



**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.7101/Del/2018
(ASSESSMENT YEAR 2007-08)**

Samtel India Limited, 501, Copia Corporate Suites, District Centre Jasola, New Delhi-110025 PAN-AAACS0390N	Vs.	Asst. CIT, Circle-22(1), New Delhi.
(Appellant)		(Respondent)

Assessee by	Shri D.C. Garg, CA
Department by	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing	04/02/2025
Date of Pronouncement	12/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-8, New Delhi ("the CIT(A)" for short) in Appeal No.32/13-14 dated 27/01/2015 for Assessment Year 2007-08.

2. The assessee has raised the following grounds of appeal:

"1. That the Learned Commissioner of Income Tax (Appeals)-VIII, New Delhi, has erred in law as well as on facts and in circumstances of the case in upholding action of the Assessing Officer in reopening the assessment under

section 148 of the Income Tax Act, 1961 without appreciation of facts and by disregarding the verdicts of the courts.

2. That the Learned Commissioner of Income Tax (Appeals) VIII, New Delhi, has erred in law as well as on facts and in circumstances of the case in confirming the addition of Rs.1,33,37,000/- written off by the assessee in its books of accounts.

3. That the Learned Commissioner of Income Tax (Appeals) X, New Delhi, has erred in law as well as on facts and in circumstances of the case in confirming the addition of Rs.2,25,16,000/- written off by the assessee in its books of accounts.

4. Without prejudice to above, both the written off amounts i.e. 1,33,37,000/- and Rs.2,25,16,000/- are allowable under section 37 of the Income Tax Act, 1961.”

3. The appeal is filed by the assessee with a delay of 1295 days. The assessee filed an application stating the reasons for the delay supported by an affidavit. It was the submission of the ld. A/R that assessee has opted for the alternate remedy by filing an application u/s 154 of the Act before the ld. CIT(A). As the assessee was every hope that it would be succeeded in the said petition filed u/s 154, no appeal was filed against the order passed u/s 250 by the ld. CIT(A). However, the ld. CIT(A) has disposed the said application by rejecting it after a period of more than 42 months on 29/08/2018 which order was served upon the assessee on 20/09/2018. Thereafter the appeal against the order passed u/s 250 was filed by the assessee on 22.10.2018. Under these circumstances it is prayed that the delay may please condoned which is mainly due to late disposal of rectification petition by ld. CIT(A). Reliance is also placed on various judicial pronouncements.

4. The Id. Sr. D/R strongly opposed the condonation of delay in filing the appeal and submit that there is no provision under Income Tax Act which prevent the assessee to file an appeal even when rectification application is filed.

5. After considering the facts that the delay is caused due to late disposal of the rectification application by the Id. CIT(A). Since the assessee opted for alternate remedy where the Id. CIT(A) has made inordinate delay in disposing the petition of the appellant, the circumstances are beyond its control. Thus after considering the reasons stated and the judicial pronouncements relied upon by the assessee, we find there is a reasonable cause in delay in filing the appeal which is hereby condoned and the appeal is decided on merits.

6. Brief facts are that assessee is a company engaged in the business of manufacturing Black & White TV picture tubes and also engaged in the trading activity. The return of income for the year under appeal was filed on 27.10.2017 at a income of Rs. 6,22,510/- after claiming various adjustments. The assessment was originally completed u/s 143(3) vide orders dt. 09/12/2009 accepting the income returned by the assessee. Thereafter reassessment proceedings were initiated by issue of notice u/s 148 on 17/02/2012 and the reassessment order was passed u/s 147 r.w.s. 143(3) dt. 27.02.2013 by making addition of Rs. 3,69,37,000/- by making disallowance of the Bad-debts claimed by the assessee.

7. In first appeal, ld. CIT(A) dismissed the appeal of the assessee and also dismissed the rectification application filed by the assessee thus the assessee is in appeal before us.

