IN THE INCOME TAX APPELLATE TRIBUNAL
"CUTTACK BENCH, CUTTACK
VIRTUAL HEARING AT KOLKATA

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.626/CTK/2025
Assessment Year: 2009-10

Chhabi Lata Sahu Block-D, Annapurna Market, Koel Nagar, Rourkela, Odisha-769014. (PAN: AEOPS8319G)	Vs	**ITO, Ward-4, Rourkela**
(Appellant)		**(Respondent)**

Assessee by : Shri S. K. Sarangi & Bishwa Jyoti Pattnaik, ARs
Revenue by : Shri Shakeer Ahamed, Sr. DR

Date of Hearing : 16.03.2026
Date of Pronouncement : 16.03.2026

ORDER

PER BENCH:

This is an appeal filed by the assessee against the order of the CIT(Appeal) ADDL/JCIT(A)-1, Visakhapatnam [hereinafter referred to as the 'CIT(A)'] in appeal no.CIT(A), Sambalpur/10013/2015-16 dated 19.09.2025 for the assessment year 2009-10.

2. Shri S. K. Sarangi & Bishwa Jyoti Pattnaik, ARs, represented on behalf of the assessee and Shri Shakeer Ahamed, Sr. DR represented on behalf of the revenue.

3. It was submitted by the ld. AR placed before us the copy of the reasons recorded and the same reads as under:

Smt. Chhabilata Sahu,
Prop.: M/s. Sahu Agency,
Plot No.37/847, Jagda, Rourkela – 769 042.
PAN – AEOPS8319G.
Asstt. Year – 2009-10.

REASONS TO BELIEVE THAT INCOME CHARGEABLE TO TAX HAS ESCAPED ASSESSMENT

The assessee has filed her return of income on 30.09.2009 disclosing a total income of ₹ 2,01,540/- and assessment has been completed u/s.143(3) on 01.09.2011 on a total income of ₹ 3,76,140/-.

On going through the return of income and the accompanying documents, it is observed that in the P & L A/c., the assessee has shown an amount of ₹ 1,75,98,139.42 towards purchases. But in the purchase reconciliation statement, the purchase figure actually works out to ₹ 1,74,44,167.02 thereby inflating the purchase amount to the extent of ₹ 1,53,972.40 and reducing the gross profit to that extent. The work-sheet as per the reconciliation is as under:

Purchase as per purchase register		₹2,22,34,731.37
Less: Items included in above		
Input VAT	₹ 24,85,370.98	
Entry Tax	₹ 2,24,014.21	
Misc. Expenses	₹ 33,034.94	₹ 27,42,420.13
Total		₹ 1,94,92,311.24
Add: Freight inward deducted from invoice		₹ 3,90,111.94
Total		₹ 1,98,82,423.18
Less: Credit notes and returns etc. adjusted against bill		₹ 24,38,256.16
Blance as per purchase A/c. of P&L A/c.		₹ 1,74,44,167.02

It is also found that as per Form 26AS, during the relevant previous year, the assessee has received interest on security deposits amounting to ₹ 32,021/- as under.

(a) Grasim Industries Ltd. – ₹ 6,199/-
(b) Ultratech Cement Ltd. – ₹ 25,822/-
Total : ₹ 32,021/-

But in the P&L A/c., the assessee has credited only ₹ 29,058/- towards interest on security deposit, thereby suppressing the net profit to the extent of ₹ 2,963/-.

Contd.....P/2.

// 2 //

In view of the above, I have reasons to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the I.T. Act, 1961 due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for her assessment. Therefore, proceedings u/s.147 of the Act has to be initiated in this case.

(C.R. Panda)
Income-tax Officer,
Ward-4, Rourkela.

Certified to be True Copy

आयकर अधिकारी | INCOME-TAX OFFICER
वार्ड-3, राउरकेला / WARD-3, ROURKELA
CODE No.-BBN-W-9-3

4. It was the submission that the original assessment in the case of the assessee was completed on 01.09.2011. The impugned assessment year is 2009-10. It was the submission that the reopening has been proposed by the issuance of notice u/s 148 dated 16.07.2014. It was the submission that the reopening is being proposed beyond the period of four years and there is requirement that there should be fresh material and the assessee has not fully and truly disclose all the material facts necessary for the assessment. It was the submission that on perusal of the reasons recorded it clearly shows that the reopening has been done only on the basis of reappraisal of the evidences as is already available in file of the Assessing Officer. It was the submission that no fresh evidence has come to the knowledge of the Assessing Officer. It was the submission that that on the basis of change of opinion, the reopening is not permissible. The ld. AR placed a decision of the Hon'ble High Court

of Orissa in the case of Rama Devi Sabat vs. DCIT in W.P (C) NO.13480 of 2014 dated 10.11.2021 wherein the Hon'ble High Court has held as follows:

> *"7. A perusal of the reasons mentioned above for reopening of the assessment reveals that there was no new material available with Opposite Party No.1. The reasons begin with the sentence "On verification of records...." In other words, it is the same statement of accounts already filed by the Petitioner during the original assessment proceedings under Section 143 (3) of the IT Act that have been revisited by Opposite Party No.1.*
>
> *8. In respect of each of the lines of business of the Petitioner in the original assessment order, the AO estimated the businesswise profit by observing as under:*
>
> > *"IMFL Business*
> >
> > *During the course of assessment proceedings the assessee filed Trading Profit & Loss account of IMFL Off shop showing sales at Rs.3,98,78,474/- and net profit from such business was disclosed at Rs.12,13,236/-. The assessee has claimed huge expenses under different heads, but could not produce any bills and vouchers or cash book, ledger etc; to substantiate the net profit. Under the above circumstances and keeping in view the nature and volume of business, the net profit is reasonably estimated @ 4% on gross sales which comes to Rs.15,95,138/- [Rs.3,98,78,474/- x 4%]*
> >
> > *M/s. Sandeep Enterprises*
> >
> > *The assessee also deals with Mobile Phone Recharge vouchers of Reliance Communications and had received commission. The assessee could not produce any bills and vouchers or books of account in support of the expenses claimed. In absence of regular books of account, the net profit shown from this business cannot be relied upon and the net profit is reasonably taken at Rs.2,00,000/- as against net profit shown by the assessee at Rs.1,68,825/-.*
> >
> > *M/s. R. D. Constructions*
> >
> > *The assessee apart from the above two business, executes civil contract works and had received gross contract receipts of Rs.37,00,000/- and disclosed net profit from such business at Rs.2,33,810/-. The assessee could not produce Cash Book, ledger and bills and vouchers in support of the expenses claimed in the profit and loss account. Hence, I have no other alternative but to estimate the income by rejecting the book result shown by the assessee. Therefore, the net profit from such business is reasonably estimated @ 7% on gross contract receipt shown by the assessee which comes to Rs.2,59,000/- [Rs.37,00,000/- x 7%= Rs.2,59,000/-]"*
>
> *9. The above analysis reveals that the AO had applied his mind to the documents and records produced before him by the Assessee. This included the balance sheet, P & L Accounts and other relevant documents. It is plain, therefore, that the reopening of the assessment was not based on any new material.*

10. The law in relation to the reopening of the assessment, particularly after the original assessment was a scrutiny assessment under Section 143 (3) of the IT Act, has been explained in detail in a number of decisions of the Supreme Court of India. Section 147 of the Act itself has undergone changes over the years. The legal position emerging on an analysis of the decisions and the legislative changes has been summarized succinctly by the Supreme Court of India in Commissioner of Income Tax, Delhi v. Kelvinator of India Limited (2010) 2 SCC 723 as under:

> *"6. 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, reopening could be done under above two conditions and fulfillment 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 1st April, 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-1st April, 1989, power to re-open 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 re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But reassessment has to be based on fulfillment 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 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 1st April, 1989, Assessing Officer has power to re-open, 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 herein below the relevant portion of Circular No.549 dated 31st October, 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."

11. Recently, this Court in similar circumstances in a judgment dated 26th October, 2021 in W.P.(C) No.14603 of 2014 (M/s. Sri Jagannath Promoters & Builders v. Deputy Commissioner of Income Tax) quashed the notice issued under Section 148 of the IT Act.

12. The facts of the present case being more or less similar, the impugned notice is hereby quashed. The writ petition is allowed in the above terms, but in the circumstances, with no order as to costs. An urgent certified copy of this order be issued as per Rules."

4.1 It was the submission that the above decision clearly applies to the assessee's present case.

5. In reply, the ld. Sr. DR submitted that the assessee has not given all the details and the reopening is valid. He vehemently supported the orders of the authorities below.

6. We have considered the rival submissions. A perusal of the reasons recorded clearly shows that the reopening was "on going through the return of income and in accompanying with the documents submitted by the assessee". This clearly shows that no fresh material has come to the possession of the Assessing Officer and the reopening has been done only on the basis of reappraisal of the evidences which was already available with the Assessing Officer. This is a change of opinion. Such reopening is impermissible when an original assessment has been done u/s 143(3) and the reopening is done beyond four years from the end of the impugned assessment year. Under the circumstances and respectfully following the decision of the Hon'ble High Court of Orissa in the case of Rama Devi Sabat vs. DCIT (supra), the notice issued u/s 148 is quashed. Consequently, the assessment order stands quashed.

7. In the result, the appeal of the assessee is allowed.

Kolkata, the 16th March, 2026.

Sd/-	Sd/-
[Rajesh Kumar]	**[George Mathan]**
लेखा सदस्य/**Accountant Member**	न्यायिक सदस्य/**Judicial Member**

Dated: 16.03.2026.
RS

Copy of the order forwarded to:
1. Appellant -
2. Respondent –
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches