evidence; (ii) to furnish the details of the income that was generated by the power plant in AY 2015-16; and (iii) that as for establishing any power generation unit, the inspection of the Chief Electrical Inspector and issuance of a certificate by him for commercial operation is required, but there were no such details available on record which would reveal that the subject power plant was established and had commenced its commercial operations during the subject year, therefore, to place on record documentary evidence supporting the same.

7. Ostensibly, as the assessee company failed to respond to the aforesaid query letter issued by the AO, therefore, he held a conviction

that the assessee company had purchased the power plant but had not put it to use for the purpose of commercial operation and generated any income during the subject year. Accordingly, the AO, being of the view that the assessee company had not put to use the solar power plant during the year under consideration, declined its claim for depreciation on the same. Apart from that, the AO observed that as the assessee company was exclusively engaged in the business of manufacturing of pharmaceuticals, while for the business of power plant was altogether a separate line of business, therefore, it had by raising a claim for depreciation on the said unit which had yet not commenced its production suppressed the profit/income of the pharmaceutical unit for the year under consideration. Accordingly, the AO, based on his aforesaid deliberations, made an addition of Rs. 2,49,54,091/- to the returned income of the assessee company and vide his order passed under section 147 r.w.s 144B of the Act, dated 28/03/2022, determined the income of the assessee company at Rs. 111,71,48,621/-.

8. Aggrieved, the assessee company carried the matter in appeal before the CIT(A). As the assessee company, despite having been put to notice about the fixation of the hearing of the appeal, had failed to participate on either of the 4 occasions when the appeal was posted for

hearing, therefore, the CIT(A) was constrained to dispose of the appeal based on the facts available on record.

9. The CIT(A) observed that though the AO, while framing the assessment, had declined to allow the assessee company's claim for depreciation of Rs. 7,34,14,979/- on the solar power plant, but while quantifying the assessed income, had made an addition of only Rs. 2,49,54,091/-. The CIT(A), based on his aforesaid observations, held the addition of Rs. 2.49 crores (approx.) made by the AO as baseless and set aside the matter to his file with a direction to disallow the correct claim of depreciation raised by the assessee company on its solar power plant.

10. Aggrieved with the order of the CIT(A), the assessee company has carried the matter in appeal before us.

11. We have heard the Learned Authorised Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

12. Shri M.V. Prasad, Chartered Accountant, Learned Authorised Representative for the assessee company (for short, "Ld. AR"), at the threshold of hearing of the appeal, submitted that the same involves a

delay of 144 days. Elaborating on the reasons leading to the delay, the Ld. AR submitted that the same had crept in for the reason that the assessee company had in its Memorandum of Appeal, i.e., in “Form-35” given its email Id, i.e., “vpclaccounts@virchows.com”, but had thereafter changed the same to “accounts@virchowpetro.com” and also filed its return of income for the current year, i.e., AY 2022-23 on 22/10/2022 using the said new email Id, i.e., “accounts@virchowpetro.com”. The Ld. AR submitted that as the CIT(A) order was uploaded on the old e-mail Id, i.e., “vpclaccounts@virchows.com”, therefore, the assessee company, having changed its email Id to “accounts@virchowpetro.com” had remained unaware about the disposal of its appeal. The Ld. AR fairly admitted that there was a bonafide mistake on the part of the assessee company in not intimating the new email account to the CIT(A) office/portal. Elaborating further on his contention, the Ld. AR submitted that the assessee company had learnt about the disposal of its appeal by the CIT(A) only when it was in receipt of a show cause notice (SCN) under section 271(1)(c) of the Act, dated 11/07/2025, which was dropped at its new email Id that was used for filing the latest return of income, viz., “accounts@virchowpetro.com”. Carrying his contention further, the Ld. AR submitted that the assessee company, on gathering about the disposal of its appeal by the CIT(A), had, thereafter, involving no further

loss of time, filed the present appeal before the Tribunal, which by the time involved a delay of 145 days. The Ld. AR to buttress the aforesaid facts, which had resulted in a bonafide delay in filing the present appeal, had taken us through the condonation application that was filed by the assessee company. Alternatively, the Ld. AR submitted that now when the assessee company pursuant to the notices that were forwarded on its old email account was not participating in the proceedings before the First Appellate Authority, then, the CIT(A) office in all fairness and in the interest of justice ought to have forwarded a physical copy of the notice at the address that was provided by the assessee company at Sl.No.17 of its Memorandum of Appeal, i.e., “Form-35”, which, however was never done.

13. Per contra, Ms. U. Mini Chandran, Ld. CIT-DR, vehemently objected to the seeking of condonation of the delay involved in filing of the present appeal by the assessee company. The Ld. CIT-DR submitted that as the assessee company does not have a sufficient cause to explain the delay in filing the present appeal, therefore, the same does not merit to be condoned. Elaborating on her contention, the Ld. CIT-DR submitted that the assessee company ought to have intimated/uploaded the changed email account in the CIT(A) office/portal, which, however it had failed to do. It was further submitted

by her that as the delay in filing of the present appeal had crept in because of lackadaisical approach adopted by the assessee company, therefore, the same does not merit to be condoned.

14. We have given thoughtful consideration to the contentions advanced by the Learned Authorised Representatives of both parties regarding the delay of 144 days involved in filing the present appeal before us.

15. Although we are principally in agreement with the Ld. CIT-DR that the assessee company ought to have remained vigilant regarding filing of the present appeal within the stipulated time period, but at the same time, cannot shut our eyes to the reasons leading to the same. We find that it is the claim of the assessee company that the delay in filing of the present appeal had crept in because it had changed its email account from “vpclaccounts@virchows.com” (as was provided in the “Form-35”) to “accounts@virchowpetro.com”, but had inadvertently failed to intimate the new email Id to the CIT(A) office. We find that the claim of the assessee company that it had changed its email account is not an eye wash but a fact which can safely be gathered from its return of income for AY 2022-23 filed on 22/10/2022, wherein the said new email Id, i.e., “accounts@virchowpetro.com” was used for filing the same. In our view, as there were justifiable and bonafide reasons due to which the

assessee company had remained oblivion about the disposal of its appeal by the CIT(A), and had gathered about the same only when a “SCN”, dated 11/07/2025 purporting imposition of penalty under section 271(1)(c) of the Act on 11/07/2025 was dropped in its new email account, i.e., “accounts@virchowpetro.com”, therefore, in our view the same explain the reason leading to the delay in filing the preset appeal, which, thus, merits to be condoned. Our aforesaid view that a liberal approach should be taken while considering an application seeking condonation of the delay involved in filing of an appeal is supported by the judgment of the **Hon’ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31<sup>st</sup> January, 2025**. The Hon'ble Apex Court while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of delay of 166 days by the Income-Tax Appellate Tribunal, Raipur Bench, had observed, that a justice-oriented and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay involved in filing the appeal. We thus, in terms of our aforesaid observations, condone the delay involved in the filing of the present appeal.

16. Coming to the merits of the case, the Ld. AR submitted that the assessee company, which is engaged in the business of manufacturing of pharmaceuticals, was originally assessed by the AO vide his order passed under section 143(3) of the Act, dated 11/12/2018, wherein, after exhaustive deliberations, its returned income was accepted as such, Page Nos.116 to 121 of APB. Elaborating further on his contention, the Ld. AR submitted that the AO in the course of the original assessment proceedings had, inter alia, looked into the assessee company's claim for depreciation/additional depreciation on the solar power plant as was raised in its return of income. The Ld. AR to buttress his contention had drawn our attention to the notice issued by the AO under section 142(1) of the Act, dated 10/09/2018, wherein at Sl.No.8 of the query letter, he had called upon the assessee company to justify its claim for depreciation at higher rates/additional depreciation for the year under consideration, Page 107-108 of APB. The Ld. AR submitted that the AO vide his notice under section 142(1) of the Act, dated 09/11/2018 had, again called upon the assessee company to furnish the details of its fixed assets along with rate of depreciation claimed "block wise" and also furnish the details of additions made to the fixed assets during the year along with the copies of bills/vouchers, and depreciation claimed on a block wise basis, Page 114-115 of APB. The Ld. AR submitted that the

assessee company in response to the aforesaid notices issued under section 142(1) of the Act had furnished the requisite information before the AO, a fact which could safely be gathered from the assessment order passed by him under section 143(3) of the Act, dated 11/12/2018, Paragraph-2, Page-117 of APB.

17. The Ld. AR submitted that now when the assessment in the case of the assessee company had been framed by the AO vide his order passed under section 143(3) of the Act, dated 11/12/2018, therefore, in absence of any failure on the part of the assessee company to fully and truly disclose all the material facts necessary for framing of its assessment, the AO was precluded from reopening its concluded assessment after lapse of a period of 4 years from the end of the relevant assessment year. The Ld. AR further submitted that though the assessee company had duly complied with the notice issued under section 148 of the Act, dated 31/03/2021 and had filed its return of income in response thereto, but thereafter, despite specific requests the copy of the “reasons to believe” based on which its concluded assessment was reopened was not made available to it, Page Nos.125-126 of APB. Further, the Ld. AR submitted that its case was reopened for reappreciating its claim for depreciation on solar power plant, which though was looked into and verified by the AO in the course of the

original assessment proceedings. The Ld. AR to support his claim that the case of the assessee company was reopened for reappreciating the assessee's claim for depreciation on the solar power plant had drawn our attention to the "Show Cause Notice" (SCN), dated 18/03/2022 issued by the AO/NaFAC, wherein the aforesaid reason for reopening of the assessee company's case formed part of the said letter.