8. In first ground of appeal assessee has challenged the action of the ld. CIT(A) in upholding the reopening of assessment u/s 148 when all the material facts were available on records and were duly considered at the time of completing the assessment u/s 143(3) of the Act and thus reopening is nothing but mere change of opinion.

9. During the course of hearing ld. A/R of the assessee submits that the assessment was originally completed u/s 143(3) wherein all the details asked for, were filed time to time, which includes the audited financial statements. After considering and thoroughly scrutinizing the same, the AO had accepted the returned income. As per the reasons recorded for initiating the reassessment proceedings, it is evident that no fresh and new tangible material was considered by the AO and only based on the material available on records satisfaction of escaped income was recorded. For this ld. A/R drew our attention to the reasons recorded which are reproduced at page 1 of the reassessment order which starts with the words “ Perusal of the records revealed that in the Profit & Loss account”. As per ld. A/R the satisfaction was based on the material available on records which has already been considered while framing the assessment u/s 143(3) of the Act and therefore, now based on the

same material making allegation that certain income has escaped assessment is a mere change of opinion which cannot per se reason to reopen the concluded assessment. For this reliance is placed on the following:

- CIT Vs. Kelvinator of India Ltd. Reported in (2010) 187 TAXMANN 312 (SC)
- Global Signal Cables (India) Ltd. Pvt. Ltd. Vs DCIT reported in (2014) 368 ITR 609 (Delhi)

10. The ld. A/R further submitted that the satisfaction was recorded that certain expenses claimed in the Profit & Loss Account are not allowable. Such expenses are duly disclosed and are part of the audited financial statements which were submitted during the course of original assessment proceedings concluded u/s 143(3) of the Act. For this he drew our attention to the letter dt. 15/7/2009 filed before the AO during the original assessment proceedings placed at paper book pages 26-28. The ld. A/R submits that all these facts has already been considered in the assessment proceedings and after due application of mind on such material available, the assessment order was passed u/s 143(3). Thus now again revisit the same material to reassess the income is nothing but mere change of opinion. Ld. A/R also submitted that the reassessment proceedings are solely based on the objection raised by the audit party and no independent application of mind by the AO before recording satisfaction of escaped income. For this he refer page 57 of the paper book which is the copy of the audit memo issued by the audit party.

According to ld.A/R if the objection of the audit party is read together with the reasons recorded it appears that AO has simply proceeded with the objection of the audit party where the language and phraseology used is almost identical thus it is clear that the AO has not even perused the assessment records nor applied his mind before recording the satisfaction and simply copied the audit objection in the reason recorded. Based on these facts and the circumstances of the case ld. A/R prayed that the reassessment proceedings are merely change of opinion and solely based on the audit objections thus the same deserves to be quashed.

11. On the other hand, ld. Sr. D/R vehemently supported the order of the lower authorities and submits that assessee had not filed complete details of the bad debts claimed in the profit & loss account during the course of original assessment proceedings. He further submits that when complete details were not filed by the assessee, the question that the AO has applied his mind does not arise nor any opinion was framed by the AO. When full facts of claim of bad debts were not available how the AO can frame the opinion that the claim of the assessee was correct. For this he placed reliance on the decision of hon'ble jurisdictional high court in the case of Consolidated Photo And Finvest Ltd Vs. ACIT reported in 281 ITR 394 (Delhi). Ld. Sr. D/R further submit that it is the duty of the assessee to make full and true disclosure of the claims made. Since complete information about the bad debts claimed was not filed by the

assessee during the course of original assessment proceedings therefore the action of the AO of reopening is correct. Regarding the audit objection, Id.Sr. D/R submits that after receiving the audit objection, the AO must have examined the assessment records and we cannot say that AO has recorded the reasons without referring to the material available in assessment folder of the assessee. He also placed reliance on the following judicial pronouncements:

- CIT Vs. PVS Beedies Pvt. Ltd. Reported in 237 ITR 13 (SC)
- Honda Seil Power Products Ltd. Vs. DCIT reported in 52 DTR 353 (Delhi)

