

BEFORE

THE HON'BLE SUPREME COURT OF INDIA

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

COMMISSIONER OF INCOME TAX

(APPELLANT)

v.

M/S. ABC COMPANY PVT. LTD.

(RESPONDENT)

WRITTEN SUBMISSION FOR APPELLANT

LIST OF ABBREVIATION

AO.....	Assessing Officer
AIR.....	All India Report
All.....	Allahabad
AP.....	Andhra Pradesh
Bom.....	Bombay
Cal.....	Calcutta
CIT.....	Commissioner of Income Tax
Co.....	Company
CTR.....	Currency Transaction Reports
CBDT.....	Central Board of Direct Taxes
Cri.....	Criminal
Del.....	Delhi
DTR.....	Daily Tax Report
HC.....	High Court
IT Act.....	Income Tax Act
ITO.....	Income Tax Officer
ITR.....	Income Tax Report
ITD.....	Income Tax Tribunal Decisions
Kar.....	Karnataka
P & H.....	Punjab & Haryana
SC.....	Supreme Court
SCC.....	Supreme Court Cases
SLP.....	Special Leave Petition
u/s.....	Under Section
UOI.....	Union of India

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BOOKS & STATUTES

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OTHER AUTHORITIES

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STATEMENT OF JURISDICTION

**THE APPELLANT HAVE THE HONOUR TO SUBMIT BEFORE THE HON'BLE SUPREME COURT
OF INDIA, THE MEMORANDUM FOR THE APPELLANT UNDER ARTICLE 136
(SPECIAL LEAVE PETITION) OF THE CONSTITUTION OF INDIA, 1950**

**THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS
IN THE PRESENT CASE**

QUESTIONS PRESENTED

- I.** WHETHER THE REVENUE'S SPECIAL LEAVE PETITION AGAINST THE JUDGMENT OF HON'BLE HIGH COURT OF CALCUTTA IS MAINTAINABLE?

- II.** WHETHER ON THE FACTS AND CIRCUMSTANCES OF THE CASE, THE ORDER PASSED BY THE LEARNED TRIBUNAL IS PERVERSE AND LIABLE TO BE QUASHED?

- III.** WHETHER ON THE FACTS AND CIRCUMSTANCES OF THE CASE, THE TRIBUNAL WAS JUSTIFIED IN HOLDING THAT THE ASSESSING OFFICER IN THE RE-OPENED ASSESSMENT CANNOT MAKE ADDITIONS IN RESPECT OF ITEMS OTHER THAN THE ONE FOR WHICH RE-OPENING PROCEEDING UNDER SECTION 147 WERE INITIATED?

STATEMENT OF THE FACTS

[I]. ASSESSING OFFICER REOPENED THE ASSESSMENT AND FRAMED RE-ASSESSMENT ORDER

After finding that the assessee company had debited and claimed as deduction amortized preliminary expenses, which is capital in nature and, as such, not allowable as deduction from the business profits, Assessing Officer reopened the assessment done u/s. 147. Thereafter, reassessment order was framed by the Assessing Officer u/s. 143(3)/147 by making an addition of Rs. 61,040/- on account of Preliminary expenses written off. During reassessment proceedings, it was found by the AO that in the instant year, the assessee company raised share capital by Rs. 12, 20, 50,000 including premium. For this details regarding unaccounted money were asked by the A.O which was subsequently verified. The verification was also done by issuing letters u/s. 133(6) of the I T Act 1961 to the share subscribers

[II] LD. COMMISSIONER OF INCOME TAX ISSUED SHOW CAUSE NOTICE

After the re-assessment was done by A.O, CIT issued show cause notice to revise the said re-assessment order by exercising powers conferred u/s. 263 of the Act. The basis for issuance of such notice as stated by CIT was that the A.O had not verified the source of funds in respect of the investment made by the share applicants in the assessee company during the course of reassessment proceedings. To this assessee-company replied back saying that specific query has been made in respect of such investment at the time of re-assessment. However, the Commissioner of Income Tax did not accept the contention of the assessee-company and passed an order u/s. 263 directing the Assessing Officer to do the assessment afresh.

[III] ASSESSEE-COMPANY'S APPEAL BEFORE THE LD. TRIBUNAL AND TRIBUNAL'S RULING:

The Assessee-company's filed an appeal before the Ld. Tribunal against the order passed by CIT u/s 263 of the IT Act. The tribunal ruled in the favor of assessee-company stating:

“Assessee has filed complete details names, addresses, no. of shares applied for and allotted, cheque nos., name of bank on which cheques were issued to shareholders and even this was verified through notices u/s. 133(6) of the Act and in response to

these notices, the prospective shareholders also replied to the assessee, and the confirmations are on record thus the same clearly reveals that complete information was available before the Assessing Officer at the time of framing of assessment and he has given this finding in his order passed u/s. 147/143(3) of the Act.”

[IV] REVENUE’S SUBSEQUENT APPEAL TO HIGH COURT AND SUPREME COURT

Revenue preferred an appeal before the Hon’ble High Court at Calcutta u/s 260A of the IT Act against the order of Tribunal. However, the Hon’ble High Court has dismissed the revenue’s appeal in limine holding that no substantial questions of law arises from the order of the learned Tribunal. Unsatisfied by the dismissal, Revenue has now approached the Hon’ble Supreme Court by filing a special leave petition under s 136 of the Constitution of India, 1950.

SUMMARY OF PLEADINGS

[ISSUE: I] THAT THE SPECIAL LEAVE PETITION FILED BY THE REVENUE IS MAINTAINABLE BEFORE THE HON'BLE SUPREME COURT OF INDIA

1. It is humbly submitted that the present appeal is maintainable under Article 136 of the Constitution of India. Article 136 is the residuary power of SC to do justice where the court is satisfied that there is injustice. The jurisdiction of Supreme Court can always be invoked when a question of law of general public importance arises.
2. In the present case, the impugned order was mechanically passed without application of mind by the Assessing Officer and hence, the order is incorrect in law.
3. Also, in case at hand the 'substantial' questions of law are involved. The jurisdiction conferred under Art. 136 on the SC is a corrective one and not a restrictive one. A finding of facts may give rise to a substantial question of law, and therefore, the SC is not precluded from going into the question of facts. **[Arguendo]** Even if we assume that the case doesn't involve 'substantial' question of law, SC in the exercise of its power conferred under article 136 can entertain the present appeal. Article 136 uses the wording 'in any cause or matter'. This gives widest power to this court to deal with any cause or matter, even if it involves question of fact.

[ISSUE: II] THE ORDER PASSED BY THE LEARNED TRIBUNAL IS PERVERSE AND LIABLE TO BE QUASHED.

4. It is submitted that the tribunal was not justified in setting aside the order passed by CIT because mere issue of notices u/s 133(6) and 'inadequate inquiry' by AO called for exercising of revisionary powers u/s 263 by the Commissioner. Also, this power exercised by the CIT is of a quasi-judicial nature and it can be used to correct both errors of fact and of law and the main requirement remains only that 'it is prejudicial to the interests of revenue' by virtue of it being erroneous. The pernicious practice of such private companies is evidence to the necessity of exercise of powers of CIT to avoid such wrong assessments by the AO.
5. It is also submitted that the invocation of section 68 was justified to asses the identity and creditworthiness of the shareholders and the onus of proof lies primarily on the assessee. The doctrine of 'source of source' and 'origin of origin' cannot be used to camouflage the black money transactions. The essential bank account details and

definite identities of shareholders still remained to be verified with other genuine details.

6. It is contended that a non-speaking order passed by the A.O under section 147 is a sufficient ground in itself for the exercise of revisionary proceeding u/s 263 of the IT Act. Power of revision by CIT under section 263 is very wide and includes orders without application of mind or orders showing apparent error of reasoning. Also, Being a Quasi-judicial authority, A.O is bound to dispose the matter through a speaking order as Recording of reasons is not a formality, but mandatory under IT Act and it has to be communicated to assessee on the principles of natural justice.

[ISSUE: III] THE TRIBUNAL WAS NOT JUSTIFIED IN HOLDING THAT THE ASSESSING OFFICER CANNOT MAKE ADDITIONS IN RESPECT OF ITEMS OTHER THAN THE ONE FOR WHICH RE-OPENING PROCEEDINGS U/S 147 WERE INITIATED.