18. Carrying his contention further, the Ld. AR submitted that though the AO vide his order passed under section 147 r.w.s 144B of the Act, dated 28/03/2022, had declined the assessee company's claim for additional depreciation of Rs.2.49 crores (supra), but the CIT(A) had enhanced the disallowance by directing the AO to disallow the entire claim of depreciation of Rs.7.34 crores (supra). The Ld. AR submitted that the enhancement directed by the CIT(A) in absence of any notice of enhancement issued to the assessee company/appellant cannot be sustained and is liable to be vacated.

19. The Ld. AR submitted that as the assessee company had in its return of income and financial statements come forth with a full and true disclosure of all relevant particulars for framing of its assessment, therefore, the AO had grossly erred in law and facts of the case in assuming jurisdiction and reopening its concluded assessment in contravention of the mandate of the "first proviso" to section 147 of the

Act. The Ld. AR submitted that the assessee company in its return of income had provided the complete details of depreciation of Rs.7.34 crores (supra), Page Nos.50 and 52 of APB. Also, the Ld. AR submitted that the complete details of the depreciation were provided by the assessee company in its audit report filed under section 44AB of the Act, i.e., in “Form-3CA”, Page No.33 of APB.

20. On merits, the Ld. AR has drawn our attention to a letter dated 10/09/2014 issued by the Chief Electrical Inspector, Government of Telangana addressed to the assessee company, wherein it was mentioned that an inspection was carried out on 06/09/2014, and based on the same approval was granted for installation of equipment of Electrical Installation of voltage exceeding 650V for energization, Page No.165 of APB. The Ld. AR based on the aforesaid facts submitted that undisputedly the solar power plant was installed at the premises of the assessee company during the subject year.

21. The Ld. AR submitted that as the AO had without any new material coming to his notice after the conclusion of the original assessment, based on a mere “change of opinion” reopened the concluded assessment of the assessee company that was originally framed by the AO vide his order passed under section 143(3) of the Act, dated 11/12/2018, therefore, the assumption of jurisdiction by him for such

reopening of the concluded assessment based on a “change of opinion” as against that held by his predecessor cannot be sustained and is liable to be struck down. The Ld.AR to support his contention had relied upon the judgment of the Hon’ble Supreme Court in the case of CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC). Also, the Ld. AR had relied upon the judgment of the Hon’ble High Court of Gujarat in the case of Hindustan Marble (P.) Ltd vs. Assistant Commissioner of Income Tax (2023) 146 taxmann.com 255 (Gujarat), wherein the impugned reassessment proceedings initiated based on a “change of opinion” was set aside by the Hon’ble High Court.

22. Per contra, Ms. U. Mini Chandran, Ld. CIT, DR submitted that as the AO while framing the original assessment vide his order passed under section 143(3) of the Act, dated 11/12/2018, had not looked into the assessee’s claim for depreciation/additional depreciation on solar power plant and thus, not formed any opinion on the said claim, therefore, there can be no issue of any change of opinion by the successor AO on the said issue on which no opinion was earlier formed. The Ld. CIT, DR had further drawn our attention to the notice under section 142(1) of the Act, dated 10/03/2022 that was issued by the AO in the course of the reassessment proceedings, wherein it was stated that though the assessee company had purchased the power plant but

had not put to use the same for its commercial operation and not generated any income, therefore, it was not entitled for claiming depreciation on the same, Page 145-147 of APB. Also, it was submitted by the Ld. CIT-DR that as the AO vide his notice issued under section 142(1) of the Act, dated 10/03/2022 had informed the assessee company about the reasons based on which its case was reopened, therefore, there was no further obligation cast upon him to separately make available to the assessee a copy of the “reasons to believe”. The Ld. CIT-DR submitted that as the assessee company in the course of the original assessment proceedings had only provided the details of additions to the fixed assets but not placed on record the supporting bills, therefore its aforesaid claim for depreciation could not be verified. Elaborating further on her contention, the Ld. CIT, DR submitted that as the assessee company in the course of the assessment proceedings had not provided the complete details to support its claim for depreciation on the solar power plant, therefore, in the absence of full and true disclosure of all material facts necessary for framing of assessment, its case was as per the mandate of the “first proviso” to section 147 of the Act rightly reopened beyond the period of 4 years from the end of the relevant assessment year. The Ld. CIT-DR further submitted that the fact that the assessee company had not generated any income from its solar power

plant during the subject year in itself evidences that the same was not put to use during the said year.

23. Apropos, the Ld. AR's claim that the case of the assessee company was reopened based on a "change of opinion" as regards its entitlement towards depreciation that was claimed by the assessee company and was allowed by the AO while framing the original assessment, the Ld. CIT, DR submitted that as the AO in the course of the original assessment had not formed any opinion regarding the entitlement of the assessee for claiming of depreciation on the solar power plant, therefore, it is incomprehensible as to on what basis it is being averred by the Learned Counsel for the assessee that the case of the assessee company had been reopened based on a change of opinion.

24. Shri M.V. Prasad, Learned Authorized Representative for the assessee in his rebuttal to the contentions advanced by the Department on the issues, viz., (i) the case of the assessee company was reopened based on change of opinion; and (ii) the AO had traversed beyond the scope of his jurisdiction and reopened the concluded assessment of the assessee beyond a period of 4 years from the end of the relevant assessment year, i.e., AY 2015-16, i.e., in contravention of the mandate of "first proviso" to section 147 of the Act, submitted that the assessee's

claim for depreciation/additional depreciation on solar power plant, (i.e., 80% depreciation + 20% additional depreciation) was clearly discernible from the depreciation chart filed by the assessee company under per the Income Tax Act, 1961 for the subject year, along with the computation of income, which revealed an aggregate claim for depreciation of Rs.7,34,14,979/-. The Ld. AR based on the aforesaid facts submitted that in the backdrop of the aforesaid depreciation chart which clearly revealed the assessee's claim for depreciation on the solar power plant, it can safely be concluded that the AO had reopened the concluded assessment based on a change of opinion. Also, it was submitted by him that based on the full and true disclosure by the assessee company of its aforesaid claim for depreciation, the Ld. CIT, DR's claim that the case of the assessee company was validly reopened as per the mandate of "first proviso" to section 147 of the Act because of failure on its part to disclose fully and truly all material facts has no legs to stand upon.

25. We have heard the Learned Authorised Representatives of both parties and perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contention.

26. As the assessee company is, inter alia, aggrieved with the order of the lower authorities on the ground that they had despite absence of any fresh information/material coming in the possession of the AO after framing of the original assessment vide his order passed under section 143(3) of the Act, dated 11/12/2018, which would justify the formation of a bonafide belief that its income chargeable to tax had escaped assessment, wrongly assumed jurisdiction and reopened the concluded assessment of the assessee company, therefore, we shall first deal with the same.

27. We find on a perusal of the assessment record available before us, that the concluded assessment of the assessee company was reopened for re-appreciation of its claim of 100% depreciation of Rs. 7,34,14,979/- on the solar power plant (80% depreciation + 20% additional depreciation). For the sake of clarity, the aforesaid reason for reopening of the concluded assessment of the assessee company can safely be gathered on a perusal of the "Annexure" to the notice issued by the AO under section 142(1) of the Act, dated 10/03/2022, Page Nos. 145 to 146 of APB, which reads as under:

"ANNEXURE

**From the details available on record**, it is observed that the assessee has claimed 100% depreciation of Rs. 7,34,14,979/- on solar power plant (80% on power plant -20% additional depreciation) in A.Y. 2015-16. However, the assessee has not received and offered any income from sale of power from the above power generation plant in

the P & L account during the year under consideration. It is also, noticed that there was no change in the nature of business of the company done during the year and according to the financial statements, the company's operations are exclusively in pharmaceuticals business segment.

In view of the above, it is clear that though the assessee purchased Power plant and It was not put to use for the purpose of commercial operation and also not generated any income from the above for claiming depreciation as rule stated above. Further, the sale on power generation is not a business of the assessee. The business of power plant is altogether separate unit and claiming depreciation of the unit which is not yet started production, resulted in reduction of profits of the pharma unit from which the assessee is offering income in the Assessment year.”

**(emphasis supplied by us)**

As observed by us herein above, the AO after the culmination of the order of assessment which his predecessor had passed under section 143(3) of the Act, dated 11/12/2018, referred to the details available on record, and observed that though the assessee company had claimed 100% depreciation of Rs.7.34 crores (approx.) on the solar power plant, but had not received and incurred any income from sale of power from the said power generation plant in its “Profit and Loss account” for the year under consideration. Also, it was observed by him that there was no change in the nature of the business of the assessee company done during the year, which, as per its financial statements for the subject year was exclusively in the pharmaceutical business segment. Accordingly, the AO, based on his aforesaid observations, was of the view that though the assessee company had purchased the power plant, but it had not put the same to use for the purpose of commercial operations and

generated any income from the said plant for entitling it to claim the depreciation on the same as required per the mandate of law. Further, the AO was of the view that the assessee company had claimed depreciation on the power plant, which, being an altogether separate unit had yet not started its production, therefore, the same had resulted in the reduction of the profits of its pharmaceutical unit from which it was offering income during the subject assessment year.