12. We have heard the rival submissions and perused the material available on records. In the instant case, the assessment was firstly completed u/s 143(3) wherein the AO after examine all the submissions filed by the assessee and are available on records, reached to the conclusion that the income declared by the assessee is correct. Thereafter based on the audit objection, the AO framed an opinion that the claim of bad debts is not allowable and proceeded to reopen the assessment. The reason recorded before issue of notice u/s 148 are reproduced as under:

“The assessment u/s 143(3) was completed u/s 143(3) at income of Rs. 622,510/- under normal provisions and under special provisions at Rs. 70,11,000/-.

Perusal of records revealed that in the Profit & Loss account (Schedule 9) expenditure worth Rs. 59810000/- has been booked on account of bad debts and advances written off, in which a sum of Rs. 3,69,37,000/- (13337000 + 1084000 + 22516000) pertains to investment. As this amount was not offered as tax earlier, as such the same should have been

added back to the income of the assessee. Thus this as resulted in underassessment of income by Rs. 3,69,37,000/-.

I have therefore, reason to believe that an amount of Rs. 3,69,37,000/- represents income of the assessee for AY 2007-08 which has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Therefore, a notice u/s 148 of the Income Tax Act 1961, is required to be issued and served upon the assessee company to assess the income escaped as stated hereinabove. “

13. During the course of assessment proceedings the assessee has objected the reopening and filed a details objection vide letter reproduced at pages 2-4 of the assessment order. Such objections were disposed off by the AO in the assessment order itself wherein the AO observed that certain factual errors were brought to the notice by the audit party and such objection of the audit party constitute the character of fresh information. From the perusal of the reasons recorded as well as perusal of the observation of the AO in disposing the objections raised by the assessee, we find that there is no quarrel that assessee has not truly and fully disclosed all the material facts necessary for the purpose of assessment. In the original assessment proceedings, the AO after considering all the material has framed an opinion that the income declared by the assessee is true and correct. There was nothing more to disclose and a person cannot be said to have omitted or failed to disclose something when, of such thing, he had no knowledge. Not only material facts were disclosed by the assessee but also they were fully scrutinized by the AO in the original assessment proceedings and figure of

income as well as the deductions were worked out by the AO. The claim of bad debts is duly disclosed in the Profit & Loss account which was available with the AO while framing the assessment. Now on the same material AO has tried to cover up the error and omission by way of reopening the assessment without any fresh material which is nothing but mere change of opinion. No new information and/ or tangible material was found and the formation of any opinion based on same facts which were then available with the AO at the time of original assessment is not permissible. The Hon'ble Apex court in the case of CIT Vs. Kelvinator of India Ltd (supra) has laid down that “ *the assessing officer has no power to review; he has the power to re-assess, but re-assessment has to be based on fulfilment of certain pre - condition and if the concept of ‘change of opinion’ is removed, then, in the garb of re-opening the assessment, the 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.*”

The aforesaid judgement of Hon'ble supreme court has not been discussed in either of the case laws relied upon by the revenue. The AO himself while disposing the objections of the assessee has admitted that there are certain factual errors which he tried to correct by way of reopening the assessment, this practice should not be allowed. It is not a case where some new material or information is brought on record.

14. Under these circumstances, by respectfully following the judgement of Hon'ble apex court in the case of Kelvinator of India Ltd. (supra) we are of the considered opinion that the reopening in the instant case is not based on fresh material and is in the nature of mere change of opinion. Accordingly, the notice issued u/s 148 is hereby quashed. The ground of appeal No 1 of the assessee is allowed.

15. Since we have already allowed the legal ground taken by the assessee, the other grounds of appeal relating to the merits of the additions become academic and thus not adjudicated upon.

16. In the result appeal of the assessee is allowed.

Order pronounced on 12.02.2025.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Dated: 12.02.2025

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI