



**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

WRIT PETITION No.13322 of 2022

DATE: 06.03.2026

Between:

M/s. Creamline Dairy Products Limited.

...Petitioner

AND

The Principal Commissioner of Income Tax-I,
Room No. 711, 7th Floor, 'A' Block,
IT Tower, AC Guards, Masab Tank,
Hyderabad, Telangana – 500 004 and others.

...Respondents

ORDER: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. Avinash Desai, learned Senior Counsel appearing on behalf of Mr. Kopal Sharraf, learned counsel for the petitioner; and Mr. Bokaro Sapna Reddy, learned Senior Standing Counsel for Income Tax Department appearing on behalf of the respondents.

2. The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following relief/s, viz.,

“.....to issue a writ, order or a direction, particularly one in the nature of a Writ of Mandamus declaring the action of the Respondents, particularly Respondent No. 2-3, 6-10, in issuing the Impugned Notice under Section 148 dated 30.03.2021 bearing Notice No. ITBA/AST/S/148/2020-21/1031935111 (1) on the basis of the Impugned Approval under Section 151 dated 30.03.2021 (received on 11.03.2022) bearing Document No. ITBA/AST/S/118/2020-21/1031927703(1) seeking to reopen the assessment of the Petitioner Company for the Assessment Year 2016-17 as being without jurisdiction, arbitrary, illegal, unconstitutional and in contravention of the Income Tax Act, 1961, and consequently:

(a) Set aside the Notice dated 30.03.2021 bearing Notice No. ITBA/AST/S/148/2020-21/1031935111(1) issued by Respondent No, 3;

(b) Set aside the Approval dated 30.03.2021 (received on 11.03.2022) bearing Document No. ITBA/AST/S/118/2020-21/1031927703(1) issued by Respondent No. 2; and

(c) Set aside the Show Cause Notice dated 11.03.2022 bearing Document no. ITBA/AST/F/142(1)/2021-22/1040620689(1) issued by Respondent No. 6 to 10 and pass any other order or orders as this Hon'ble Court may deem fit in the circumstances of the case.”

3. The facts of the case in nutshell are that the original assessment for the Assessment Year 2016-17 was completed by the Assessing Officer *vide* order dated 17.12.2018 after detailed scrutiny and consideration of all relevant documents and submissions made by the petitioner. However, the respondent authorities, specifically respondent Nos.2 and 3, issued an approval dated 30.03.2021 under Section 151 of the Act and subsequently issued a notice under Section 148 of the Act on the same date seeking to reopen the assessment. The reasons for reopening were not communicated to the petitioner until 11.03.2022, when a show-cause notice was also issued giving the petitioner less than four working days to respond to the matters pertaining to transactions from five years prior.

4. Learned Senior Counsel appearing for the petitioner contended that the impugned notice dated 30.03.2021 (received on 11.03.2022) and the impugned notice dated 11.03.2022 are fundamentally flawed and bad in law as they constitute a prohibited change of opinion. The original assessment was completed on 17.12.2018 after a detailed scrutiny proceedings wherein the Assessing Officer examined all relevant facts,

documents and submissions made by the petitioner. During those proceedings, the Assessing Officer had full opportunity to examine the very same transactions and issues that are now sought to be reopened. Moreover, the petitioner had disclosed all the material facts truly and fully, and the Assessing Officer applied his mind to those facts and arrived at conclusions after due consideration. The settled position in law, as laid down by the Hon'ble Supreme Court in numerous decisions including **Assistant Commissioner of Income Tax-12(3)(2) and Others vs. Marico Limited¹**, **Marico Ltd. vs. Assistant Commissioner of Income Tax-12(3)(2) and Others²**, and **Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited³** is that once an Assessing Officer has taken a particular view on a matter after due application of mind during the original assessment proceedings, he cannot reopen the assessment merely because he has formed a different opinion on the same set of facts. The power to reopen under Section 147 of the Act is not a power of review and cannot be exercised to permit the Assessing

¹ (2020) 16 Supreme Court Cases 354

² 2019 SCC OnLine Bom 4772

³ (2010) 2 Supreme Court Cases 723

Officer to have a second look at the same material which was available during the original assessment.