28. We have given thoughtful consideration to the aforesaid facts, based on which the concluded assessment of the assessee company had been reopened by the AO. In our view, the reopening of the concluded assessment of the assessee company was based on the same set of facts that were available with the AO while framing the original assessment. To sum up, no fresh material/documents had come in the possession of the AO after culmination of the original assessment proceedings, which would have vested jurisdiction with him to reopen the concluded assessment of the assessee company. Our aforesaid conviction is fortified on a bare perusal of the aforesaid reasons, which reveals that the reopening of the concluded assessment of the assessee company was based on a mere re-appreciation of the facts available on record by the successor AO, i.e., the entitlement of the assessee company for claiming 100% depreciation on its solar power plant.

29. Considering the fact that the case of the assessee company had been reopened with the purpose to re-appreciate its claim for depreciation on solar power plant, based on the same set of facts which were already available on record and not on the basis of any fresh material/document coming into the possession of the A.O after the culmination of the original assessment by his predecessor vide order u/s.143(3) dated 11/12/2018, which would reveal that any income of the assessee company chargeable to tax had escaped assessment, we find substance in the Ld. AR's claim that the A.O. had traversed beyond the scope of his jurisdiction and had wrongly reopened the concluded assessment of the assessee company under Sec. 147 of the Act. In fact, we are unable to comprehend what new "material" or "information" had come up before the A.O., which justified the reopening of the concluded assessment of the assessee company. We are afraid that re-appreciation of the facts already available on record before the A.O. while framing the original assessment is not permissible u/s 147 of the Act. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **Asian Paints Ltd. Vs. DCIT (2008) 308 ITR 195 (Bom)**. The Hon'ble High Court, by drawing support from the landmark judgment of the "**Full bench**" of the **Hon'ble High Court of**

**Delhi** in the case of **CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del)** [which thereafter had been approved by the **Hon'ble Apex Court** in **CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC)**] had observed that the department cannot take recourse to the provisions of Sec. 147 of the Act for the failure of the A.O to apply his mind in the original assessment proceedings to the material which according to him, is relevant and which was available on record. Relying on the observations of the "Full bench" of the High Court of Delhi in **CIT Vs. Kelvinator of India Ltd.** (supra), the Hon'ble High Court of Bombay in **Asian Paints Ltd. Vs. DCIT** (supra), had observed that where according to the A.O he had failed to apply his mind to the relevant material in making the assessment order, he cannot take advantage of his own wrong and reopen the assessment by taking recourse to the provisions of Sec. 147. The Hon'ble High Court had further observed that fresh application of mind by the A.O to the same set of facts for the reason that some material that was on record while framing the original assessment was inadvertently excluded from consideration would not justify reopening of the assessment u/s 147 of the Act. For the sake of clarity, the observations of the Hon'ble High Court of Bombay in the case of **Asian Paints Ltd. Vs. DCIT** (supra) is culled out as follows:

"7. We have heard the learned counsel appearing for both sides. We have also gone through the judgments on which reliance was placed by the learned counsel appearing for both sides.

8. In the order rejecting the objection filed by the petitioner to the notice under section 148, respondent No. 1 has observed "verification of assessment record reveals that the said details were called for but inadvertently the same were not taken into account while framing the assessment and, therefore, it cannot be said that there is a change of opinion." According to respondent No. 1, thus, the relevant material was available on record, but he failed to apply his mind to that material in making the assessment order. **The question is, can respondent No. 1 take recourse to the provision of section 147 for his own failure to apply his mind to the material which, according to him, is relevant and which was available on record. We find that this situation has been considered by the Full Bench of the Delhi High Court in its judgment in the case of *CIT v. Kelvinator of India Ltd.* [2002] 256 ITR 1 and the Full Bench has observed thus (page 19)**

:

"The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. **If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong.**"

**9. It is clear from the observations made above that the Full Bench of the Delhi High Court has taken a view that in a situation where according to the Assessing Officer he failed to apply his mind to the relevant material in making the assessment order, he cannot take advantage of his own wrong and reopen the assessment by taking recourse to the provisions of section 147. We find, ourself, in respectful agreement with the view taken by the Full Bench of the Delhi High Court.**

10. It is further to be seen that the Legislature has not conferred power on the Assessing Officer to review its own order. Therefore, the power under section 147 cannot be used to review the order. **In the present case, though the Assessing Officer has used the phrase "reason to believe", admittedly between the date of the order of assessment sought to be reopened and the date of formation of opinion by the Assessing Officer, nothing new has happened, therefore, no new material has come on record, no new information has been received, it is merely a fresh application of mind by the same Assessing Officer to the same set of facts and**

**the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion.** The Full Bench of the Delhi High Court in its judgment in the case of *Kelvinator* [2002] 256 ITR1 referred to above, has taken a clear view that reopening of assessment under section 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under section 148.

11. In the result, therefore, petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a) with no order as to costs.”

**(emphasis supplied by us)**

At this stage, it would be relevant to point out that the view taken by the “Full bench” of the Hon’ble High Court of Delhi in CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del), that the failure of the A.O to consider certain material that was available on record while framing the original assessment cannot justify the reopening of its concluded assessment, as the same would amount to opening of the assessment on the basis of a “change of opinion” which is not allowed as per the mandate of law, had been approved by the **Hon’ble Apex Court in CIT Vs. Kelvinator of India (2010) 320 ITR 561 (SC)**. The observations of the “Full bench” of the Hon’ble High Court of Delhi in CIT Vs. Kelvinator of India (2002) 256 ITR 1 (Del), which thereafter had been approved by the Hon’ble Apex Court in 320 ITR 561, are culled out as under (relevant extract):

“10. It is further to be seen that the legislature has not conferred power on the AO to review its own order. Therefore, the power under s. 147 cannot be used to review the order. In the present case, though the AO has used the phrase “reason to believe”, admittedly between

the date of the order of assessment sought to be reopened and the date of formation of opinion by the AO, nothing new has happened, therefore, no new material has come on record, no new information has been received; it is merely a fresh application of mind by the same AO to the same set of facts and the reason that has been given is that the some material which was available on record while assessment order was made was inadvertently excluded from consideration. This will, in our opinion, amount to opening of the assessment merely because there is change of opinion. The Full Bench of the Delhi High Court in its judgment in the case of Kelvinator (supra) referred to above, has taken a clear view that reopening of assessment under s. 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case also, it was not permissible for respondent No. 1 to issue notice under s. 148".

Also, a similar view has been taken by the **Hon'ble Supreme Court** in the case of **ITO, Ward No. 16(2) Vs. M/s Techspan India Private Limited, Civil Appeal No 2732 of 2007, dated 24/04/2018**. Further, we find that the **Hon'ble High Court of Bombay** in the case of **Runwal Realty (P) Ltd. Vs. Deputy Commissioner of Income Tax, Central Circle 4(1) (2019) 107 taxmann.com 284 (Bombay)**, had observed that the reopening of the assessment on the basis of the same material would be a mere change of opinion and hence not permissible.

30. At this stage, we may herein observe, that as per the mandate of law, even where a concluded assessment is sought to be reopened by the A.O within a period of 4 years from the end of the relevant assessment year, it is a must that the A.O has fresh material or information with him, that had led to the formation of belief on his part that the income of the assessee chargeable to tax has escaped

assessment. Our aforesaid view is fortified by the judgments of the **Hon'ble High Court of Bombay** in the case of **NYK Lime (India) Ltd. Vs. DCIT (No.2) [2012] 346 ITR 361 (Bom)** and **Purity Tech Textile Pvt. Ltd. Vs. ACIT & Anr. [2010] 325 ITR 459 (Bom)**.

31. Alternatively, we concur with the view taken by the CIT(Appeals) that the reopening of the concluded assessment of the assessee company is also hit by the "1<sup>st</sup> proviso" to Section 147 of the Act. Admittedly, the original assessment was framed in the case of the assessee company for the year under consideration, i.e., A.Y 2015-16 vide order passed under Sec. 143(3) of the Act, dated 11/12/2018. The concluded assessment of the assessee company was thereafter reopened vide notice issued under Section 148 of the Act, dated 31/03/2021. It is the claim of the Id. A.R. that the A.O. had exceeded his jurisdiction and framed the reassessment order under Section 147 r.w.s 144B of the Act, dated 28.03.2022, inter alia, for the reason that the same had been passed in violation of the mandate of the "1<sup>st</sup> proviso" of Section 147 of the Act. As stated by the Ld. A.R and, rightly so, in a case where an assessment had earlier been made under Section 143(3) of the Act, and action thereafter is sought to be taken for the reopening of the case u/s.147 after the expiry of four years from the end of the relevant assessment year, then, it would be necessary that the twin

conditions contemplated in the statutory provision are satisfied, i.e. (i). the AO must have reason to believe that income chargeable to tax has escaped assessment; AND (ii). he must also have a reason to believe that such escapement had occurred by reason of failure on the part of the assessee for either of the two conditions, viz. (a). to make a return of income under Section 139 or in response to notice issued under sub-section (1) of Section 142 or Section 148; or (b). to disclose fully and truly all material facts necessary for his assessment for that purpose.

