

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, F: NEW DELHI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA Nos.- 2405/Del/2019 and 2407/Del/2019
[Assessment Years: 2010-11 and 2012-13]**

Vedanta Limited (formerly known as the Madras Aluminium Company Ltd.), 3 rd Floor, Core-6, Scope Complex, 7, Lodhi Road, South Delhi, New Delhi-110003.	Vs	Assistant Commissioner of Income Tax, Circle 26(1), New Delhi-110002.
PAN- AACCS7101B		
Assessee		Revenue

**ITA Nos.- 2250/Del/2019 and 2251/Del/2019
[Assessment Years: 2010-11 and 2012-13]**

Assistant Commissioner of Income Tax, Circle 26(1), New Delhi-110002.	Vs	Vedanta Limited (formerly known as the Madras Aluminium Company Ltd.), 3 rd Floor, Core-6, Scope Complex, 7, Lodhi Road, South Delhi, New Delhi-110003
PAN- AACCS7101B		
Revenue		Assessee

Assessee by	Shri Ravi Sharma, Adv. & Ms. Shruti Khimta, Adv.
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	26.11.2025
Date of Pronouncement	20.02.2026

ORDER

PER BRAJESH KUMAR SINGH, AM:

These cross appeals have been preferred by the Assessee (ITA Nos. 2405/Del/2019 and 2407/Del/2019) and Revenue (ITA Nos.- 2250/Del/2019 and 2251/Del/2019) against two separate orders both dated 28.12.2018 of the Commissioner of Income Tax (Appeal)-9, New Delhi [hereinafter referred to as the 'Ld. CIT(A)] pertaining to Assessment Year 2010-11 and 2012-13, arising out of two separate Assessment orders both dated 29.12.2017 passed under Section 143(3) r.w.s. 147 of the Income-tax Act, 1961(hereinafter referred to as 'the Act') by ACIT, Circle 26(1), New Delhi for A.Y. 2010-11 and 2012-13 respectively. Since, common issues are involved in these appeals, the same were heard together and are being disposed of by this common order for the sake of convenience.

2. First, we take up the assessee's appeal for A.Y. 2010-11 being ITA No. - **2405/Del/2019.**

3. Brief fact in this case: The assessee is a Company engaged in the business of manufacture and sale of aluminum as well as in the commercial power generation business. The assessee filed its original return of income on September 28, 2010 wherein income under normal provision of Rs. 81,99,029 and book profit under MAT provisions of Rs. 1,68,14,36,980 was offered to tax. The return of income was

selected for scrutiny wherein the AO while framing the assessment order dated January 28, 2013 made an addition amounting to Rs. 2,06,19,999 under Section 14A of the Income Tax Act, 1961 ('the Act') to the income under normal provision.

3.1 Being aggrieved from the aforementioned impugned order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated May 31, 2017 allowed the appeal of the Appellant and deleted the impugned addition made by the Id. AO. The Ld. AO preferred an appeal before the Hon'ble ITAT. The Hon'ble ITAT vide order dated April 10, 2018 (ITA No. 214/Panaji/2017) upheld the order of the Ld. CIT(A).

3.2 During the pendency of appeal before the CIT(A) against the original assessment order, re-assessment proceedings were also initiated by the Ld. AO vide notice dated December 23, 2016, issued under Section 148 of the Act. The assessee vide letter dated January 19, 2017 sought reasons from the AO for reopening of the assessment proceedings. The AO vide letter dated September 12, 2017 provided the below-mentioned reasons to the Appellant for reopening of assessment.

- a. Addition made u/s 14A of the Act amounting to Rs. 2,06,19,999 not added back to the book profit of the Appellant u/s 115.JB of the Act.

b. Non claim of additional depreciation amounting to Rs. 15,49,26,546 resulting in excess claim of deduction u/s 80-IA of the Act.

3.3 The assessee filed its response on October 26, 2017 wherein the assessee objected to the issuance of the notice being barred by limitation in view of proviso to section 147 of the Act as there was no failure on part of the assessee to disclose fully and truly all material facts necessary for the assessment proceedings. However, the AO proceeded with the re-assessment proceedings after passing the order disposing of the objections to the issuance of notice under Section 148 of the Act vide order dated nil placed at page no. 140-146 of the paper book.

4. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A) in which the assessee challenged the legality of the aforesaid notice u/s 148 of the Act dated 23.12.2016, which was rejected by the Ld. CIT(A) vide order dated 28.12.2018. The relevant extracts of the order of the Ld. CIT (A) are reproduced as under:

“5.2 I have perused the facts of the case, the grounds of appeal, the order of the AO, the submission of the appellant and the submission of the AO. The appellant, vide this ground of appeal, has challenged the legality of the reassessment proceedings. It is noted that the AO has reopened the case on two observations, which are summed up as under:

- 1. That the appellant had failed to disallow the amount of disallowance under Sec 14A, while computing the income under the provisions of Sec 115JB of the Act.*
- 2. That the appellant had failed to claim additional depreciation on the fixed assets purchased, thereby leading to additional claim under Sec 801B of the Act.*

5.3 *The appellant had objected to the above-mentioned reasons by stating that in the assessment proceedings, the AO had duly applied his mind and had made disallowance of the expenses u/s 14A, only under the normal provisions of Income Tax. Further, the appellant also contended that the element of depreciation has been duly considered and verified by the AO, during the original proceedings, and therefore there is change of opinion, on the basis of which, the proceedings of the appellant have been reopened. The appellant also resorted to the first proviso to Sec 147, and claimed that there is no failure of disclosure at its end and that there cannot be any reassessment beyond the period of 4 years from the end of the assessment year, in its case. Lastly, it was also contested that there was no tangible material on the basis of which the AO has determined that there was concealment of income and hence, the reassessment is devoid in law, since the same is not permitted by the provisions of Sec 147 rws 148 of the Act.*

Contra, the AO vide his submissions made during the proceedings, submitted that simple production of document can in no way construe that the AO had formed an opinion and hence, in the present case, the AO had not formed any opinion at the time of original proceedings. Therefore, the AO stated that the objections made by the assessee, vide this ground of appeal, is eligible to be rejected.

5.4 *In the given context, the moot question for consideration is whether the AO, at the time of original proceedings, had applied his mind on the subjected matter in the reasons to believe. This is supported by another question, as to whether there has been fully disclosure from the assessee, as stated in the proviso to Sec 147 and whether the reasons are formed out on tangible material.*

5.5 *For the first question, on considering the entirety of the records, it is observed that the AO, in the original proceedings had made the addition under Sec 14A, under the normal provisions of computation of income, under the Income Tax Act. However, there was no iota of discussion or understanding or opinion, that the AO had formed on the computation of income under Sec 14A of the Act. While it may be later decided as to the tenability of such additions on the merit of the case, even still, on the legal front, the AO had not formed any opinion, since had that been a case, the AO would have either made an addition under computation of Sec 115JB, or would have outrightly stated his satisfaction in the assessment order itself. The appellant has drawn the attention towards the computation of the original assessment order, but it is again significant to state that such computation is barely a procedural reproduction of the assessed income, and does not where reflect the formation of an opinion. Hence, the contention of the appellant fails.*

Further, with respect to the second reason, i.e, on additional depreciation, even there the AO does not seem to have formed any opinion, since the assessment order nowhere gives a categorical finding to such effect. Neither the assessment order nor any part of the proceedings, highlights that the AO had applied his mind towards such issues. Therefore, the AO being found to have not applied his mind on such issues in the original assessment proceedings, there cannot be an opinion and consequentially, there cannot be a change in opinion as well. Hence, the objection of the appellant, as to the change in opinion is answered in negative.

5.6 With respect to the question i.e, the appellant had made fully and truly disclosures of all the material facts during the assessment proceedings, it is significant to state, that full and true disclosures are somethings that are to be considered from the point of view of the AO. Now, since the AO, in his opinion, has found that the appellant has not made disallowance under Sec 14A, under the provisions of Sec 115JB, there cannot be doubt that the AO has not found the disclosure to be full and true. The same goes on for the other reason, that the action of addition in the reassessment proceedings automatically implies that the appellant has not fully and truly disclosed all the material facts to the AO. It is reiterated that had there been true and full disclosure and that the AO, in the original proceedings applied his mind on such disclosure, there would never have arisen a need for a reassessment and hence, there would never have been a consequential addition in such reassessment proceedings. However, that not being the case, the objection of the appellant in this regard is rejected and hence, even this contention fails. So far issue relating to the presence of a tangible material is concerned, it is noted that any material hinting of concealment of income or a potential concealment of income, is eligible to be called as a tangible material. In the present case, the reasons to believe clearly arises of some materials, and that the reliance of the AO, on such documents, automatically leads these materials to be tangible materials and hence, event the said objection is rejected. Thus all the legal objections raised in these grounds are dismissed.”

5. Aggrieved with the said findings and the rejection of the assessee’s appeal challenging the legal validity of the impugned notice u/s 148 of the Act , the assessee filed an appeal before us on the following grounds of appeal on the legal validity of the said notice:

“1.0 That on the facts and in the circumstances of the case and in law, the order passed by the Learned Commissioner of Income-tax (Appeals) ('Ld CIT(A)') is erroneous and bad in law.

2.0 Initiation of reassessment proceedings

2.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Learned Assessing Officer ('Ld AO') initiating reassessment proceedings under section 148 of the Income-tax Act, 1961 (Act')

2.1.1 That the Ld. CIT(A) erred in confirming and the Ld AO erred in initiating reassessment proceedings on a mere change of opinion.

2.1.2 That the Ld. CIT(A) erred in confirming and the Ld AO erred in initiating reassessment proceedings without proving any failure on the part of the Appellant to disclose fully and truly all material facts necessary for assessment even when no new information has come in possession of the Ld. AO

6. During the hearing before us and the Ld. AR filed a written submission. The relevant extract of the said submission is reproduced as below:

“Ground 1: The order passed by Ld. CIT(A) is bad in law

12. The above ground is general in nature.

Ground 2 to 2.1.2: The Ld. CIT(A) erred in confirming the action of Ld. AO initiating reassessment proceedings under Section 148 of the Act on a mere change of opinion and without proving any failure on the part of Appellant to disclose fully and truly all material facts necessary for assessment

13. The Ld. AO for the year under consideration has initiated reassessment proceedings against the Assessee on the premise that the addition made u/s 14A of the Act amounting to INR 2,06,19,999 was not added back to the book profit of the Appellant u/s 115JB of the Act and the non-claim of additional depreciation amounting to INR 15,49,26,546 had resulted in excess claim of deduction u/s 80-IA of the Act.

14. In this regard, the Assessee vehemently objects to the basis for reopening of assessment as it had fully and truly disclosed all the relevant/material facts and information during the original assessment proceedings. It is submitted that the said proceedings have been initiated on a mere change of opinion. Further, the Ld. CIT(A) has erred in not considering that the jurisdiction u/s 147 of the Act cannot be exercised by the AO on a mere change of opinion.

15. For the captioned year, the notice for initiation of re-assessment proceedings was issued on December 23, 2016, which is beyond a period of 4 years period from the end of the assessment year. In this regard, it is humbly submitted that the proviso to Section 147(1) of the Act mandates that proceedings under section 148 of the Act can only be initiated if there was a failure on the part of the Appellant to disclose fully and truly all material facts necessary for its assessment for the subject assessment year. 16. or ease of reference, the proviso to Section 147 of the Act is reproduced below:-

"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"

17. In the instant case, the Appellant had, during the course of assessment made a complete disclosure of all the relevant facts. Nowhere in the reasons supplied to the Appellant, has the Ld. AO indicated which material facts were omitted to be filed by the Appellant during assessment.

18. It is trite law that any reassessment proceedings initiated beyond a period of four years from the end of the relevant assessment year in the absence of any failure on the part of an assessee to disclose fully and truly all material facts at time of assessment is bad in law. Accordingly, in view of the above facts and proviso to Section 147 of Act, the Appellant submits that captioned proceedings have been initiated incorrectly after expiry of four years from the end of AY 2010-11. Such proceedings are in contravention to the provisions of Section 147 of the Act read with proviso thereto and deserve to be quashed.

19. The Hon'ble Supreme Court in its recent decision in the case of New Delhi Television Limited VS. CIT [TS-197-SC-2020] set aside the notice for reopening the assessment on the ground that there was no failure to disclose all material facts fully and truly, meaning thereby that the first proviso to section 147 did not apply.

Quote

"28. We are unable to agree with this reasoning given by the High Court. The assessee as mentioned above made a disclosure about having agreed to stand guarantee for the transaction by NNPLC and it had also disclosed the factum of the issuance of convertible bonds and their redemption. The income, if any, arose because of the redemption at a discounted price. This was an event which took place subsequent to the assessment year in question though it may be income for the assessment year. As we have observed above, all relevant facts were duly within the knowledge of the assessing officer. The assessing officer knew who were the entities who had subscribed to other convertible bonds and in other proceedings relating to the subsidiaries the same assessing officer had knowledge of addresses and the consideration paid by each of the bondholders as is apparent from assessment orders dated 03.08.2012 passed in the cases of M/s. NDTV Labs Ltd. and M/s. NDTV Lifestyle Ltd. Therefore, in our opinion there was full and true disclosure of all material facts necessary for its assessment by the assessee.

.....

.....

3.3 In our view the assessee disclosed all the primary facts necessary for assessment of its case to the assessing officer. What the revenue urges is that the assessee did not make a full and true disclosure of certain other facts. We are of the view that the assessee had disclosed all primary facts before the assessing officer and it was not required to give any further assistance to the assessing officer by disclosure of other facts. It was for the assessing officer at this stage to decide what inference should be drawn from the facts of the case. In the present case the assessing officer on the basis of the facts disclosed to him did not doubt the genuineness of the transaction set up by the assessee. This the assessing officer could have done even at that stage on the basis of the facts which he already knew. The other facts relied upon by the revenue are the proceedings before the DRP and facts subsequent to the assessment order, and we have already dealt with the same while deciding Issue No.1. However, that cannot lead to the conclusion that there is non-disclosure of true and material facts by the assessee."

Unquote

(Emphasis Supplied)

20. It is accordingly submitted that the instant proceedings ought to be set-aside as the requirements set out in the first proviso to Section 147 is not met in the Appellant's case.

Reassessment initiated based upon change of opinion

21. It is a well settled legal position that an assessment cannot be reopened in terms of Section 147 of the Act on the basis of change of opinion on the issues which were already considered and decided in the original assessment proceedings. It is pertinent to note that the provisions of Section 147 of the Act provide that the reassessment proceedings may be initiated only where the Ld. AO has 'reason to believe that any income chargeable to tax has escaped assessment and not on the basis of change of opinion

22. It is pertinent to note that the Appellant had filed all the necessary facts/details/disclosures and other relevant documents before the lower authorities. All the necessary facts/details/disclosures as regards the computation of deduction claimed, were available with the Ld. Assessing Officer at the time of the original assessment proceedings.

23. As mentioned above, the re-assessment was opened on the following "reasons to believe":

a. Addition made u/s 14A of the Act amounting to INR 2,06,19,999 not added back to the book profit of the Appellant u/s 115JB of the Act.

b. Non claim of additional depreciation amounting to INR 15.49.26.546 resulting in excess claim of deduction u/s 80-LA of the Act.

24. The Ld. AO during the original assessment proceedings, vide notice dated September 24, 2012 raised queries regarding the computation of deduction under Section 80-IA of the Act, MAT computation as well as the disallowance under Section 14A of the Act (Refer Pg. 153 of the PB).

5. The Appellant in response to such notice vide letter dated October 18, 2012 and December 21, 2012 provided the following details (Refer Pg. 153 of the PB)

-Computation of deduction under Section 80-IA of the Act

-MAT Computation

-Computation of disallowance under Section 14A of the Act

26. After considering and examining the said details / information, the Ld. AO accepted the claim of deduction under Section 80-IA of the Act during the assessment proceeding. Further, the Ld. AO made a disallowance under Section 14A of the Act under normal provisions of the Act, but no such addition was made while computing the book profit under Section 115JB of the Act.

27. Thus, it is clear that by initiating the reassessment proceeding, there is fresh application of mind by the Ld. AO to the same set of facts and material. The "reasons recorded" refer to the same facts and material which were available and considered at the time of passing the original assessment order u/s 143(3). The 'reasons recorded' do not indicate or show that any new, fresh material has been brought on record in consequence of which there is a reason to believe that the provisions in question has escaped assessment. It is submitted that from the above recorded reasons, it is clear that the reassessment proceedings have been initiated to review the already accepted position by applying a fresh mind to the same facts and material.

28. As per settled legal position, such proceedings initiated under section 147 of the Act tantamount to change of opinion, which is not permissible under the provisions of the law and in this regard, we place reliance on the following judicial precedents:

29. Your Honour's attention is drawn to the following pertinent observations of the Apex Court in the case of CIT vs. Kelvinator of India Ltd. (supra):

“.....however, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion as an in-

built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

30. *The Hon'ble Bombay High Court in Asian Paints Ltd. vs. DCIT ([2009] 223 CTR 141 (Bombay)) following the decision of the Full Bench of the Hon'ble Delhi High Court in the case of CIT v. Kelvinator of India Ltd. (supra) (which was later affirmed by the Hon'ble Supreme Court) held that in a situation where the Assessing Officer has failed to apply his mind to the relevant material while passing an assessment order; he cannot take advantage of his own wrong and reopen the assessment by taking recourse to the provisions of section 147 of the Act. The relevant observations of the Hon'ble Bombay High Court are reproduced below:*

Quote

8. *In the order rejecting the objection filed by the petitioner to the notice under section 148, respondent No. 1 has observed "verification of assessment record reveals that the said details were called for but inadvertently the same were not taken into account while framing the assessment and, therefore, it cannot be said that there is a change of opinion." According to respondent No. 1, thus, the relevant material was available on record, but he failed to apply his mind to that material in making the assessment order. The question is, can respondent No. 1 take recourse to the provision of section 147 for his own failure to apply his mind to the material which, according to him, is relevant and which was available on record. We find that this situation has been considered by the Full Bench of the Delhi High Court in its judgment in the case of CIT v. Kelvinator of India Ltd. [2002] 256 ITR 1 and the Full Bench has observed thus "The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further; the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong."*

Unquote

31. *Similarly, in the instant case, the Ld. AO has not pointed out which pertinent facts were not furnished during the course of assessment to warrant the reopening of assessment. Thus, the findings of the Hon'ble High Court in the case of CIT vs. Kelvinator (supra) reproduced hereinabove, as affirmed by the*

Hon'ble Supreme Court, squarely apply to the case at hand. The assessing officer thus, cannot be allowed a premium for his own mistake as the instant matter is clearly a case of change of opinion.

32. *It is a well settled legal position that where the assessee has been subject to assessment proceedings under Section 143(3) of the Act, then it can be presumed that the assessment order has been passed after due application of mind. Mere change of opinion or having second thoughts on the same material cannot be a ground to commence proceedings for reassessment under Section 148 of the Act.*

33. *Reliance is placed on the following decisions:*

- *CIT us. Annamalai Finance Ltd. ((2005) 275 ITR 451 (Mad))*
- *ITO vs. Techspan India (P) Ltd. ((2018) 404 ITR 10 (SC))*
- *CIT us. Usha International Ltd. [348 ITR 485 FB (Del)]*
- *Commissioner of Income-Tax us. Foramer France reported in [264 ITR 566(SC)]*

No fresh and tangible material existed to warrant initiation of reassessment

34. *It is submitted that in order to re-open an assessment under section 147 of the Act, there has to be a reason to believe in the form of some new or fresh material/evidence which has come to the knowledge of the AO after passing the assessment order under section 143(3) of the Act, on the basis of which a belief has been formed that some income has escaped assessment.*

35. *It is respectfully submitted that in the instant case, there was no fresh material available on record, on the basis of which belief has been formed by the Ld. AO that some income has escaped assessment. It is evident from the reasons recorded that the reassessment is being made on the material which were already on record. For ease of reference, the relevant portion of the reasons recorded is extracted*

Quote

"2. Now it is noticed that an addition of Rs. 2,06,19,999/- was made u/s.14A of I.T. Act, 1961, but the same income was not added back while computing the income u/s.155.JB of I.T. Act, 1961. This has resulted in short computation of income of Rs. 2,06,19,999/-

3. It is also noticed that the assessee had 2 power plant units: (i) MCPP (unit 1-3) commenced during F.Y. 2005-06 & (ii) MCPP (unit 4) commenced during F.Y. 2009-10. During the current A.Y. 2010-11, the assessee had claimed depreciation on Plant & Machinery related to both 801A units @ 15% without claiming of additional depreciation. The assessee had made additions to Plant and Machinery related to power plant units of Rs. 79.32,78,527/-(Rs. 75.59.86,944/- for more than 180 days and Rs.3,72,91.583/- for less than 180 days). The

additional depreciation on these assets amounting to Rs. 15,49,26,546/- @ 20% for more than 180 days & @10% for less than 180 days. The non claim of additional depreciation of Rs. 15,49,26,546/- has resulted excess claim of 801A deduction by the same amount.

4. In view of the above facts, I have reason to believe that income chargeable to tax amounting to Rs.17.55,46,545/ has escaped the assessment, within meaning of provision of section 147 of the Income Tax Act, 1961, warranting reopening of assessment for A.Y. 2012-13. Accordingly, assessment for A.Y. 2010-11 is reopened & notice u/s 148 of Income Tax Act 1961 is issued after obtaining approval of higher authority- Pr. Commissioner of Income Tax, Panaji."

36. A perusal of the reasons recorded indicates that the Ld. AO has himself admitted that there is no new material available with him and that he proceeded on the basis of the material already on record. The reassessment notice has been issued on the basis of the same material and same set of facts as was available with the Ld. AO at the time of the original assessment.

37. The Appellant places reliance on the judgment of the Apex Court in the case of CIT vs. Kelvinator of India Ltd. ([2010] 187 Taxman 312 (SC)), wherein the Hon'ble Supreme Court upheld the full bench decision of the jurisdictional Delhi High Court in the case of CIT vs. Kelvinator of India Ltd. ([2002] 256 ITR 1 (Del) (FB)). The Hon'ble Delhi High Court made several observations relating to reassessment proceedings and extract of the judgment relating to fresh and tangible material is reproduced below-

"In the event it is held that by reason of s. 147 if ITO exercises its jurisdiction for initiating a proceeding for reassessment only upon mere change of opinion, the same may be held to be unconstitutional. We are, therefore, of the opinion that s. 147 of the Act does not postulate conferment of power upon the AO to initiate reassessment proceeding upon his mere change of opinion.

We, however, may hasten to add that if "reason to believe" of the AO is founded on an information which might have been received by the AO after the completion of assessment, it may be a sound foundation for exercising the power under s. 147 r/w s. 148 of the Act

22. We are unable to agree with the submission of Mr. Jolly to the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report has already been submitted by the assessee. It is one thing to say that the Assessing Officer had received information from an audit report which was not before the ITO, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself."

(Emphasis Supplied)

38. Further reliance is placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd. (354 ITR 536), wherein the Hon'ble Delhi High Court while placing reliance on the above decision of the Apex Court in the case of CIT vs. Kelvinator of India Ltd (supra) held that reopening of assessment without any fresh and tangible material coming to the possession of the assessing officer subsequent to the original proceedings leads to arbitrary use of powers conferred under section 147 of the Act. The relevant extract is reproduced as under -

"In the present case the reasons disclose that the Assessing Officer reached the belief that there was escapement of income "on going through the return of income" filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in Kelvinator of India Ltd. (supra). The reasons recorded by the Assessing Officer in the present case do confirm our apprehension about the harm that a less strict interpretation of the words "reason to believe" vis-à-vis an intimation issued under section 143(1) can cause to the tax regime. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147."

(Emphasis Supplied)

39. Similar observations were made in the following cases

- *KLM Royal Dutch Airlines v. Assistant Director of Income Tax (208 CTR 33)*
- *ACIT us. ICICI Securities Primary Dealership Ltd. [(2012) 348 ITR 299 (SC)]*
- *Jindal Photo Films Ltd. vs. CIT & Anr. (234 ITR 170)*
- *Techspan India (P) Ltd. and Anr. us. ITO (283 ITR 212)*
- *Asian Paints Ltd us. CIT (223 CTR 141)*
- *CIT us. Jagson International Ltd. (18 DTR 144)*

40. Thus, it is the humble submission of the Appellant that reassessment in the instant case could not have been initiated in the absence of any fresh and tangible material. The decision of the Ld. AO in the facts of the Appellant's case appears to be nothing but a review of the original proceedings which cannot be sustained. The Ld. AO is not empowered to reopen an assessment on similar sets of facts which were examined by him at the time of the original assessment. Any

information coming to the possession of the Ld. AO which is specific, reliable and relevant, that was not previously disclosed or which exposes the untruthfulness of the facts given by the Appellant at the time of assessment, certainly empowers the AO to start the reassessment proceedings subject to the provision of the Act. However, it is an admitted fact that in the Appellant's case, no new evidence has surfaced that wasn't already at the disposal of the Ld. AO at the time of assessment.

41. From the reasons recorded by the Ld. AO in the instant case, it is quite evident that the Ld. AO has alleged escapement only on the basis of change of opinion in respect of the issues under reference and in respect of none of the issues has he referred to any fresh and tangible material which had come to his notice subsequent to the passing of the original order of assessment. Thus, it is prayed that the impugned order may kindly be set aside as it was issued without the existence of new/fresh ('tangible') material.”

(emphasis supplied by us)

7. The Ld. Sr. DR relied upon the order of the Ld. CIT(A) and submitted that the legal grounds raising objections to the assumption of jurisdiction by the Assessing Officer vide notice u/s 148, dated 23.12.2016 should be rejected.

8. We have heard both the parties and perused the material available on record. The legal issue that has been raised before us in the instant appeal is with respect to validity of reassessment proceedings u/s.148 r.w.s. 147 of the Act vide notice u/s 148 dated 23.12.2016. In this case, the assessment has been reopened after more than four years from the end of relevant assessment year and also in the present case an order u/s 143(3) of the Act was passed on 28.01.2013. The relevant excerpts from the reasons recorded for reopening assessment are reproduced herein below:

“ Notice u/s. 148 of Income-Tax Act, 1961, dated 23.12.2016, has been duly served upon you on 26.12.2016. In response to the same you vide your above referred letter has informed that you have filed return in response to notice u/s. 148, on

28.09.2010 and asked to provide 'reasons' recorded for reopening your assessment for the A.Y. 2010-11.

As requested by you, the reasons recorded are being furnished herewith-as under :-

The assessment in this case for A.Y. 2010-11 was completed in January, 2013, determining an ignore at Rs.2,88,19,030/- under normal provision and Rs.168,14,36,980/- under 115JB after allowing 80IA deduction of Rs.168,89,77,101/-, income derived from power generation.

2. Now it is noticed that an addition of Rs.2,06,19,999/- was made u/s.14A of I. T. Act, 1961, but the same income was not added back while computing the income u/s.115JB of I. T. Act, 1961. This has resulted in short computation of income of Rs.2,06,19,999/-.

3 It is also noticed that the assessee had 2 power plant units: (i) MCPP (unit 1-3) commenced during F.Y. 2005-06 & (ii) MCPP (unit 4) commenced during F.Y. 2009-10. During the current A.Y. 2010-11, the assessee had claimed depreciation on Plant & Machinery related to both 80IA units @ 15% without claiming of additional depreciation. The assessee had made additions to Plant and Machinery related to power plant units of Rs.79.32,78,527/- (Rs.75.59,86,944/- for more than 180 days and Rs.3,72,91,583/- for less than 180 days). The additional depreciation on these assets amounting to Rs.15,49,26,546/- @ 20% for more than 180 days & @ 10% for less than 180 days. The non claim of additional depreciation of Rs.15,49,26,546/- has resulted excess claim of 80IA deduction by the same amount.

4. In view of the above facts, I have reason to believe that income chargeable to tax amounting to Rs.17,55,46,545/- has escaped the assessment, within meaning of provision of section 147 of the Income Tax Act, 1961, warranting reopening of assessment for A.Y. 2012-13-Accordingly, assessment for A.Y. 2010-11 is reopened & notice u/s 148 of Income Tax Act 1961 is issued after obtaining approval of higher authority - Pr. Commissioner of Income Tax, Panaji."

8.1 On perusal of the above reasons, we notice that there is no allegation by the AO that income chargeable to tax has escaped assessment for the impugned

assessment year by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment in the return of income and more particularly on the above issues for which the assessment has been reopened. The assessment was reopened on two grounds, firstly, that an addition of Rs.2,06,19,999/- was made u/s.14A of I. T. Act, 1961, in the order u/s 143(3) of the Act dated 31.03.2010 but the same was not added back while computing the income u/s.115JB of I. T. Act, 1961, which resulted in short computation of income of Rs.2,06,19,999/-, and secondly on the ground that the non claim of additional depreciation of Rs.15,49,26,546/- resulted excess claim of 80IA deduction by the same amount, as described in details in the reasons recorded as above. Both the facts were available before the AO while passing the original assessment in this case. It is obvious from the reasons recorded as reproduced earlier in this order that the AO upon the facts available before him noticed about the alleged escapement as noted in the reasons recorded and not on the basis of any fresh material/information.

8.2 Whenever, the assessment is reopened beyond four years, first proviso to section 147 of the Act gets triggered. Accordingly, the Assessing Officer has to show that income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment in the return of income for that assessment year.

However in the reasons recorded there is no whisper of any tangible material which came to the possession of the assessing officer subsequent to the passing of the assessment order u/s 143(3) of the Act on 28.01.2013 or there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment in the return of income for that assessment year in respect of the above two issues on which the assessment was reopened.

8.3 The Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd.,(supra) held that in the absence of any fresh tangible material, the re-opening of assessment u/s.147 of the Act is without jurisdiction. The relevant extract of the said order is reproduced as under:

"In the present case the reasons disclose that the Assessing Officer reached the belief that there was escapement of income "on going through the return of income" filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in Kelvinator of India Ltd. (supra). The reasons recorded by the Assessing Officer in the present case do confirm our apprehension about the harm that a less strict interpretation of the words "reason to believe" vis-à-vis an intimation issued under section 143(1) can cause to the tax regime. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147."

(Emphasis supplied by us)

8.4 Thus, in the given facts of the case, this is clearly a case of reopening of assessment on the basis of change of opinion on the same set of facts and in the absence of any fresh tangible material. It is a settled legal principle that assessment cannot be reopened based on change of opinion [Re: CIT vs. Kelvinator of India Ltd. 187 Taxman 312 (SC)] and in the absence of any fresh tangible material as held by Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd.,(supra). Thus, in light of facts of the case and settled legal principle, we hold reassessment proceedings in this case initiated vide the impugned notice u/s 148 of the Act dated 23.12.2016 are without jurisdiction, hence, is quashed. Ground nos. 1 to 2.1.2 are allowed.

9. In view of the fact, that the we have held the re-assessment proceedings without jurisdiction and have quashed the same the other grounds of appeal of the assessee become academic and are left open in this case.

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

11. Now, we take up the Revenue's appeal in **ITA No. 2250/Del/2019** for the Assessment Year 2010-11. In view of the fact, that the we have held the re-assessment proceedings without jurisdiction and have quashed the same in ITA No.- 2405/Del/2019, the grounds of appeal in the Revenue's appeal become infructuous and are dismissed.

12. In the result, appeal of the Revenue is dismissed.

13. To sum up, the appeal of the assessee (ITA No. 2405/Del/2019) is allowed and appeal of the revenue (ITA No. 2250/Del/2019) is dismissed.

14. Now, we take up the assessee's appeal for A.Y. 2012-13 being ITA No. - **2407/Del/2019**.

15. Brief facts of the case : The assessee filed its original return of income on 29.09.2012 declaring total income of Rs. 5,63,80,700/- under normal provision and book profit of Rs. 26,22,49,083/- under section 115JB of the Act. The return of income was selected for scrutiny and the AO passed the assessment order u/s 143(3) of the Act on 13.03.2015 at a total income of Rs. 7,15,36,005/- under normal provision and book profit of Rs. 27,74,04,388/- under section 115JB of the Act.

15.1 In this case, re-assessment proceedings were initiated by the AO vide notice u/s 148 of the Act on 30.03.2017. The assessee vide letter dated 20.03.2017 sought reasons from the AO for reopening of the assessment proceedings. The AO vide letter dated 12.09.2017 provided the below-mentioned reasons to the assessee for reopening of assessment.

Non claim of additional depreciation amounting to Rs. 87,15,66,230/- resulting in excess claim of deduction amounting to Rs. 9,24,14,545/- u/s 80-IA of the Act.

15.2 The assessee filed its response on October 26, 2017 wherein the assessee objected to the issuance of the notice on the ground that the said notice was invalid due to the change opinion. It was submitted by the assessee that the reasons for seeking reassessment merely reflect mere inadvertent omission to appreciate the facts of the assessee's case and what AO's office apparently intends to consider in reassessment assessment proceedings has already been reflected and properly reported by the assessee in its return of income. However, the AO proceeded with the re-assessment proceedings after passing the order disposing of the objections to the issuance of notice under Section 148 of the Act vide order dated nil placed at page no. 151-154 of the paper book.

16. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A) in which the assessee challenged the legality of the aforesaid notice u/s 148 of the Act dated 30.03.2017, which was rejected by the Ld. CIT(A) vide order dated 28.12.2018. The relevant extracts of the order of the Ld CIT (A) are reproduced as under:

“5.2 I have perused the facts of the case, the grounds of appeal, the order of the AO, the submission of the appellant and the submission of the AO. The appellant, vide this ground of appeal, has challenged the legality of the reassessment proceedings.

The AO had reopened the case on the observation that the appellant had failed to claim depreciation @ 80%. Instead, had under-claimed the depreciation @ 15%.

The appellant had objected to the above-mentioned reasons by stating that the element of depreciation has been duly considered and verified by the AO during the original

proceedings and hence that there is change in opinion, on the basis of which, the proceedings of the appellant have been reopened.

The AO, vide his submissions made during the proceedings, had submitted that simply production of documents can in no way construe that the AO had formed an opinion and hence, in the present case, the AO had not formed any opinion at the time of original proceedings. Therefore, the AO stated that the objections made by the assessee, vide this ground of appeal, is eligible to be rejected.

5.3 On considering both the submissions, the moot question for consideration is whether at the time of original proceedings had applied his mind on the subjected matter in the reasons to believe. On careful perusal of the material on record, it is noted that there was no iota of discussion or understanding or opinion on the matter of depreciation on the plant and machinery of the appellant. While it may be later decided as to the tenability of such additions on the merit of the case, on the legal front, the AO had not formed any opinion for the fact that had that it been such a case, the AO would have either made an addition or would have outrightly stated his satisfaction in the assessment order itself. The appellant has drawn attention towards the fact that the AO had verified the deduction u/s 801A of the Act. However, it is pertinent to mention that the said contention of the appellant fails, since the verification of deduction is a very wide term, and does not merely and barely includes depreciation therein. The AO does not seem to have formed any opinion, since the assessment order nowhere gives a categorical finding to such effect. Neither the assessment order nor any part of the proceedings highlights that the AO had applied his mind towards such issue. Since the AO is not found to have applied his mind on such issues in the original assessment proceedings, there cannot be an opinion, much less the change in opinion. Hence, the objection of the appellant as to the change in opinion is answered in negative. Under the circumstances, all the legal objections are dismissed.”

17. Aggrieved with the said findings and the rejection of the assessee’s appeal challenging the legal validity of the impugned notice u/s 148 of the Act , the assessee filed an appeal before us on the following grounds of appeal on the legal validity of the said notice:

“1.0 That on the facts and in the circumstances of the case and in law, the order passed by the Learned Commissioner of Income-tax (Appeals) (‘Ld CIT(A)’) is erroneous and bad in law.

2.0 Initiation of reassessment proceedings

2.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Learned Assessing Officer ('Ld AO') initiating reassessment proceedings under section 148 of the Income-tax Act, 1961 (Act')

2.1.1 That the Ld. CIT(A) erred in confirming and the Ld AO erred in initiating reassessment proceedings on a mere change of opinion.

18. During the hearing before us and the Ld. AR filed a written submission. The relevant extract of the said submission is reproduced as below:

“In the captioned appeals for AY 2012-13, the re-assessment proceedings have been initiated vide notice under Section 148 of the Income-tax Act, 1961 ('the Act') dated March 30, 2017. The assessment proceedings were reopened on the reason to believe that the Appellant has claimed depreciation at the rate of 15% instead of 80% resulting in ineligible claim of deduction under Section 80-1A of the Act amounting to INR 9.24.14.545 Copy of reasons provided by the Ld. AO has been enclosed as Annexure-1

It is pertinent to mention that before such issuance of notice u/s 148 of the Act, the Ld. Principal Commissioner of Income Tax (Ld. PCIT) sought to invoke its revisionary powers u/s 263 of the Act vide notice dated February 01, 2017 on the same reason that the Appellant has incorrectly claimed depreciation at the rate of 15% instead of 80% resulting in ineligible claim of deduction under Section 80-1A of the Act Copy of show cause notice u/s 263 of the Act has been enclosed as Annexure-II.

In response to such show cause notice, the Appellant made its submission on merits that why depreciation at the rate of 80% is not applicable in the given case of the Appellant. Copy of response has been enclosed as Annexure-III.

The Ld. PCIT appreciating the submission of the Appellant and the facts of the case dropped the revisionary proceedings initiated u/s 263 of the Act vide order dated March 27, 2017. Copy of order u/s 263 of the Act has been enclosed as Annexure-IV.

In view of the above, it is the humble submission of the Appellant that since the sole reason for re-opening of assessment was already subject to revisionary proceedings wherein the Ld. PCIT adjudicated in the favour of the Appellant, the issuance of notice u/s 148 of the Act is had in law and deserves to be quashed.

In this regard, the Appellant seeks to place reliance on the order passed by the Hon'ble Bangalore ITAT in the case of Asea Brown Boveri Ltd. vs. ACIT ((2012) 20 taxmann.com 369 (Bangalore)) wherein it is held that the Ld. AO does not have any jurisdiction to re-open the assessment on the basis of reasons to believe which were already subject to

revisionary proceedings. Relevant extract of the order has been reproduced for ready reference:

"13. In the impugned assessment year also, the reasons which prompted the Commissioner of Income-tax to issue notice under section 263 were regarding technical know-how fees, cash assistance and duty-draw back, consideration of doubtful debts for the deduction under section 32AB and matter regarding deduction under section 80-1. The reasons recorded by the Assessing Officer for issuing notice under:

Section 148 and the reasons reflected in the notice under section 263 are also nothing else but the very same issues considered by the Commissioner of Income-tax for the purpose of section 263 proceedings.

14. Now as a matter of fact, the Tribunal has held that the reopening of assessment made by the Assessing Officer was bad in law for the immediately preceding assessment year 1987-88 and has allowed the appeal filed by the assessee. Consequently, the appeal filed by the Revenue was dismissed as infructuous.

15. In the order passed by the Tribunal for the immediately preceding assessment year 1987-88 and in the impugned appeal for the assessment year 1988-89, the assessee is the same, facts and circumstances are exactly similar and the grounds raised are again just the same. The co-ordinate Bench of the Tribunal has already held in favour of the assessee for the earlier assessment year 1987-88 relying on the judgment of the Madras High Court in the case of Ramachandra Hatcheries [2008] 305 ITR 117.

17. Therefore, in the facts and circumstances of the case, despite extensive deliberations made in the course of hearing, we hold that the issue is covered by the decision of the Income-tax Appellate Tribunal "A" Bench rendered for the preceding assessment year 1987-88 in the assessee's own case through its order dated February 16, 2010. Respectfully following the above order of the Tribunal passed for the assessment year 1987-88, we hold that the order of the Assessing Officer reopening the assessment for the impugned assessment year 1988-89 is bad in law and, therefore, set aside.

7 Without prejudice to the aforesaid, it is most humbly stated that the impugned 'reasons to believe' record that the Appellant ought to have claimed depreciation @ 80% vis-à-vis 15% claimed in the return. Where the said reasons are considered and allowed, it would actually result in increasing the net loss of the Appellant and hence, the case does not involve 'any chargeable to tax which has escaped assessment (kindly refer last page of annexure III of assessee's response placed before Ld. PCIT. The said condition has been held to be sine qua none for the purpose of initiating reassessment proceedings by the jurisdictional Delhi High Court in case of Angelantoni Test Technologies Srl v. ACIT [(2024) 463 ITR 139 (Delhi)] holding that:

"9. Further, this Court in Divya Capital One Private Limited (Earlier Known as Divya Portfolio Private Limited) vs. Assistant Commissioner of Income Tax Circle 7(1) Delhi & Anr., 2022 SCC OnLine Del 1461 held that "Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of

income chargeable of tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act'."

In light of the aforesaid, the instant reassessment proceedings deserves to be dropped at the very threshold. Where the above ground is allowed, the remaining grounds in assessee's and department's appeal would become academic."

19. The Ld. Sr. DR relied upon the order of the Ld. CIT(A) and submitted that the legal grounds raising objections to the assumption of jurisdiction by the Assessing Officer vide notice u/s 148, dated 30.03.2017 should be rejected.

20. We have heard both the parties and perused the material available on record. The legal issue that has been raised before us in the instant appeal is with respect to validity of reassessment proceedings u/s.148 r.w.s. 147 of the Act vide notice u/s 148 dated 30.03.2017. In this case, the assessment u/s 143(3) of the Act was passed on 30.03.2015. The relevant excerpts from the reasons recorded for reopening assessment are reproduced herein below:

*"Sub Reopening of assessment of A.Y. 2012-13-Notice u/s 148 d1.30.03.2017
Ref Your letter dt. 20.04. 2017 received in this office on 21-04-2017
Please refer to the above.*

Notice u/s 148 of Income-Tax Act, 1961, dated 30.03.2017: has been duly served upon you on 30.03.2017. In response to the same you vide your above referred letter has informed that you have filed return in response to notice u/s 148, on 29.09.2012 and asked to provide 'reasons' recorded for reopening your assessment for the AY 2012-13

As requested by you, the reasons recorded are being furnished herewith-as under:

"The assessee filed its return of income for AY 2012-13 on 29.09.2012 declaring total income of Rs.5.63,80,700/- under normal provision and Rs.26.22,49,083/- u/s. 115JB of the I.T. Act, 1961. The assessment was completed on 13.03.2015, assessing total income of the assessee at Rs 7,10,46,600/ under normal provisions & Rs 27,69,14,987/- u/s 115JB of the I.T. Act, 1961.

2 It is noticed that the assessee had claimed deduction of Rs 9,24,14,545/- u/s 801A of the I.T. Act, 1961 in the computation of income as well as while filing of return of income. The assessee is engaged in the business of power generation and marketing of the same to Tamil Nadu Electricity Board. As per the provisions of I.T. Act, 1961, the power generation companies. are eligible for depreciation at the rate of 80% on the block of Plant & Machinery, however the assessee company had claimed depreciation at the rate of 15% on the Block of Plant & Machinery

resulting in short claim of depreciation of Rs.87,15,66,230/- which has resulted into ineligible claim of deduction u/s.801A of the I.T. Act, 1961 to the tune of Rs.9,24,14,545/-

3. In view of the above facts, it is abundantly clear that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessments for the AY 2012-13. Therefore, I have reason to believe that income chargeable to tax amounting to Rs.9,24,14,545/- has escaped the assessment, within meaning of provision of section 147 of the Income Tax Act, 1961, warranting reopening of assessment for A.Y. 2012-13. Accordingly, assessment for A.Y. 2012-13 is reopened & notice u/s 148 of Income Tax Act 1961 is issued after obtaining approval of higher authority - Jt. Commissioner of Income Tax, Rg. 1, Panaji."

20.1 On perusal of the above reasons, it is seen that the assessment has been reopened on the ground of non claim of additional depreciation amounting to Rs. 87,15,66,230/- resulting in excess claim of deduction amounting to Rs. 9,24,14,545/- u/s 80-IA of the Act. In this regard the ld. AR in its written submission as reproduced above submitted that the same issue was examined by the Ld. PCIT, Panaji vide show cause notice dated 01.02.2017 and had dropped the said proceedings vide order dated 27.03.2017 upon explanation dated 15.02.2017 submitted by the assessee. In this

regard , the assessee has relied upon the order of the ITAT, Bangalore Bench in the case of Asea Brown Boveri Ltd. (supra) to submit that in such a situation the AO cannot reopen the case by invoking the provisions of section 148 of the Act as has been done by the AO in this case by issuing the impugned notice u/s 148 of the Act dated 30.03.2017. Relying upon the above order the Ld. AR submitted that the impugned notice u/s 148 of the Act dated 30.03.2017 is bad in law and therefore, the assessment proceedings passed by virtue of the said notice is illegal and may be quashed.

20.2 The above submission of the assessee has been examined with the facts of the case and the case law relied upon by the assessee. In this regard, the relevant extract of the show cause notice dated 01.02.2017 issued by the Ld. PCIT, Panaji u/s 263 of the Act (placed at page 140-141 of the paper book) to the assessee for A.Y. 2012-13 is reproduced as under:-

“2. You had filed your return of income for A.Y. 2012-13 on 29.09.2012, declaring a total income of Rs.5,63,80,700/-, after claiming deduction u/s. 801A of the Income Tax Act, 1961 amounting to Rs.9,24,14,545/-. The assessment proceedings for A.Y. 2012-13 were completed by DCIT, Circle 1(1), Panaji assessing the total income at Rs.7,15,36,005/- and determining the assessed book profits u/s. 115JB at Rs.27,74,04,388/-.

*3. On a perusal of the records pertaining to your case, it is observed that:
During the relevant A.Y. under consideration, you have claimed a deduction u/s. 801A of the I.T. Act, 1961 amounting to Rs.9,24,14,545/-. Your records*

further show that you have claimed depreciation @ 15% on the block of assets consisting of plant and machinery as against the eligible 80% for entities engaged in the business of Power Generation, as in your case. This has resulted in the short claim of depreciation amounting to Rs.87,15,66,230/-, which in turn has resulted in your claim for deduction u/s. 801A to the tune of Rs.9,24,14,545/-, being allowed though you were not eligible for the same.

4. Since this and other related aspects were not examined by the AO during the course of the assessment proceedings, he failed to adhere to the provisions of the Income Tax Act, 1961. Accordingly, the order passed by the AO is found to be erroneous in so far as it is prejudicial to the interests of the Revenue.”

20.3 Further the order dated 27.03.2017 of the Ld. PCIT, Panaji dropping the above proceedings are reproduced as under:-

“PROCEEDING OF THE PR. COMMISSIONER OF INCOME TAX, PANAJI

*ALKA TYAGI
PR. COMMISSIONER OF INCOME TAX,
PANAJI*

<i>Name & address of the assessee</i>	<i>M/s Vedanta Ltd. (formerly known as M/s The Madras Aluminium Company Pvt. Ltd., Sesa Ghor, 20 EDC Complex, Patto, Panaji, Goa-403001</i>
<i>PAN</i>	<i>AAACT7665D</i>
<i>Assessment Year</i>	<i>2012-13</i>
<i>Date of hearing</i>	<i>15.02.2017 & 07.03.2017</i>
<i>Date of Order</i>	<i>27.03.2017</i>
<i>Present for the assessee</i>	<i>Mr. Benicio Menezes, AGM of assessee company</i>

Order under section 263 of the Income Tax Act, 1961

The proceedings initiated u/s 263 of the I.T. Act, 1961 in this case are hereby dropped

(ALKA TYAGI)

Pr. Commissioner of Income Tax, Panaji”

20.4 In this regard in the relevant extract of the order of the ITAT, Bangalore Bench in the case of Asea Brown Boveri Ltd. (supra) are reproduced as under:-

“12. But we have to see another important aspect of this case. The very same issue was raised by the assessee in the immediately preceding assessment year 1987-88 before the Income-tax Appellate Tribunal "A" Bench, wherein the Tribunal found that the hon'ble Madras High Court in the case of CIT v. Ramachandra Hatcheries [2008] 305 ITR 117, has considered the same legal issue that whether 147 action is permissible in a case where proceedings under section 263 has already been dropped. In the said case, the hon'ble High Court has held that the Assessing Officer has no jurisdiction to reopen an assessment under section 147 so as to circumvent the order of the Commissioner of Income-tax passed under section 263 which had become final unless and until the order was set aside by any process known to law. In the case of the earlier assessment year 1987-88 also, the facts and circumstances of the case were exactly similar. The Commissioner of Income-tax had issued notice under section 263 proposing revising of the assessment order on the basis of certain specific observations. On receipt of the notice, detailed reply was filed by the assessee. The Commissioner of Income tax accepted those explanations and came to a conclusion that there was no justification in proceeding further. Accordingly, the proposed action under section 263 was dropped. Thereafter the Assessing Officer issued notice under section 148 proposing to reopen the assessment on the basis of the very same observations recorded by the Commissioner of Income-tax. On going through the facts and on appreciating the law, the hon'ble Madras High Court came to a conclusion that when a set of matters have already been adjudicated by the Commissioner of Income-tax under section 263, the assessing authority has no jurisdiction to repeat the discussion on the very same issues by issuing notice under section 148 proposing reopening of the assessment under section 147.

13. In the impugned assessment year also, the reasons which prompted the Commissioner of Income-tax to issue notice under section 263 were regarding technical know-how fees, cash assistance and duty-draw back, consideration of doubtful debts for the deduction under section 32AB and matter regarding deduction under section 80-I. The reasons recorded by the Assessing Officer for issuing notice under section 148 and the reasons reflected in the notice under section 263 are also nothing else but the very same issues considered by the Commissioner of Income-tax for the purpose of section 263 proceedings.

14. Now as a matter of fact, the Tribunal has held that the reopening of assessment made by the Assessing Officer was bad in law for the immediately preceding assessment year 1987-88 and has allowed the appeal filed by the assessee. Consequently, the appeal filed by the Revenue was dismissed as infructuous.

15. In the order passed by the Tribunal for the immediately preceding assessment year 1987-88 and in the impugned appeal for the assessment year 1988-89, the assessee is the same, facts and circumstances are exactly similar and the grounds raised are again just the same. The co-ordinate Bench of the Tribunal has already held in favour of the assessee for the earlier assessment year 1987-88 relying on the judgment of the Madras High Court in the case of Ramachandra Hatcheries [2008] 305 ITR 117 .

16. When the co-ordinate Bench has already passed an order on an issue, we have to follow the said order of the co-ordinate Bench unless the facts are different or new questions of law have been raised or new materials have been placed. If the facts and circumstances are the same and the law considered the same and the materials placed before the Tribunal are also the same, the Tribunal has to follow the earlier decision of the co-ordinate Bench as that is the mandate of rule regarding judicial precedence and that of judicial discipline. If the Tribunal does not follow the earlier decision of the co-ordinate Bench without valid reasons, it would be an onslaught on the rule of law. Not to follow the order of the co-ordinate Bench would be ridiculed as a pompous show of self-righteousness. That is why the hon'ble Supreme Court in the case of Union of India v. Raghbir Singh [1989] 178 ITR 548 has held that the Tribunal has to follow its own decision and should not differ from its earlier view simply because a contrary view is possible.

17. Therefore, in the facts and circumstances of the case, despite extensive deliberations made in the course of hearing, we hold that the issue is covered by the decision of the Income-tax Appellate Tribunal " A" Bench rendered for the preceding assessment year 1987-88 in the assessee' s own case through its order dated February 16, 2010. Respectfully following the above order of the Tribunal passed for the assessment year 1987-88, we hold that the order of the Assessing Officer reopening the assessment for the impugned assessment year 1988-89 is bad in law and, therefore, set aside."

(emphasis supplied by us)

20.5 As noted above the facts in the present case are identical to the facts of the case relied upon by the assessee in as much as the AO had initiated reassessment proceedings u/s 148 of the Act vide notice dated 30.03.2017 on the same issue on which the Ld. PCIT, Panaji after initiating proceedings u/s 263 of the Act vide show cause notice dated 01.02.2017 had dropped the proceedings vide order dated 27.03.2017 as reproduced above . No contrary decision was brought on record by the Ld. Sr. DR to the order of the Tribunal relied upon the assessee. We therefore, relying upon the order of the ITAT, Bangalore Bench in the case of Asea Brown Boveri Ltd. (supra) hold that the reassessment proceedings in this case initiated vide the impugned notice u/s 148 of the Act dated 30.03.2017 are without jurisdiction, hence, is quashed. Ground nos. 1 to 2.1.1 are allowed.

21. In view of the fact, that the we have held the re-assessment proceedings without jurisdiction and have quashed the same the other grounds of appeal become academic and are left open in this case.

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

23. Now, we take up the Revenue's appeal in **ITA No. 2251/Del/2019** for the Assessment Year 2012-13. In view of the fact, that the we have held the re-assessment proceedings without jurisdiction and have quashed the same in ITA No.- 2407/Del/2019, the grounds of appeal in the Revenue's appeal become infructuous and are dismissed.

24. In the result, appeal of the Revenue is dismissed.

25. To sum up, the appeals of the assessee (ITA No. 2405/Del/2019 and ITA No. 2407/Del/2019) are allowed and appeals of the Revenue (ITA No. 2250/Del/2019 and ITA No. 2251/Del/2019) are dismissed.

Order pronounced in the open court on 20TH February, 2026.

Sd/-
[PAWAN SINGH]
JUDICIAL MEMBER

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated: 20.02.2026.
Pooja/Santosh

Copy forwarded to:

1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR
- 6.

Asst. Registrar,
ITAT, New Delhi,