# आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी',मुंबई।

## IN THE INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCHES "G", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**
श्री जी. मंजूनाथ, लेखा सदस्य**,** के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and**
**Shri G. MANJUNATHA, Accountant Member**

**ITA NO.622/Mum/2016**
**Assessment Year: 2009-10**

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| ACIT,<br>Circle-7(1)-1,<br>Room No.23, Ground Floor,<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai-400020 | **बनाम**/<br>Vs. | M/s Goldmohur Design and Apparel Park Ltd.<br>Goldmohur Textile Mill,<br>Dadasaheb Phalke Road,<br>Dadar (E),<br>Mumbai-400014 |
| (राजस्व /Revenue) | | (निर्धारिती /Assessee) |
| | | **P.A. No.AADCG1613M** |

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| राजस्व **की ओर से** / Revenue by | Shri Abhijit Patankar-DR |
| निर्धारिती **की ओर से /** Assessee by | Shri Vipul Joshi |

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|---|---|
| सुनवाई की तारीख **/ Date of Hearing :** | **23/04/2018** |
| घोषणा की तारीख/**Date of Pronouncement** | **20/06/2018** |

## आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 30/11/2015 of the Ld. First Appellate Authority, Mumbai in setting aside the reopening of assessment holding that information was already available with the Assessing Officer while completing the assessment u/s 143(3) of the Act without appreciating the fact that explanation-1 to section 147 of the Income Tax Act, 1961 (hereinafter the Act) that the production of books of accounts or other evidences in itself by the assessee would not necessarily amounts to disclosure where the escapement arises out of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

2. During hearing, the Ld. CIT-DR, Shri Abhijit Patankar, invited our attention to the provision of section 147 of the Act, reasons for reopening of assessment (page-52 of the paper book), para 4.3. (page-5 of the impugned order) by contending that the reopening was done within four years by following the procedure prescribed in the

section and there was information with the Assessing Officer from the ROC that the premium was at higher value. Reliance was placed upon the decision from Hon'ble Apex Court in the case of Rajesh Jhaveri (291 ITR 500) (Supreme Court). It was pleaded that sufficient and correctness is not required at early stages for which reliance was placed upon the decision in Raymond Woollen Mills Ltd. vs Income-Tax Officer And Ors. 236 ITR 34 (Supreme Court). In reply, the ld. counsel for the assessee, Shri Vipul Jain, defended the impugned order by contending that it is not a case of bogus shares and the assessee is a government owned company and the issue pertains to excess share premium. It was pleaded that the source is doubted and the premium is mentioned in the agreement itself. Our attention was invited to paper book pages 43, 44 and 47. In reply, the Ld. CIT-DR, contended that it is a case of abnormal share premium. He relied upon the decision in *COMMISSIONER OF INCOME-TAX vs* PRECISION FINANCE PVT. LTD. 208 ITR 465 (Cal.) and CIT vs Vir Bhan & Sons 273 ITR 206 (P & H).

2.1. We have considered the rival submissions and perused the material available on record. Before adverting further, it is our bounded duty to analyze section 147 of the Act also, which is reproduced hereunder:-

> *"147. Income escaping assessment.—If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*
>
> *Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub- section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.*
>
> *Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the fore going proviso.*
>
> *Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—*
>
> *(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income-tax ;*

*(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;*

*(c) where an assessment has been made, but—*

*(i) income chargeable to tax has been under assessed ; or*

*(ii) such income has been assessed at too low a rate ; or*

*(iii) such income has been made the subject of excessive relief under this Act ; or*

*(iv) excessive loss or depreciation allowance or any other allow ance under this Act has been computed.*

*Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub- section (2) of section 148."*

2.2. If the aforesaid provision of the Act is analyzed, we are of the view that for reopening an assessment made under section 143(3) of the Act, the following conditions are requires to be satisfied :

*(i) the Assessing Officer must form a tentative or prima facie opinion on the basis of material that there is underassessment or escapement of income ;*

*(ii) he must record the prima facie opinion into writing ;*

*(iii) the opinion formed is subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion.*

*(iv) reasons recorded and/or the documents available on record must show a nexus or that in fact they are germane*

*and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income.*

*(v) In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts. The Explanation to the section stipulates that mere production of books of account or other documents from which the Assessing Officer could have, with due diligence, inferred material facts, does not amount to "full and true disclosure of material facts" (the proviso is not applicable where reasons to believe for issue of notice are recorded and notice is issued within four years from the end of assessment year).*

2.3. The term and facets of the term "change of opinion". The expression "change of opinion" postulates formation of opinion and then a change thereof. In the context of section 147 of the Act it implies that the Assessing Officer should have formed an opinion at the first instance, i.e., in the proceedings under section 143(3) and now by initiation of the reassessment proceeding, the Assessing Officer proposes or wants to take a different view.

2.4. The word "opinion" is derived from the latin word "opinari" which means "to believe", "to think". The word "opinion" as per the Black's Law Dictionary means a statement by a judge or a court of a decision reached by him incorporating cause tried or argued before them, expounding the law as applied to the case and, detailing

the reasons upon which the judgment is based. Advanced Law Lexicon by P. Ramanatha Aiyar (third edition) explains the term "opinion" to mean "something more than mere retaining of gossip or hearsay ; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question . . . An opinion is a conviction based on testimony . . . they are as a result of reading, experience and reflection".

2.5. In the context of assessment proceedings, it means formation of belief by an Assessing Officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection to use the words in Law Lexicon by P. Ramanatha Aiyar. The question of change of opinion arise when an Assessing Officer forms an opinion and decides not to make an addition or holds that the assessee is correct and accepts his position or stand. In Hari Iron Trading Co. v. CIT [2003] 263 ITR 437 (P&H), a Division Bench of the Hon'ble Punjab and Haryana High Court observed that an assessee has no control over the way an assessment order is drafted. It was observed that generally, the issues which are accepted by the

Assessing Officer do not find mention in the assessment order and only such points are taken note of on which the assessee's explanations are rejected and additions/disallowances are made. Applying the principles laid down by the Full Bench of this court as well as the observations of the Punjab and Haryana High Court, we find that if the entire material had been placed by the assessed before the Assessing Officer at the time when the original assessment was made and the Assessing Officer, applied his mind to that material and accepted the view canvassed by the assessee, then merely because he did express this in the assessment order, that by itself would not give him a ground to conclude that income has escaped assessment and, therefore, the assessment needed to be reopened. On the other hand, if the Assessing Officer did not apply his mind and committed a lapse, there is no reason why the assessee should be made to suffer the consequences of that lapse.

2.6. The Hon'ble Delhi High Court in Consolidated Photo and Finvest Ltd. [2006] 281 ITR 394 (Delhi) held as under:

*"In the light of the authoritative pronouncements of the Supreme Court referred to above, which are binding upon us and the observations made by the High Court of Gujarat with which we find ourselves in respectful agreement, the action initiated by the Assessing Officer for reopening the assessment cannot be said to be either incompetent or otherwise improper to call for interference by a writ court. The Assessing Officer has in the reasoned order passed by him indicated the basis on which income exigible to tax had in his opinion escaped assessment. The argument that the proposed reopening of assessment was based only upon a change of opinion has not impressed us. The assessment order did not admittedly address itself to the question which the Assessing Officer proposes to examine in the course of reassessment proceedings. The submission of Mr. Vohra that even when the order of assessment did not record any explicit opinion on the aspects now sought to be examined, it must be presumed that those aspects were present to the mind of the Assessing Officer and had been held in favour of the assessee is too far-fetched a proposition to merit acceptance. There may indeed be a presumption that the assessment proceedings have been regularly conducted, but there can be no presumption that even when the order of assessment is silent, all possible angles and aspects of a controversy had been examined and determined by the Assessing Officer. It is trite that a matter in issue can be validly determined only upon application of mind by the authority determining the same. Application of mind is, in turn, best demonstrated by disclosure of mind, which is best done by giving reasons for the view which the authority is taking. In cases where the order passed by a statutory authority is silent as to the reasons for the conclusion it has drawn, it can well be said that the authority has not applied its mind to the issue before it nor formed any opinion. The principle that a mere change of opinion cannot be a basis for reopening completed assessments would be applicable only to situations where the Assessing Officer has applied his mind and taken a conscious decision on a particular matter in issue. It will have no application where the order of assessment does not address itself to the aspect which is the basis for reopening of the assessment, as is the position in the present case. It is in that view inconsequential whether or not the material necessary for taking a decision was available to the Assessing Officer either generally or in the form of a reply to the questionnaire served upon the assessee. What is important is whether the Assessing Officer had based on the material available to him taken a view. If he had not done so, the proposed reopening cannot be assailed on the ground that the same is based only on a change of opinion."*

2.7. From the foregoing discussion, the clear position emerges as under:

*(1) Reassessment proceedings can be validly initiated in case return of income is processed under section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion.*

*(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by the principle of "change of opinion".*

*(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.*

2.8. Thus, where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion. Here a distinction has to be drawn between erroneous application/interpretation /understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time

of the assessment order, the principle of "change of opinion" will not apply. The reason is that "opinion" is formed on facts. "Opinion" formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of "change of opinion". Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression "material facts" means those facts which if taken into account would have an adverse effect on the assessee by a higher assessment of income than the one actually made. Correct material facts can be ascertained from the assessment records also and it is not necessary that the same may come from a third person or source, i.e., from source other than the assessment records. However, in such cases, the onus will be on the Revenue to show that the assessee had stated incorrect and wrong material facts resulting in the Assessing Officer proceeding on the basis of facts, which are incorrect and

wrong. The reasons recorded and the documents on record are of paramount importance and will have to be examined to determine whether the stand of the Revenue is correct. A decision of from Hon'ble Delhi High Court dated September 26, 2011 in Dalmia P. Ltd. v. CIT [2012] 348 ITR 469 (Delhi) and another decision from Hon'ble jurisdictional High Court dated November 8, 2011, in Indian Hume Pipe Co. Ltd. v. Asst. CIT [2012] 348 ITR 439 (Bom) are two such cases, which throws light on the issue. In the first case, the Assessing Officer in the original assessment had made addition of Rs. 19,86,551 under section 40(1) on account of unconfirmed sundry creditors. The reassessment proceedings were initiated after noticing that unconfirmed sundry creditors, of which details, etc., were not furnished, were to the extent of Rs. 52,84,058 and not Rs. 19,86,551. In Indian Hume Pipe Co. Ltd. (supra), after verification the claim under section 54EC was allowed but subsequently on examination it transpired that the second property was purchased prior to the date of sale. The aforesaid decisions/ facts cases must be distinguished from cases where the material facts on record are correct but the

Assessing Officer did not draw proper legal inference or did not appreciate the implications or did not apply the correct law. The second category will be a case of "change of opinion" and cannot be reopened for the reason that the assessee, as required, has placed on record primary factual material but on the basis of legal understanding, the Assessing Officer has taken a particular legal view. However, as stated above, an erroneous decision, which is also prejudicial to the interests of the Revenue, can be made subject-matter of adjudication under section 263 of the Act.

2.9. A division Bench of Hon'ble Delhi High Court in New Light Trading Co. v. CIT [2002] 256 ITR 391 (Delhi), referred to the decision of the Hon'ble Apex Court in CIT v. P. V. S. Beedies P. Ltd. [1999] 237 ITR 13 (SC) and made following observations. (page 392) :

> *"In the case of CIT v. P. V. S. Beedies P. Ltd. [1999] 237 ITR 13 (SC), the apex court held that the audit party can point out a fact, which has been overlooked by the Income-tax Officer in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. As the Tribunal has rightly noticed, this was not a case of the Assessing Officer merely acting at the behest of the audit party or on its report. It has independently examined the materials collected by the audit*

*party in its report and has come to an independent conclusion that there was escapement of income. The answer to the question is, therefore, in the affirmative, in favour of the Revenue and against the assessee."*

*"As recorded above, the reasons recorded or the documents available must show nexus that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income. At the same time, it is not the requirement that the Assessing Officer should have finally ascertained escapement of income by recording conclusive findings. The final ascertainment takes place when the final or reassessment order is passed. It is enough if the Assessing Officer can show tentatively or prima facie on the basis of the reasons recorded and with reference to the documents available on record that income has escaped assessment."*

This takes us to the observations of the Delhi High Court in Kelvinator of India Ltd. [2002] 256 ITR 1 (Delhi) [FB] which read as under (page 18):

*"The Board in exercise of its jurisdiction under the aforementioned provisions had issued the circular on October 31, 1989. The said circular admittedly is binding on the Revenue. The authority, therefore, could not have taken a view, which would run counter to the mandate of the said circular."*

From a perusal of clause 7.2 of the said circular it would appear that in no uncertain terms it was stated as to under what circumstances the amendments had been carried out, i.e., only with a view to allay the fears that the omission of the expression 'reason to believe' from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessment on mere change of opinion. It is, therefore, evident that even according to the CBDT a mere

change of opinion cannot form the basis for reopening a completed assessment.

2.10. Another aspect of the matter also cannot be lost sight of. A statute conferring an arbitrary power may be held to be ultra virus article 14 of the Constitution of India. If two interpretations are possible, the interpretation which upholds constitutionality, it is trite, should be favoured. In the event it is held that by reason of section 147 if the Income-tax Officer exercises its jurisdiction for initiating a proceeding for re-assessment only upon mere change of opinion, the same may be held to be unconstitutional. I am, therefore, of the opinion that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion.

2.11. The Hon'ble Apex Court thereafter referred to the subsequent decision in Indian and Eastern Newspaper Society v. CIT [1979] 119 ITR 996 (SC), wherein it was observed that some of the observations made in Kalyanji Mavji (supra) were far too wide and the statute did not permit reappraisal of material considered by the Assessing

Officer during the original assessment. The observations in Kalyanji Maviji (supra) that reopening would cover a case "where income has escaped assessment due to the oversight, inadvertence or mistake" was too broadly expressed and did not lay down the correct law. It was clarified and observed at page 1004 in Indian and Eastern Newspaper Society [1979] 119 ITR 996 (SC) as under :

> *"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 and Co. v. CIT [1976] 102 ITR 287 (SC), 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 in so far 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 [1959] 35 ITR 1 (SC), CIT v. A. Raman and Co. [1968] 67 ITR 11 (SC) and Bankipur Club Ltd. v. CIT [1971] 82 ITR 831 (SC), and we do not believe that the law has since taken a different course. Any observations in Kalyanji Mavji and Co. v. CIT [1976] 102 ITR 287 (SC) suggesting the contrary do not, we say with respect, lay down the correct law."*

2.12. In A. L. A. Firm (supra), the Hon'ble Apex Court explained that there was no difference between the

observations of the Supreme Court in Kalyanji Maviji [1976] 102 ITR 287 (SC) and Indian and Eastern Newspaper Society case [1979] 119 ITR 996 (SC), as far as proposition (4) is concerned. It was held that (page 297 of 189 ITR) :

> *"We have pointed out earlier that Kalyanji Maviji's case [1976] 102 ITR 287 (SC) outlines four situations in which action under section 34(1)(b) can be validly initiated. The Indian Eastern Newspaper Society's case [1979] 119 ITR 996 (SC) has only indicated that propo sition (2) outlined in this case and extracted earlier may have been somewhat widely stated ; it has not cast any doubt on the other three propositions set out in Kalyanji Mavji's case. The facts of the present case squarely fall within the scope of propositions 2 and 4 enunciated in Kalyanji Maviji's case [1976] 102 ITR 287 (SC). Proposition (2) may be briefly summarized as permitting action even on a 'mere change of opinion'. This is what has been doubted in the Indian and Eastern Newspaper Society case [1979] 119 ITR 996 (SC) and we shall discuss its application to this case a little later. But, even leaving this out of consideration, there can be no doubt that the present case is squarely covered by proposition (4) set out in Kalyanji Maviji's case [1976] 102 ITR 287 (SC). This proposition clearly envisages a formation of opinion by the Income-tax Officer on the basis of material already on record provided the formation of such opinion is consequent on 'information' in the shape of some light thrown on aspects of facts or law which the Income-tax Officer had not earlier been conscious of. To give a couple of illustrations ; suppose an Income-tax Officer, in the original assessment, which is a voluminous one involving several contentions, accepts a plea of the assessee in regard to one of the items that the profits realised on the sale of a house is a capital realisation not chargeable to tax. Subsequently, he finds, in the forest of papers filed in connection with the assessment, several instances of earlier sales of house property by the assessee. That would be a case where the Income-tax Officer derives information from the record on an investigation or enquiry into facts not originally undertaken. Again, suppose the Income-tax Officer accepts the plea of an assessee that a particular receipt is not income liable to tax. But, on further research into law he finds that there was a direct decision holding that category of receipt to be an income receipt. He would be entitled to reopen the assessment under section 147(b) by virtue of proposition (4) of Kalyanji Mavji. The fact that the details of sales of house properties were already in the*

*file or that the decision subsequently come across by him was already there would not affect the position because the information that such facts or decision existed comes to him only much later.*

*What then, is the difference between the situations envisaged in propositions (2) and (4) of Kalyanji Maviji's case [1976] 102 ITR 287 (SC). The difference, if one keeps in mind the trend of the judicial decisions, is this. Proposition (4) refers to a case where the Income- tax Officer initiates reassessment proceedings in the light of 'information' obtained by him by an investigation into material already on record or by research into the law applicable thereto which has brought out an angle or aspect that had been missed earlier, for e.g., as in the two Madras decisions referred to earlier. Proposition (2) no doubt covers this situation also but it is so widely expressed as to include also cases in which the Income-tax Officer, having considered all the facts and law, arrives at a particular conclusion, but reinitiates proceedings because, on a reappraisal of the same material which had been considered earlier and in the light of the same legal aspects to which his attention had been drawn earlier, he comes to a conclusion that an item of income which he had earlier consciously left out from the earlier assessment should have been brought to tax. In other words, as pointed out in Indian and Eastern Newspaper Society's case [1979] 119 ITR 996 (SC), it also ropes in cases of a 'bare or mere change of opinion' where the Income-tax Officer (very often a successor officer) attempts to reopen the assessment because the opinion formed earlier by himself (or, more often, by a predecessor Income- tax Officer) was, in his opinion, incorrect. Judicial decisions had consistently held that this could not be done and the Indian and Eastern Newspaper Society's case [1979] 119 ITR 996 (SC) has warned that this line of cases cannot be taken to have been overruled by Kalyanji Mavji [1976] 102 ITR 287 (SC). The second paragraph from the judgment in the Indian and Eastern Newspaper Society's case [1979] 119 ITR 996 (SC) earlier extracted has also reference only to this situation and insists upon the necessity of some information which make the Income-tax Officer realise that he has committed an error in the earlier assessment. This paragraph does not in any way affect the principle enumerated in the two Madras cases cited with approval in Anandji Haridas 21 STC 326. Even making allowances for this limitation placed on the observations in Kalyanji Mavji, the position as summarised by the High Court in the following words represents, in our view, the correct position in law (at page 629 of 102 ITR) :*

*The result of these decisions is that the statute does not require that the information must be extraneous to the record. It*

*is enough if the material, on the basis of which the reassessment proceedings are sought to be initiated, came to the notice of the Income-tax Officer subsequent to the original assessment. If the Income-tax Officer had considered and formed an opinion on the said material in the original assessment itself, then he would be powerless to start the proceedings for the reassessment. Where, however, the Income-tax Officer had not considered the material and subsequently came by the material from the record itself, then such a case would fall within the scope of section 147(b) of the Act'." (emphasis supplied)*

The aforesaid observations are a complete answer to the issue that if a particular subject-matter, item, deduction or claim is not examined by the Assessing Officer, it will nevertheless be a case of "change of opinion" and the reassessment proceedings will be barred.

2.13. So far as, the reliance by the Ld. CIT-DR upon the decisions from Hon'ble Calcutta High Court/Punjab & Haryana High Court ((supra)) is concerned, those cases are based upon the facts contained therein. The Hon'ble Apex Court in CIT vs Foramer France, vide order dated 16/01/2003, where, there was no failure on the part of the assessee to disclose the material facts, it was held that the notice issued beyond prescribed period cannot be sustained merely on the basis of change of opinion. Even otherwise, when two views are possible, the view, which favours the assessee has to be preferred.

2.14. We are conscious of the fact that the aforesaid observations have been made in the context of section 147(b) with reference to the term "information" and conceptually there is difference in scope and ambit of reopening provisions incorporated with effect from April 1, 1989. However, it was observed by the Hon'ble Apex Court in Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) that the amended provisions are wider. What is important and relevant is that the principle of "change of opinion" was equally applicable under the un-amended provisions. The Supreme Court was, therefore, conscious of the said principle, when the observations mentioned above in A. L. A. Firm [1991] 189 ITR 285 were made.

2.15. Under the new provisions of section 147, an assessment can be reopened if the Assessing Officer has "reason to believe" that income chargeable to tax has escaped assessment; but if he wants to do so after a period of four years or merely on the change of opinion, he can do so only if the assessee has fallen short of his duty to disclose fully and truly all material facts necessary for his assessment. The Act places a general duty on every

assessee to furnish full and true particulars along with the return of income or in the course of the assessment proceedings so that the Assessing Officer is enabled to compute the correct amount of income on which the assessee shall pay tax. The position has been further clarified by the proviso itself in a case where assessment under sub-section (3) of section 144 of the Act or this section has been made for the relevant assessment year, no action shall be taken after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such year by the reason of failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose truly and fully all material facts necessary for his assessment for that assessment year. It is also noted that the scope of newly substituted (w.e.f. 01/04/1989) section 147 has been elaborated in department circular number 549 dated 31st October, 1989, meaning thereby, on or after 01/04/1989, initiation of reassessment proceedings has to be governed by the provisions of section 147 to 151 as

substituted (amended) w.e.f. 01/04/1989. Still, power u/s 147 of the Act, though very wide but no plenary. We are aware that Hon'ble Gujarat High Court in Praful Chunilal Patel: Vasant Chunilal Patel vs ACIT (1999) 236 ITR 82, 840 (Guj.) even went to the extent that action under main section 147 is possible in spite of complete disclosure of material facts. The primary condition of reasonable belief having nexus with the material on record is still operative. However, we are of the view, that mere fresh application of mind to the same set of facts or mere change of opinion does not confer jurisdiction to the Assessing Officer even under the post 1989 section 147 of the Act. Our view finds support from the decision from Hon'ble High Courts in following cases:-

i. Jindal Photo Films Ltd. vs DCIT (1998) 234 ITR 170 (Del.),
ii. Garden Silk Mills Pvt. Ltd. vs DCIT (1999) 151 CTR (Guj.) 533,
iii. Govind Chhapabhai Patel vs DCIT 240 ITR 628, 630 (Guj.),

iv. Foramer vs CIT (2001) 247 ITR 436 (All.), affirmed in CIT vs Foramer Finance (2003) 264 ITR 566, 567 (SC),

v. Ipica Laboratories vs DCIT (2001) 251 ITR 416 (Bom.),

vi. Ritu Investment Pvt. Ltd.(2012) 345 ITR 214 (Del.),

vii. Ketan B. Mehta vs ACIT (2012) 346 ITR 254 (Guj.),

viii. Ms. Praveen P. Bharucha vs DCIT (2012) 348 ITR 325 (Bom.),

ix. CIT vs Usha International Ltd. 348 ITR 485 (Del.),

x. Agricultural Produce Market Committee vs ITO (2013) 355 ITR 348 (Guj.),

xi. B.B.C. World News Ltd. vs Asst. DIT (2014) 362 ITR 577 (Del.).

xii. Identical ratio was laid down in CIT vs Malayala Manorma Company Ltd. (2002) 253 ITR 378 (Ker.)

We think this thread runs through the various provisions of the Act. But Explanation 1 to the section confines the duty to the disclosure of all primary and material facts necessary for the assessment, fully and truly. As to what are material or primary facts would depend upon the facts and circumstances of each case and no universal formula can be adopted. The legal or factual

inferences from those primary or material facts are for the Assessing Officer to draw in order to complete the assessment and it is not for the assessee to advise him, for obvious reasons. The Explanation, however, cautions the assessee that he cannot remain smug with the belief that since he has produced the books of account before the Assessing Officer from which material or evidence could have been with due diligence gathered by him, he has discharged his duty. It is for him to point out the relevant entries which are material, without leaving that exercise to the Assessing Officer. The caveat, however, is that such production of books of account may, in the light of the facts and circumstances, amount to full and true disclosure ; this is clear from the use of the expression "not necessarily" in the Explanation. Thus, the question of full and true disclosure of primary or material facts is a pure question of fact, to be determined on the facts and circumstances of each case. No general principle can be laid down. It was observed by the Hon'ble Apex Court, in various cases that there should be some "tangible material" coming into the possession of the Assessing Officer in such cases to enable

him to resort to section 147 of the Act. Despite being a case of full and true disclosure, tangible material coming to the possession of the Assessing Officer after he made the original assessment under section 143(3), would influence the opinion, formed or presumed to have been formed earlier, by the assessing authority; he can with justification change it, but that would not be a case of a "mere change of opinion" unguided by new facts or change in the legal position. It will be a case of the assessing authority having "reason to believe", notwithstanding that full and true particulars were furnished by the assessee which were examined, or presumed to be examined, by him. There was a divergence of opinion amongst various High Courts as to what constitute “Information” for the purposes of section 34(1)(b) of the 1922 Act (which corresponds to section 147(b) of the 1961 Act) the Hon’ble Apex Court in CWT vs Imperial Tobacco Company Ltd. (1966) 61 ITR 461 has noted such divergence of opinion on the point. Hon’ble jurisdictional High Court in CIT vs Sir Mohammad Yusuf Ismail (1944) 12 ITR 8 (Bom.) held that mere change of opinion on the same facts are on question of law or mere

discovery of mistake of law is not sufficient information and that in order to sustained action u/s 34 by further holding that reassessment is not permissible. The Hon'ble Apex Court in Simon Carves Ltd. (1976) 105 ITR 212 held that errorless legally correct order cannot be reopened, therefore, it is settled law that without any new information and on the basis of mere change of opinion, reopening of assessment is not permissible. As was held in CIT vs TTK Prestige ltd. (2010) 322 ITR 390 (Karn.) SLP dismissed in (2010) 322 ITR (St.) 14 (SC). Reference also made to Asian Paints ltd. vs DCIT (2009) 308 ITR 195 (Bom.), Andhra Bank Ltd. vs CIT (1997) 225 ITR 447 (SC). The observations of the Supreme Court are a protection against the abuse of power; they also protect the Revenue which can, in the light of subsequent coming into light of facts or law, reopen the assessment. In the light of the aforesaid discussion, now, we shall examine the facts of the present appeal. The assessee is a purpose vehicle, formed by Govt. of India (through National Textile Corporation) as a part of textile mills in Mumbai. It is formed in pursuance of scheme for revival and rehabilitation of sick textile companies, as

framed and approved by board for Industrial and Financial reconstruction. The assessee was formed as a joint venture vehicle (JVV) between National Textile Corporation Ltd.(NTC), a Govt. of India undertaking and Pantaloon Retail India Ltd. (PRIL), now future retails ltd, pursuant to MOU signed by NTC and PRIL on 06/11/2007, which envisaged NTC holding 51% share and PRIL (along with group companies) holding remaining 49% of the total share capital of the assessee. The purpose was to run and operate the textile mill a commercially viable unit. PRIL was to infuse fresh capital in the assessee in terms of minimum investment plan for modernization, by acquiring share capital of the assessee at a premium. In pursuant to this base agreement, three agreements were entered into. In fact, the MOU itself contained draft of these three agreements to be entered into subsequently. The first undertaking transfer agreement was executed between NTC and the assessee on 15/11/2007, in pursuance of which, the entire undertaking in the form of textile mill, which included the assets & liabilities as stated in that agreement, were transferred as going concern and on 'as is

where is basis' to the assessee. This included among others, all licenses permits, contracts, other rights and privileges etc of the existing running textile business. We have perused this agreement and notice issued u/s 143(2) r.w.s 129 of the Act (page-42 of the paper book) and as per letter dated 24/11/2011 (page-43 of the paper book), the assessee duly furnished the details of share holding before the Ld. Assessing Officer. It is further noted that as per letter dated 01/12/2011, addressed to the ACIT, the statement of share capital and statement of share premium was also duly furnished by the assessee. It is further noted that vide letter dated 23/12/2011 (page-47 of the paper book), addressed to the ACIT, the assessee also furnished the copy of the agreement. The shares subscription and share holders agreement between the parties was executed at New Delhi on 22/11/2007, which contains the necessary details and was duly filed by the assessee before the Ld. Assessing Officer, meaning thereby, the necessary evidence was duly made available by the assessee during assessment proceedings and thus no new material came to the light/possession of the Ld. Assessing Officer. All the

correspondence made during original assessment between the assessee and the Ld. Assessing Officer are available in the paper book. It is noted that the Ld. Assessing Officer reopened the assessment framed u/s 143(3) of the Act on the basis of some information from the office of ROC about raising share capital along with share premium. We have perused the reasons recorded by the Ld. Assessing Officer and consequent objections raised by the assessee vide letter dated 16/06/2014 (page-53 to 59 of the paper book). The assessee vide letter dated 29/01/2015 (pages 62 to 65 of the paper book) explained and more particularly pointed out that the fixation of amount of premium was done by government (through NTC) and the same was duly reflected in the audited accounts of the respective share holders/government undertaking/public limited company. The relevant material including the copies of the agreement was made available by the assessee to the Ld. Assessing Officer, thus, in view of the finding of the Ld. Commissioner of Income Tax (Appeal) that there was no scope of bringing to tax the excess share premium, the Ld. Assessing Officer was not justified to assess the share premium received by

the assessee by invoking the provision of section 68 of the Act. Since, there was no new tangible material available with the Assessing Officer while resorting to section 147/148 of the Act, more specifically, while framing original assessment u/s 143(3) of the Act, there was full disclosure of material facts by the assessee and on the basis of those facts, assessment was completed u/s 143(3) of the Act, therefore, in my humble opinion, the reassessment/reopening u/s 147 of the Act is unjustified as there was no fresh tangible material with the Assessing Officer, while reopening the assessment, therefore, the reopening beyond a period of four years is not permissible, more specifically, when the material facts were disclosed by the assessee and assessment was framed u/s 143(3) of the Act, thus, the reopening of assessment is bad in law, resultantly, we find no merit in the ground raised by the Revenue, therefore, dismissed.

3. The next ground raised by the Revenue pertains to deleting the addition made on account of alleged investment of share holders as income from disclosed sources. The crux of the argument is that it is not a case of

bogus shares rather the allegations are with respect to excess share premium. It was pleaded that the source is not in doubt and the premium is mentioned in the agreement. Our attention was invited to page 43, 44, 47 and 66 of the paper book. It was contended that it is government owned company. On the other hand, the Ld. CIT-DR defended the addition made by the Ld. Assessing Officer by contending that the tests are the same even for the government company. Reliance was placed upon the decision Commissioner of Income-tax *vs.* Precision Finance (P.) Ltd. 208 ITR 465 (Cal.), CIT vs Vir Bhan & Sons 273 ITR 206 ( P & H) and ITA No. 525 of 2014.

3.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee filed its return on 24/09/2009 declaring income of Rs.7,80,32,935/-, which was processed under section 143(1) of the Act. The assessment was framed under section 143(3) on 26/12/2011. As per the Revenue, an information was received from ROC that the assessee charged share premium of Rs.154.72 per shares for 28,66,500 shares issued during the year and thus the

amount of Rs.44,35,01,250/- was collected. The assessee was asked to prove the genuineness of the transactions along with nature and source of funds. As per the Revenue, the assessee did not explain the excess premium so charged and thus addition was made under section 68 of the Act. On appeal before the Ld. Commissioner of Income Tax (Appeal), the additions so made was deleted, against which the Revenue is in appeal before this Tribunal.

3.2. Before adverting further, it is our bounded duty to examine section 68 of the Act, which is reproduced hereunder:-

> "Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :
>
> **Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—
>
> (*a*) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
>
> (*b*) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

> **Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (*23FB*)of section 10."

3.3. The stand of the Revenue is that the assessee did not discharged the onus cast upon it and the explanation of the assessee is not satisfactory and thus the Ld. Assessing Officer proceeded to charge the share premium, received by the assessee to tax. The assessee furnished the shares subscription and share holder agreement which contains the names and addresses of investors as well as their proposed share holding and proposed charge of share premium. The assessee is a joint venture between NTC and PRIL. It was established with a view to revive a sick textile mill and the larger scheme of revival was approved by BIFR. However, still the assessee is independent company under the income tax Act, therefore the composition of share holding is a material. The stand of the Revenue is that unless and until the genuineness of higher share premium is established, the assessee cannot be shielded by stating that the valuation of shares is subjective matter. It is the duty of the assessee to explain the unusual share premium collected over and above the Net Asset Value (NAV). As per

the Ld. Assessing Officer, the NAV of the shares as on 31/03/2008 and excess premium charged is as under:-

| Sr. No. | | Amount in Rs. |
|---|---|---|
| 1 | Total Assets | 19,31,48,494 |
| 2. | Less Misc. Expenses | -77,976 |
| 3. | Total Assets | 19,30,70,518 |
| 4. | Total number of shares | 58,50,000 |
| 5. | NAV | 33 |
| 6. | Premium Charged per shares | 154.72 |
| 7. | Excess premium charged | 121.72 |
| 8. | Total excess premium charged | 34,89,10,380/- |

If the aforesaid factual matrix is analyzed, the net asset value of shares as on 31/03/2008 comes to Rs.33/- as the total asset is Rs.19,30,70,518/-, whereas, the premium charged per share is Rs. 154.72, thus, the excess premium charged comes to Rs.121.72 resulting into total excess premium comes to Rs.34,89,10,380/-. However, we note that as per the provisions of section 56(2)(viib), where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration receive for such share as exceed the fair market value of such share was inserted by the Finance Act, 2012, w.e.f. 01/04/2013 and the present

assessment year before us is 2009-10, therefore, the amendment made in section 68 is prospective in nature. Our view find supports from the decision in the case of ACIT vs Gagandeep Infrastructure Pvt. Ltd. (ITA No.5784/Mum/2011), order dated 23/04/2014, wherein the facts are identical. The Hon'ble Bombay High Court in CIT vs Gangadeep Infrastructure Pvt. Ltd. (394 ITR 680)(Bom.) held as under:-

> **"1.** This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 23rd April, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.
>
> **2.** Mr. Suresh Kumar, the learned counsel appearing for the Revenue urges the following re-framed questions of law for our consideration:—
>
> "(*i*) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs.7,53,50,000/- under Section 68 of the Act being share capital/share premium received during the year when the Assessing Officer held the same as unexplained cash credit?
>
> (*ii*) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the disallowance under Section 14A of the Act only to the amount of expenditure claimed by the assessee in the absence of any such restriction under Section 14A and/or Rule 8D?"
>
> **3.** Regarding question no.(*i*):—
>
> (*a*) During the previous relevant to the subject Assessment Year the respondent-assessee had increased its share capital from Rs.2,50,000/- to Rs.83.75 lakhs. During the assessment proceedings, the Assessing Officer noticed that the respondent had collected share premium to the extent of Rs.6.69 crores. Consequently he called upon the respondent to justify the charging of share premium at Rs.190/- per share. The respondent furnished the list of its shareholders, copy of the share application form, copy of share certificate and Form no.2 filed with the Registrar of Companies. The justification for charging share premium was on the basis of the future prospects of the business of the respondent-assessee. The Assessing Officer did not accept the explanation/justification of the respondent and invoked

Section 68 of the Act to treat the amount of Rs.7.53 crores i.e. the aggregate of the issue price and the premium on the shares issued as unexplained cash credit within the meaning of Section 68 of the Act.

(*b*) Being aggrieved, the respondent carried the issue in appeal. By an order dated 24th May, 2011 the Commissioner of Income Tax (Appeals) (CIT(A)) deleted the addition of Rs.7.53 crores made by the Assessing Officer by holding that the Assessing Officer had given no reason to conclude that the investment made (inclusive of premium) was not genuine. This inspite of evidence being furnished by the respondent in support of the genuineness of the transactions. Further he held that the appropriate valuation of the shares is for the subscriber/investor to decide and not a subject of enquiry by the Revenue. Finally he relied upon the decision of the Apex Court in *CIT* v. *Lovely Exports (P.) Ltd.* [2008] 216 CTR 195 to hold that if the amounts have been subscribed by bogus shareholders it is for the Revenue to proceed against such shareholders. Therefore it held the Assessing Officer was not justified in adding the amount of share capital subscription including the share premium as unexplained credit under Section 68 of the Act.

(*c*) Being aggrieved, the Revenue carried the issue in the appeal to the Tribunal. The impugned order of the Tribunal holds that the respondent-assessee had established the identity, genuineness and capacity of the shareholders who had subscribed to its shares. The identity was established by the very fact that the detailed names, addresses of the shareholders, PAN numbers, bank details and confirmatory letters were filed. The genuineness of the transaction was established by filing a copy of share application form, the form filed with the Registrar of Companies and as also bank details of the shareholders and their confirmations which would indicate both the genuineness as also the capacity of the shareholders to subscribe to the shares. Further the Tribunal while upholding the finding of CIT(A) also that the amount received on issue of share capital alongwith the premium received thereon, would be on capital receipt and not in the revenue field. Further reliance was also placed upon the decision of Apex Court in *Lovely Exports (P.) Ltd.* (*supra*) to uphold the finding of the CIT(A) and dismissing the Revenue's appeal.

(*d*) Mr. Suresh Kumar, the learned counsel appearing for the Revenue contends that proviso to Section 68 of the Act which was introduced with effect from 1st April, 2013 would apply in the facts of the present case even for A.Y. 2008-09. The basis of the above submission is that the *de hors* the proviso also the requirements as set out therein would have to be satisfied.

(*e*) We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective

effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in *Lovely Exports (P.) Ltd.* (*supra*) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

(*f*) In the above circumstances and particularly in view of the concurrent finding of fact arrived at by the CIT(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law. Thus not entertained.

**4.** (*a*) Admit the substantial question of law at (ii) above.

(*b*) The issue arising in question no. (ii) is essentially whether application of Rule 8D(2)(iii) of the Income Tax Act Rules would permit the Revenue to disallow expenditure not claimed i.e. much larger than the expenditure / debited in earning its total income. The Counsel inform us that there is no decision on this issue of any Court available and it would affect a large number of cases where similar issues arise. Therefore, this issue would require an early determination. In the above view, at the request of the Counsel, the appeal is kept for hearing on 17th April, 2017 at 3.00 p.m., subject to overnight part-heard.

**5.** Registry is directed to communicate a copy of this order to the Tribunal. This would enable the Tribunal to keep the papers and proceedings relating to the present appeal available, to be produced when sought for by the Court."

In the aforesaid case, the Hon'ble High Court held that the three essential tests while confirming the section 68 laid down by the Court namely the genuineness of the transaction, identity and the capacity of the investor have

all been examined by the impugned order of the Tribunal and on fact it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders, i.e., they are bogus. The Apex Court in a case in this context to the pre-amended section 68 has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income-tax Officer to proceed by reopening the assessment of such shareholder and assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the assessee's income as unexplained cash credit. Identically in the case of Green Infra vs Income Tax Officer (2013) 38 taxman.com 253 (Mum. Trib.), decided in favour of the assessee and this order was confirmed by Hon'ble High Court in CIT vs Green Infra Ltd. (2017) 392 ITR 7 (Bom.). The ratio laid down in Pr. CIT vs Apeak Infotech & Ors. (ITA No.26 to 31/2017) order dated 08/06/2017 (Bombay High Court) and Hon'ble Madras High Court in CIT vs Pranav Foundation Ltd. (2015) 229 taxman 58 (Madras) further

supports the case of the assessee. Thus, we find no infirmity in the order of the Ld. Commissioner of Income Tax (Appeal), thus this ground of the Revenue is also dismissed.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court on 20/06/2018.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| (G. Manjunatha) | (Joginder Singh) |
| **लेखा सदस्य** / ACCOUNTANT MEMBER | **न्यायिक सदस्य** / JUDICIAL MEMBER |

मुंबई Mumbai; दिनांक Dated : 20/06/2018

*Shekhar, P.S./*नि.स.,

**<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/** BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)
**आयकर अपीलीय अधिकरण,** मुंबई **/ ITAT, Mumbai**