32. Coming back to the two conditions carved out in the “1st proviso” to Sec. 147 of the Act, as it is neither the case of the department nor a fact discernible from the record that the income of the assessee company chargeable to tax had escaped assessment for the reason that there was any failure on its part to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148, therefore, the first condition contemplated in the “1st proviso” to Sec. 147 is not satisfied in the present case.

33. We shall now advert to the second condition contemplated in the “1st proviso” to Sec. 147 of the Act, i.e., as to whether or not there has been any failure on the part of the assessee company to disclose fully and truly all material facts as were necessary for its assessment for the year under consideration, i.e., A.Y. 2015-16. On a perusal of the record,

it transpires that the assessee company had disclosed fully and truly all the material facts regarding its claim for depreciation/additional depreciation of Rs. 7,34,14,979/- on its solar power plant. We may herein observe that the **Hon'ble Supreme Court** in the case of **New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax (2020) 116 Taxmann.com 151 (SC)**, had, inter alia, held that though the assessee is obligated to disclose the "primary facts" but it is neither required to disclose the "secondary facts" nor required to give any assistance to the A.O by disclosure of the other facts and it is for the A.O to decide what inferences are to be drawn from the facts before him. It was observed by the Hon'ble Apex Court that the extended period of limitation for initiating proceedings under the "1<sup>st</sup> proviso" of Section 147 of the Act would only get triggered where the assessee had failed to disclose fully and truly all material facts necessary for its assessment. Now, in the case before us, we are unable to comprehend what facts the assessee company had failed to disclose, which would have otherwise justified bringing its case within the realm of the extended time period contemplated in the "1<sup>st</sup> proviso" of section 147 of the Act. As the assessee company had disclosed fully and truly all the material facts as regards the aforesaid issue, i.e., its claim for depreciation/additional depreciation of Rs.7.34 crores (supra) on its solar power plant as were necessary for its

assessment for the year under consideration, i.e., AY 2015-16; therefore, it could by no means be held to be in default for the purpose of bringing it within the sweep of “1st proviso” of Section 147 of the Act.

34. Analyzing the scope of the “1<sup>st</sup> proviso” to Sec. 147 of the Act, which contemplates that where assessment in the assessee's case had been framed u/s 143(3) of the Act, then no action under Sec. 147 shall be taken in its case after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax had escaped assessment for such assessment year for failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, the **Hon’ble Supreme Court** had dismissed the Special Leave Petition (SLP) filed by the revenue in **ACIT Vs. Marico Limited, 117 taxmann.com 244 (SC)**, and impliedly approved the decision of the **Hon’ble High Court of Bombay** in the case of **Marico Limited Vs. ACIT, WP NO.1917 of 2019 dated 21.08.2009**. The Hon’ble High Court of Bombay in Marico Limited Vs. CIT (supra) [as approved by the Hon’ble Apex Court] had observed as follows:

“5. Upon hearing learned counsel for the parties and upon perusal of the documents and record, what we gather is that the notice of reopening of assessment has been issued beyond the period of four years from the assessment year. The reasons recorded by the Assessing Officer are elaborate and refer to various issues on which he wishes to carry out the reassessment. However, the central theme which passes through all these issues is that the Assessing Officer had gathered the information and material from the record of the assessment. For example in Paragraph No. 3 of the reasons which contains several sub-paragraphs which are different elements of the grounds for reassessment begins with the expression "On perusal of

the record for the assessment year 2011-12, the following issues were found". Thus, with reference to various issues arise on the basis of the perusal of the record of the assessment year in question. Clearly, therefore, there is no material alien to the record which the Assessing Officer has referred to for issuing the impugned notice. Further, almost for every ground which is part of various sub-paragraphs of Paragraph No. 3, he has referred to either scrutiny or verification of the case records. In clear terms, therefore, the Assessing Officer was acting on the information available from the record of the assessment.

6. As is well known, in an instance where the Assessing Officer exercises power of reassessment beyond the period of four years from the end of relevant assessment year, an essential requirement is that the escapement of income chargeable to tax is due to the failure on the part of the assessee to disclose truly and fully all material facts. This is part of section 147 of the Act itself and is on number of occasions by various judgments of High Court and Supreme Court held to be mandatory pre-requirement. In view of such settled law, it is not necessary to refer to any judgment. Revenue is unable to bring to our notice any aspect or element which did not form part of the record and on the basis of which from the reasons recorded, it can be culled out that the Assessing Officer had formed a belief that income chargeable to tax had escaped assessment. In clear terms therefore, there was no failure on the part of the assessee to disclose truly and fully all material facts.

7. Counsel for the revenue however submitted that one of the issues raised by the Assessing Officer is that the activity carried on by the assessee does not amount to manufacturing activity. In the present petition, it is not necessary for us to comment on this aspect of the matter. What is important however is such belief also the Assessing Officer has formed on the basis of material already on record. Looked from any angle, the Assessing Officer cannot justify issuing the notice of reopening of assessment beyond the period of four years from the end of relevant assessment year.

8. Under the circumstances, impugned notice is quashed. Petition allowed and disposed of accordingly."

Considering the aforesaid settled position of law, we are of the considered view that as in the case before the Hon'ble Apex Court in Marico Limited (supra), the concluded assessment in the case of the present assessee company before us for the year under consideration, i.e., A.Y 2015-16 had been reopened vide notice u/s 148, dated 31/03/2021, i.e., beyond 4 years from the end of the relevant assessment year, for the purpose of reappreciating the material that was available on the assessment record while framing the original

assessment u/s 143(3), dated 11/12/2018, i.e. for reappreciating the claim of the assessee company for depreciation/additional depreciation of Rs.7.34 crores (supra) on its solar power plant, facts regarding which as observed by us hereinabove had not only been fully and truly disclosed by the assessee company in its original return of income/financial statements filed along with the same, but has also been looked into, queried and deliberated upon by the AO while framing the original assessment vide his order under section 143(3) of the Act, dated 11/12/2018, therefore, in our view, in absence of any failure on the part of the assessee company to fully and truly disclose all material facts necessary for its assessment, the reopening of its concluded assessment beyond a period of 4 years from the end of the relevant assessment year, i.e., AY 2015-16 would be clearly hit by the "1<sup>st</sup> proviso" to Sec. 147 of the Act.

35. We, thus, hold a firm conviction that as stated by the Ld. AR, and rightly so, the assessment of the assessee company for AY 2015-16 that was earlier framed under Sec. 143(3), dated 11/12/2008, had despite any failure on its part to fully and truly disclose all material facts necessary for framing of its assessment, reopened by the AO vide Notice u/s 148, dated 31/03/2021, i.e, after the expiry of four years from the end of the relevant assessment year, which being in contravention of the

mandate of the “1<sup>st</sup> proviso” to Section 147 of the Act, cannot also be sustained for the said reason.

36. On the basis of our aforesaid deliberations, we are of the view that the A.O had wrongly assumed jurisdiction and reopened the concluded assessment of the assessee company for two fold reasons, viz. (i). that fresh application of mind by the A.O to the same set of facts for the reason that some material that was available on record while framing the original assessment was inadvertently excluded from consideration would not justify reopening of the assessment u/s 147 of the Act; and (ii). that concluded assessment of the assessee company for the year under consideration, i.e., A.Y 2015-16, had been reopened, vide notice u/s 148, dated 31/03/2021, i.e., beyond 4 years from the end of the relevant assessment year, for the purpose of reappreciating the material that was available on the assessment record while framing the original assessment u/s 143(3), dated 11/12/2018 and not for any failure of the assessee company to fully and truly disclose all material facts necessary for its assessment; therefore, the reassessment order passed by him u/s. 147 r.w.s 144B, dated 28.03.2022, for both the said reasons cannot be sustained. We, thus, set aside the CIT(A) order, and quash the impugned assessment order for want of a valid assumption of jurisdiction by the AO.

37. As we have quashed the assessment for want of valid assumption of jurisdiction by the AO, therefore, we refrain from adverting to and adjudicating the other grounds based on which the impugned addition/disallowance made by the lower authorities has been assailed before us, which, thus, are left open.

38. In result, the appeal filed by the assessee company is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 26<sup>th</sup> February, 2026.

<b>Sd/-</b> <b>(MANJUNATHA G.)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(RAVISH SOOD)</b> <b>JUDICIAL MEMBER</b>
---	---

Hyderabad,

Dated 26<sup>th</sup> February, 2026.

**\*\*OKK / SPS**

Copy to:

S.No	Addresses
1	Virchow Petrochemical Private Limited, Plot No.17A, Phase-1, IDA, Patancheru, Sangareddy District, Hyderabad, Telangana-502319.
2	The Assistant Commissioner of Income Tax, Central Circle-8(1), Signature Towers, Sy. No.6(P) of Kondapur, Opposite Botanical Gardens, Serlingampally (M), RR District, Hyderabad, Telangana-500084.
3	The Pr. CIT, Central Circle, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order  
Sr. Private Secretary,  
ITAT, Hyderabad.