5. Learned Senior Counsel further contended that the respondent authorities have failed to demonstrate the existence of any fresh tangible material that came into their possession subsequent to the completion of the original assessment proceedings which would justify the reopening of assessment under Section 147 of the Act. The statutory provision mandates that reassessment can only be initiated when the Assessing Officer has reasons to believe that income chargeable to tax has escaped assessment based on tangible material not available during the original assessment. In the present case, all information, documents and materials relating to the transaction in question were duly examined during the original assessment proceedings. Moreover, the attempt to reopen the assessment is merely based on a re-appreciation of the same facts and materials that were already on record, which does not constitute valid grounds for reassessment. That the respondent authorities are providing ex-post facto justifications to cover up the irregularities and illegality committed in the process of issuing the impugned notices. Without any

new tangible material having surfaced post the original assessment, the reassessment proceedings lack the foundational jurisdictional requirement and is therefore liable to be quashed.

6. Learned Senior Counsel further contended that the respondent authorities provided the reasons for reopening the assessment only on 11.03.2022, after an inordinate and unexplained delay of more than 11 months from the date of issuance of the notice. More egregiously, after this prolonged delay the petitioner was given less than four working days to respond to the show cause notice and provide information and documents relating to transactions dating back five years. This arbitrary and unreasonable time frame made it practically impossible for the petitioner to prepare and submit a comprehensive response, effectively denying them a meaningful opportunity of being heard. Furthermore, the respondents had failed to provide the approval granted by the Additional Commissioner of Income Tax for reopening the case under Section 148 of the Act, despite specific requests from the petitioner. The concerned authority stating that such approval is merely internal correspondence that need not be communicated to the petitioner is wholly untenable and

demonstrates a complete disregard for transparency and fairness in quasi-judicial proceedings. These procedural irregularities and violations of natural justice render the impugned notices legally infirm and liable to be set aside.

7. *Per contra*, the learned Senior Standing Counsel for Income Tax Department contended that the petitioner has deliberately misled the Jurisdictional Assessing Officer by failing to apply the prescribed methods for valuation of shares under Rule 11UA of the Act. Despite being a professionally managed company with audited books of account, the petitioner did not adopt either the "Discounted Free Cash Flow Method" or the "Net Asset Value Method" as mandated by law. Instead, the petitioner submitted a valuation certificate by inappropriately comparing share values with those of a listed company, which is not an approved method under the Act. Furthermore, the petitioner failed to correctly calculate the disallowance under Section 14A by not applying the provisions of Rule 8D, leading to underreporting of investments and incorrect computation of taxable income. That these material omissions and non-application of mandatory rule provisions constitute tangible

grounds for reopening the assessment, as income chargeable to tax had escaped assessment due to the petitioner's failure to comply with the statutory requirements. The Assessing Officer during the original scrutiny proceedings did not form any opinion on the inappropriate method adopted by the petitioner and therefore, the question of a mere difference of opinion does not arise in this case.

8. Learned Senior Standing Counsel for Income Tax Department submits that all procedural requirements under Section 148 of the Act were duly complied with before issuing the notice for reopening the assessment for Assessment Year 2016-17. A show cause notice under Section 148A(b) was issued on 11.03.2022, providing the petitioner an opportunity to respond, and considering the material on record and non-response from the petitioner, an order under Section 148A(d) of the Act was passed on 30.03.2022. The notice under Section 148 of the Act was issued on 30.03.2022 after obtaining prior approval from the specified authority under Section 151 of the Act, with proper DIN (Document Identification Number) generation that reflects the date and time of approval. It was also clarified that the approval granted by the Joint

Commissioner of Income Tax (respondent No.2) is part of the official record and was obtained in accordance with the law as it stood on 30.03.2021. The reasons for reopening were provided to the petitioner *vide* letter dated 11.03.2022 in response to the petitioner's request dated 10.12.2021. Therefore, the reopening is not based on a change of opinion but on the discovery of new material facts regarding the petitioner's non-compliance with Rule 11UA and Section 14A read with Rule 8D, which were not properly examined during the original assessment proceedings.

9. Further, the learned Senior Standing Counsel for Income Tax Department refutes the petitioner's contentions that the reassessment proceedings are time-barred or violate the amended provisions under Section 148A of the Act. The impugned notice under Section 148 of the Act was issued on 30.03.2021, which was well within the limitation period and in accordance with the provisions of law as existed at that time. The subsequent amendments introduced by the Finance Act, 2021, which inserted Section 148A do not apply retrospectively to proceedings that were already initiated before the amendments came into force. That the reassessment proceedings were conducted with proper jurisdiction

and within the time limits specified under the Act. The notice under Section 142(1) dated 11.03.2022 was issued legitimately calling information from the petitioner and for supplying the reasons for reopening as requested by the petitioner. Thus, the learned Senior Standing Counsel for Income Tax Department prays the Hon'ble Court to dismiss the writ petition and vacate the stay granted on the reopening proceedings allowing the Department to conduct further scrutiny proceedings in accordance with law.

10. Having heard the contentions put forth on either side and on perusal of records, the question that arises for consideration in this case is “whether the impugned notice dated 30.03.2021 under Section 148 of the Act and the subsequent proceedings constitute an impermissible change of opinion when the original assessment for the Assessment Year 2016-17 was completed after a detailed scrutiny on 17.12.2018, and whether the reassessment proceedings are legally sustainable in the absence of any fresh tangible material coming into existence subsequent to the original assessment?”

11. The fact on record is that the original assessment for the Assessment Year 2016-17 was completed on 17.12.2018 after elaborate scrutiny proceedings wherein the Assessing Officer had examined the very transactions now sought to be reopened, including the valuation of shares and disallowance under Section 14A. The petitioner had placed all the material facts, documents and valuation certificates before the Assessing Officer during the original assessment proceedings and the Assessing Officer after due application of mind accepted the same and completed the assessment. The respondent authorities subsequent realization that a different method of valuation under Rule 11UA ought to have been applied, or that Rule 8D should have been invoked for Section 14A disallowance, represents nothing but a mere change of opinion on the same set of facts that were fully available during the original assessment.

12. The Hon'ble Supreme Court in the case of **Indian & Eastern Newspaper Society, New Delhi vs. Commissioner of Income Tax, Delhi**⁴ held at paragraph No.14 as under:

⁴ (1979) 4 Supreme Court Cases 248

“14. Now, in the case before us, the Income Tax Officer had, when he made the original assessment, considered the provisions of Sections 9 and 10. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under Section 147(b). Reliance is placed on Kalyanji Mavji & Co. v. CIT [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287] where a Bench of two learned Judges of this Court observed that a case where income had escaped assessment due to the “oversight, inadvertence or mistake” of the Income Tax Officer must fall within Section 34(1)(b) of the Indian Income Tax Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels farther than the statute warrants insofar as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the Income Tax Officer discovers that he has committed an error in consequence of which income has escaped assessment it is open to him to reopen the assessment. In our opinion, an error discovered on a reconsideration of the same material (and no more) does not give him that power. That was the view taken by this Court in Maharaj Kumar Kamal Singh v. CIT [AIR 1959 SC 257 : (1959) 35 ITR 1 : 1959 Supp 1 SCR 10] , CIT v. Raman & Co. [AIR 1968 SC 49 : (1968) 1 SCR 10 : (1968) 67 ITR 11] and Bankipur Club Ltd. v. CIT [(1972) 4 SCC 386 : 1974 SCC (Tax) 76 : (1971) 82 ITR 831] , and we do not believe that -the law has since taken a different course. Any observations in Kalyanji Mavji & Co. v. CIT [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287] suggesting the contrary do not, we say with respect, lay down the correct law.”

13. The Hon'ble Supreme Court in the case of **Kelvinator of India Limited** (supra) has held as under:

“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 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.”

14. The Hon'ble Supreme Court in the case of **Marico Ltd.** (supra) has held as under:

“10. It is undisputed position before us, that a query was raised on the very issue of reopening during regular assessment proceedings. The parties have responded to it and the assessment order dated January 30, 2018, makes no reference to the above issue at all. However, once a query has been raised by the Assessing Officer during the assessment proceedings and the assessee has responded to that query, it would necessarily follow, as held by our court that the Assessing Officer has accepted the petitioner's/assessee's submissions, so as to not deal with that issue in the assessment order. In fact, our court in GKN Sinter Metals Ltd. v. Ms. Ramapriya Raghavan, Asst. CIT (2015) 371 ITR 225(Bom) had occasion to deal with the similar/identical submissions on behalf of the Revenue, viz., that an assessment order passed under section 143(3) of the Act does not reflect any consideration of the issue, it must follow that no opinion was formed by the Assessing Officer in the regular assessment proceedings. This submission was negated by this court by observing as follows (para 237 of 371 ITR):

“According to the Revenue, it could only be when the assessment order contains a discussion with regard to a particular claim can it be said that the Assessing Officer had formed an opinion with regard to the claim made by the assessee. This court in Idea Cellular Ltd. v. Deputy CIT (2008) 301 ITR 407(Bom) has expressly negated on the identical contention on behalf of the Revenue. The court held that once all the material was placed before

the Assessing Officer and he chose not to refer to the deduction/claim which was being allowed in the assessment order, it could not be contended that the Assessing Officer had not applied his mind while passing the assessment order. Moreover in this case, it is evident from the letter dated August 6, 2007, addressed by the Assessing Officer to the petitioner containing the reasons recorded for issuing the impugned notice also record the fact that during the regular assessment proceedings, the petitioner has been asked to furnish details in support of the claim for exemption under section 80-IA/IB of the Act. The letter further records that the details sought for were furnished and it is now observed that there has been a disproportionate distribution of expenses between various units belonging to the petitioner for claiming deduction under section 80-IA/IB of the Act. This is a further indication of the fact that the Assessing Officer had during the regular assessment proceedings for the assessment year 2002-03 sought information in respect of the allocation of expenses and the explanation offered by the petitioner was found to be satisfactory. This is evident from query dated December 27, 2004, and the petitioner's response to the same on January 25, 2005, explaining the manner of distribution of common expenses for delaying the process of claiming deduction under section 80-IA/80-IB of the Act. All this would indicate that Assessing Officer had formed an opinion while passing the order dated March 9, 2005, This court in Aroni Commercial Ltd. v. Asst. CIT (2014) 367 ITR 405(Bom) had occasion

to consider somewhat similar submission made by the Revenue and negated the same by holding that when a query has been raised with regard to a particular issue during the regular assessment proceedings, it must follow that the Assessing Officer had applied his mind and taken a view in the matter as is reflected in the assessment order. Besides, the manner in which an Assessing Officer would draft/frame his order is not within the control of an assessee. Moreover, if every contention raised by the assessee which even if accepted is to be reflected in the assessment order, then as observed by the Gujarat High Court in CIT v. Nirma Chemicals Ltd. [2008] 305ITR 607(P&H), the order would result into an epic tome. Besides, it would be impossible for the Assessing Officer to complete all the assessments which have undergone scrutiny at its hand. In the above view, it is clear that once a query has been raised during the assessment proceedings and the petitioner has responded to the query to the satisfaction of the Assessing Officer as is evident from the fact that the assessment order dated March 9, 2005, accepts the petitioner's claim for deduction under section 80-IA/80-IB of the Act. It must follow that there is due application of mind by the Assessing Officer to the issue raised.”

The above observations apply on all fours to this petition, so far as the Revenue's submission of no change of opinion is concerned.

12. *Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised*

the query dated September 25, 2017, during the assessment proceedings and the petitioner had responded to the same by its letters dated December 10, 2017 and December 21, 2017, justifying its stand. The non-rejection of the explanation in the assessment order would amount to the Assessing Officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated March 27, 2019, is quashed and set aside.”

15. In the case of Assistant Commissioner of Income Tax-12(3)(2) and Others vs. Marico Limited (supra) it was held as under:

“3. Subsequently, by notice dated 27-3-2019 issued under Section 148 of the Income Tax Act, the matter was sought to be re-opened. While accepting the challenge to the issuance of notice, the High Court [Marico Ltd. v. CIT, 2019 SCC OnLine Bom 4772 : (2019) 311 CTR 865] in para 13 of its judgment observed as under: (Marico Ltd. case [Marico Ltd. v. CIT, 2019 SCC OnLine Bom 4772 : (2019) 311 CTR 865] , SCC OnLine Bom)

“13. Thus, we find that the reasons in support of the impugned notice is the very issue in respect of which the assessing officer has raised the query dated 25-9-2017 during the assessment proceedings and the petitioner had responded to the same by its letters dated 10-12-2017 and 21-12-2017 justifying its stand. The non-rejection of the explanation in the assessment order would amount to the assessing officer accepting the view

of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27-3-2019 is quashed and set aside.”

16. Lastly, in the case of **Shri Saibaba Sansthan Trust (Shirdi) vs. Union of India**⁵ in paragraph No.48, it was held as under:

“48. From the aforesaid discussion, it is quite clear to us that once tangible material during the course of assessment proceedings was available with the Assessing Officer and the same was considered in passing the assessment order under section 143(3) of the Income-tax Act, the Assessing Officer, in the absence of any fresh material, could not have proceeded to reopen the petitioner's assessment on similar materials. Such exercise would tantamount to a review of the assessment order on a mere change of opinion. This is certainly not permissible. If such interpretation of the provisions as canvassed on behalf of the respondents is accepted, an assessment order would become vulnerable to be arbitrarily reopened, merely on the ground that the Assessing Officer on the very material intends to take a different view/opinion on the assessment order passed by him. This would lead to a regime of total uncertainty. In our opinion, this is neither the object nor the intention of the provisions of section 147. The provision is a special power, so as to check, discern and recall concluded assessments, hence, such power cannot be exercised

⁵ 2024 SCC OnLine Bom 3875

when it is not a case, where the assessee had not withheld any information and/or the Assessing Officer did not have any fresh tangible material. A second bite at the cherry is not what is contemplated under section 147, on the basis of materials already available with the Assessing Officer, as the provision would become applicable in the present facts. Also, section 147 certainly does not postulate a review jurisdiction so that the assessment can be reviewed, on the Assessing Officer intending to form a different and/or a new opinion.”

17. All the above judgments have consistently held that reassessment proceedings cannot be initiated merely because the Assessing Officer, on a subsequent review of the same material, forms a different opinion about the applicability of certain provisions or methods of computation. The power under Section 147 of the Act is not a power to review but a power to reassess which can only be exercised when there is tangible material suggesting escapement of income that was not available or considered during the original assessment proceedings. Furthermore, the contention of the Department that the Assessing Officer did not form any opinion on the method of valuation during the original assessment is factually incorrect and legally untenable. When a valuation certificate is submitted during scrutiny proceedings and the Assessing Officer accepts

the assessment without raising any objection or making any addition on that ground, it implies that the Assessing Officer has applied his mind to the valuation methodology and found it acceptable. The subsequent assertion that Rule 11UA was not applied is merely a retrospective rationalization and does not constitute discovery of new material warranting reopening. The Department cannot now contend that because specific rule provisions were not explicitly mentioned or discussed, no opinion was formed. The acceptance of the return and completion of assessment itself reflects the formation of opinion.

18. Moreover, the procedural irregularities committed by the respondent authorities further vitiate the reassessment proceedings. The reasons for reopening were communicated to the petitioner only on 11.03.2022 after an inordinate and unexplained delay of nearly 11 months from the date of issuance of the impugned notice on 30.03.2021, and thereafter the petitioner was given less than four working days to respond to the matters concerning transactions from five years prior thereby violating the fundamental principles of natural justice enshrined in Article 14 of the Constitution of India. The Department's failure to

provide the approval granted under Section 151 of the Act claiming it to be internal correspondence, demonstrates a cavalier approach to transparency in quasi-judicial proceedings and deprives the petitioner of the opportunity to verify the legal sanctity of the approval process.

19. For these cumulative reasons, we are of the considered opinion that the reassessment proceedings are fundamentally flawed and legally unsustainable. Thus, the impugned reassessment proceedings issued by the respondent authorities deserve to be set aside / quashed. It is ordered accordingly.

20. In the result, the writ petition stands allowed.

21. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P.SAM KOSHY, J

SUDDALA CHALAPATHI RAO, J

Date: 06.03.2026
GSD