7. It is submitted that once an assessment is re-opened, it is an assessment at large and this is clarified by introduction of Explanation 3 to section 147 by Finance Act, 2009 where AO can assess any income which is not even the subject matter of recorded reasons. The presumption is that all official acts are performed regularly according to s.114 (e) of the Evidence Act, hence AO is not required to discuss all the issues in the original assessment order.
8. It is contended that once re-assessment proceedings start, old assessment is wiped out and hence the formation of opinion by the AO on prior set of facts does not affect the new opinion, hence is not struck by the 'change of opinion' doctrine. **[Arguendo]** If the order passed by AO is erroneous and prejudicial to the revenue, exercise of power u/s 263 is justified.

PLEADINGS

ISSUE: I: WHETHER THE REVENUE'S SPECIAL LEAVE PETITION AGAINST THE JUDGMENT OF HON'BLE HIGH COURT OF CALCUTTA IS MAINTAINABLE

1. It is humbly submitted that the special leave petition filed by the Revenue against the judgment of Hon'ble high court of Calcutta [hereinafter as HC] is maintainable under Article 136 of the Constitution of India. It is contended that the jurisdiction of Supreme Court [hereinafter as SC] under Article 136 can always be invoked when a question of law of general public importance arises and even question of fact can also be a subject matter of judicial review under Art.136 [1.1]. Also, the issues involves substantial question of law and the HC erred in dismissing the revenue's appeal on the ground that no substantial question of law arises from the order of tribunal [1.2].

[1.1]. JURISDICTION OF SC UNDER ARTICLE 136 CAN ALWAYS BE INVOKED WHEN A QUESTION OF LAW OF GENERAL PUBLIC IMPORTANCE ARISES.

2. The jurisdiction conferred under Art. 136 on the SC are corrective one and not a restrictive one.¹ A duty is enjoined upon the SC to exercise its power by setting right the illegality in the judgments is well-settled that illegality must not be allowed to be perpetrated and failure by the SC to interfere with the same would amount to allowing the illegality to be perpetuated.²

3. It has been held in plethora of cases that when the question of law of general public importance arises, the jurisdiction of SC can be invoked by filing special leave petition. In the present case, the issue involves matter of General Public Importance and hence, entitled to be maintainable [1.1.1].

[1.1.1] That the matter involves question of law of general public importance and hence, entitled to be maintainable.

4. It has been held by this Hon'ble Court that when a question of law of general public importance arises, or a decision shocks the conscience of the court, its jurisdiction can always

¹ *Haryana State Industrial Corpn. v Cork Mfg. Co.* (2007) 8 SCC 359 (SC).

² *Pawan Kumar v State of Haryana* (2003)11 SCC 241 (SC); see also H.M. Seervai, *Constitutional Law Of India* (4th edn. Vol 1 2010); see also *Halsbury's Laws of India* (Vol. 35 2007).

be invoked. Article 136 is the residuary power of SC to do justice where the court is satisfied that there is injustice.³ The principle is that this court would never do injustice nor allow injustice being perpetrated for the sake of upholding technicalities.⁴ In any case, special leave would be granted from a second appellant decision only where the judgment raises issues of law of general public importance.⁵

5. In the case at hand, requisite and proper inquiries were not conducted regarding the identity and creditworthiness of the shareholders and the impugned order was passed mechanically without application of mind by the Assessing Officer [hereinafter as AO]. Hence, the matter concerned is of great public importance and the same was reiterated by the Delhi High court.⁶ It was said that if the assessee wished to convert his unaccounted money in the form of share capital, the court will not remain silent.⁷

6. Further, it is contended that the case of an assessee is not to be viewed in isolation. The AO seems to have missed the larger picture and has ended up giving certificate of genuineness of the share capital by passing the impugned order.⁸ Upon identical facts, in numerous judicial decisions orders under section 148 were passed⁹ where huge amount of share capital was involved and high amount of share premium has come into the books.¹⁰ All these circumstances clearly indicate that what is apparent is probably not real and it needs further examination.¹¹

7. Further, if a proceeding is neither civil nor criminal and does not involve any question of constitutional interpretation, the only way in which a party may appeal from an order made in

³ *C.C.E v Standard Motor Products* (1989) AIR 1298 (SC), see also H.M. Seervai, *Constitutional Law of India* (4th edn. Vol 2 2010).

⁴ *Janshed Hormusji Wadia v Board of Trustees, Port of Mumbai* (2004)3 SCC 214 (SC).

⁵ *Balakrishna v Rmaswami* (1965) AIR 195 (SC).

⁶ *CIT v Nova Promoter & Finlease Pvt. Ltd.* (2012) 342 ITR 169 (Del).

⁷ *ibid*, Moot Proposition, Annexure II, p14.

⁸ Moot Proposition, Annexure II, p.14.

⁹ *ibid* p. 9.

¹⁰ Moot Proposition, Annexure II, p.14

¹¹ *ibid*.

such a proceeding is by obtaining special leave of the Supreme Court itself, under article 136.¹²

8. It was said that a decision on classification of goods under tax statute is not a question of fact, but of substantial importance. In such cases, even if all the authorities have classified the goods in a particular way, the Supreme Court entertained the appeal and decided the case on merits.¹³ Any legislation, subordinate to the Constitution, cannot whittle down, the jurisdiction of the Supreme Court under Article 136.¹⁴

9. Hence, considering all the above authorities, it is humbly submitted before this court that the matter involves question of law of general public importance and therefore, the appeal is maintainable under article 136 of the constitution of India.

[1.2] THE ISSUES INVOLVES SUBSTANTIAL QUESTION OF LAW AND THE HIGH COURT ERRED IN DISMISSING THE REVENUE'S APPEAL ON THE GROUND THAT NO SUBSTANTIAL QUESTION OF LAW ARISES FROM THE ORDER OF TRIBUNAL.

10. It is contended that the matter involves substantial question of law and hence entitled to be maintainable [1.2.1]. Since the AO had not taken into consideration relevant materials, the findings of Tribunal were perverse and, therefore, the High Court has erred in holding that there was no substantial question of law involved.

11. It is a well-settled law that one of the basic principles of natural justice is that the authority concerned must pass a speaking order so as to enable a party to know the reasons as to why his application is being accepted or rejected. This ensures due application of mind to the facts by the authority concerned.¹⁵

[1.2.1] The matter involves substantial question of law and hence entitled to be maintainable.

12. Where findings are entered without considering relevant materials and without following proper legal procedure, SC interference is called for.¹⁶ The expression "substantial question of law" is not defined in the Income-Tax Act. Nevertheless, it has acquired a definite

¹² M.P Jain, *Indian Constitutional Law*, (16th edn Lexis Nexis Butterworth Wadhwa Nagpur 2011) 5753.

¹³ *DCM v State of Rajasthan* (1980) AIR 1552 (SC).

¹⁴ Constitution of India 1950, s136, *See also Mahendra Saree Emporium II v G.V. Srinivasa Murthy* (2005) 1 SCC 481(SC), *see also V N Shukla, Constitution of India* (10th edn. 2007) .

¹⁵ *Universal Packaging & Ors v CIT* (2013) 352 ITR 398 (Bom).

¹⁶ *Dale & Carrington Invt. Ltd. v P.K. Prathapan* (2005) 1 SCC 212(SC).

connotation through various judicial pronouncements. A Constitution Bench¹⁷ of this Court, while explaining the import of the said expression, observed that:

*13. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views.*¹⁸

14. It is submitted that, the present facts in issue satisfy all of the above mentioned criteria. The case involves the matter of general public importance and it directly and substantially affects the rights of the parties as the order is erroneous and prejudicial to the interest of revenue. Also, in the light of the facts that huge amount of cases aroused under same facts and circumstances, it is submitted that the question is indeed an open question.

15. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case.¹⁹ It has been laid down that the tax authorities are entitled to look into surrounding circumstances to find out the reality of the transaction by applying the test of human probability.²⁰

[A]. Finding of facts may give rise to substantial question of Law.

16. A finding of facts may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.²¹

¹⁷*Sir Chunilal Mehta and Sons, Ltd. v Century Spinning and Manufacturing Co. Ltd.* (1962) AIR 1314(SC).

¹⁸*ibid.*

¹⁹*ibid.*

²⁰ *Sumati Dayal v CIT*, (1995) 214 ITR 801(SC); see also Ramesh C. Sharma, *Income-tax Pleadings, Practice & Conveyancing* (10th edn. 2011).

²¹ *MadanLal v Mst. Gopi and Anr* (1980) 4 SCC 255(SC); see also *Narendra Gopal Vidyarthi v Rajat Vidyarthi* (2009) 3 SCC 287(SC); see also *Commissioner of Customs (Preventive) v Vijay Dasharath Patel* (2007) 4 SCC 118(SC); see also *Metroark Ltd. v Commissioner of Central Excise, Calcutta* (2004) 12 SCC 505(SC); see also *West Bengal Electricity Regulatory Commission v. CESC Ltd.* (2002) 8 SCC 715(SC).

17. An incorrect assumption of fact or an incorrect application of law would satisfy requirement of order being erroneous under section 263²². If due to erroneous order of the AO, revenue is losing tax lawfully payable by a person, it should be certainly prejudicial to interest of revenue.²³ Interference by the Supreme Court is justified in tax matters where the question is purely one of law.²⁴

18. In the present case, the question of law involved in appeal is of recurring nature which has been raised in plethora of cases.²⁵ Hence, it is humbly submitted before this Hon'ble Supreme Court of India that the matter involves substantial question of law and hence entitled to be maintainable.

19. **[ARGUENDO]** Even if we assume that the case doesn't involves substantial question of law, SC in the exercise of its power conferred under article 136 can entertain the present appeal. Even on the question of fact, wrong question leads to a wrong answer. In such cases, even errors of fact can be the subject matter of judicial review under Art. 136.²⁶ It is open to the SC to interfere with the findings of the fact given by the HC, if the HC has acted perversely or otherwise improperly.²⁷

20. The SC is not precluded from going into the question of facts under article 136, if it considers it necessary to do so.²⁸ Article 136 uses the wording 'in any cause or matter'. This gives widest power to this court to deal with any cause or matter.²⁹ It is, plain that when the Supreme Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts, or otherwise can stand in the way of the exercise of this power.³⁰

²² *Shri Purshottamdas Shankarlal Prajapati v CIT* ITA No.877/Ahd/2013 .

²³ *CIT, Patiala v Himachal Pradesh Financial Corpn.* (2010) 186 Taxman 105 (HP).

²⁴ *Hemalatha Gargya v CIT* (2003) 9 SCC 510 (SC).

²⁵ Moot proposition (n 7)

²⁶ *Cholan Roadways Ltd. v G. Thirugnanasambandam* (2005) AIR 570 (SC).

²⁷ *Ganga Kumar Srivastava v State of Bihar* (2005) 6 SCC 211(SC).

²⁸ *Kathi Raning Rawat v The State of Saurashtra* (1952) AIR 991 (All), *see also Achyut Adhicary v West Bengal* (1963) AIR1039 (SC).

²⁹ *Pritam Singh v The State* (1950) AIR 169 (SC).

³⁰ *Sripur Paper Mills v Commr. of Wealth Tax* (1970) AIR1520 (SC); *see also Om Prakash Sood v UOI* (2003) 7 SCC 473(SC).

ISSUE: II: WHETHER ON THE FACTS AND CIRCUMSTANCES OF THE CASE THE ORDER PASSED BY THE LEARNED TRIBUNAL IS PERVERSE AND LIABLE TO BE QUASHED ?

21. It is humbly submitted before the Hon'ble Supreme Court of India that the order passed by learned Tribunal is perverse and is liable to be quashed. The learned tribunal is not justified in setting aside the order of CIT u/s 263 of the IT Act [2.1]. Moreover, the order passed by the AO was a non-speaking order and hence, a sufficient ground for initiation of proceedings u/s 263 of the Act [2.2].

[2.1] THE LEARNED TRIBUNAL WAS NOT JUSTIFIED IN SETTING ASIDE THE ORDER OF CIT PASSED UNDER SECTION 263 OF INCOME-TAX ACT.

22. It is contended that the CIT was justified in exercising its power of revision u/s 263 for the purpose of directing the Assessing officer to hold another investigation, based on the facts and circumstances of the case.

[2.1.1] That the impugned assessment order of AO u/s 148 is erroneous and prejudicial to the interests of the Revenue.

[A] Mere issue of notices u/s 133(6) does not absolve the AO from his responsibility.

23. It is contended that mere issue of notices u/s 133(6) does not absolve the AO from his responsibility rather this inaction on the part of AO rendered impugned order erroneous and prejudicial to the interests of revenue.

24. Primarily it is contended that the finding that is arrived u/s 133(6) and u/s 68 at may be a finding of fact, which may be a pure question of fact. It might be a question of inference drawn from the finding of fact, which is a question of law.³¹

25. Also, section 133(6)³² and it uses the words 'any inquiry' and 'for the purposes of the Act' which stipulate the matters in the opinion of the AO. In a 2013 ruling of this Hon'ble Court, the power under this provision to call for information on the part of the Department is

³¹ *CIT v Biju Patnaik* (1986) 160 ITR 674(SC); see also *CIT v Smt. Sangeeta Agarwal* 2010 (12) TMI 857(Cal); *Malabar Industrial Co. Ltd. v CIT* (1992) 198 ITR 611 (Ker); see also *CIT v Hari Om Agarwal* (1990) 34 ITD 420 (Del); see also *CIT v Urmila Devi* (2005) 195 CTR 383(All).

³² Finance Act (amendment) 1995, s 133(6).

described as ‘unrestricted’ and the word ‘inquiry’ is given a wider interpretation which may mean a systematic investigation often of a matter of public interest.³³ The legislative intent is clarified by the CBDT Circular³⁴ which gives unbridled power to revenue to tackle evasion effectively. In another ruling, it was held that there need not be any pending proceeding under the Act and verification can be called in relation to ‘any’ matter.³⁵ The safeguard provided in the provision that the approval of Commissioner is necessary implies that the authority of AO can be called in question by the CIT u/s 263.

26. In an important decision rendered by this Hon’ble Court where a public company had shown wrong deductions in its accounts and AO verified in favour of assessee, CIT’s ‘no application of mind’ opinion was upheld and inaction on part of AO was established.³⁶ Absence of any supporting material and without making due inquiry, authority should not give any order.³⁷ The CIT is not debarred from exercising his power of revision u/s 263 even when records are placed before him by his subordinates who point out the error and prejudice.³⁸

[B] The revisionary power u/s 263 is of a wider amplitude and can be used for ‘any’ proceedings.

27. It is contended that supervisory power exercised by the CIT is of a quasi-judicial nature and it can be used to correct both errors of fact and of law and the main requirement remains only that ‘it is prejudicial to the interests of revenue’ by virtue of it being erroneous.³⁹ The word ‘prejudicial’ is of wide import and is not only confined to loss of tax to the revenue.⁴⁰ . There must be some grievous error in the order passed by the Officer, which might set a bad trend or pattern for similar assessments, which on a broad reckoning, the Commissioner

³³ *Kathiroor Services Co-operative Bank v CIT* (2013) 263 CTR 129 (SC); see also Kanga, *Palkhivala and Vyas the Law and Practice of Income Tax* (9th edn 2004).

³⁴ CBDT CIRCULAR NO. 717 dated 14.8.1995.

³⁵ *Karnataka Bank Ltd. v Secretary, Government of India and Ors.* (2002) 9 SCC 106.

³⁶ *Malabar Industries* (n 31).

³⁷ *ibid.*

³⁸ *Sumitra Devi Khirwal v CIT* (1972) 84 ITR 26 (Cal); see also *Master Guide to Income Tax Rules: A Rule-wise Commentary on Income-Tax Rules* (20th edn. taxmans 2013).

³⁹ *Jubilant Organosys v CIT* (2004) 265 ITR 420 (All).

⁴⁰ *Dawjee Dadabhoy & Co. v S.P. Jain & Anr.* (1957) 31 ITR 872 (Cal).

might think to be prejudicial to the interests of Revenue Administration.⁴¹ The counsel contends that the facts in issue provide nearly 250 similar assesses with huge share capital and whose assessments are summarily accepted u/s 143 are engaged in such circular transactions with black money unaccounted by issue of huge premiums of shares of paltry value.⁴² This pernicious practice is evidence to the necessity of exercise of powers of CIT to avoid such wrong assessments by the AO.

28. If due to an erroneous order of the Assessing Officer, the revenue is loosing, as lawfully payable by a person, it should be certainly prejudicial to the interest of the Revenue.⁴³ *Even where an income had not been earned and is not assessable merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of revenue and CIT can cancel or re-asses u/s 263.*⁴⁴

29. It is contended that section 263 provides for 'any' record available 'at the time of examination' by the CIT.⁴⁵ If a report is not provided at the time of AO, Commissioner can exercise his revisionary power to call for that record.⁴⁶ Here the notices were issued only on a test-check basis and relevant bank transactions, bank account details and identity of the shareholders was yet to be called for.⁴⁷

30. The Hon'ble Court has held that the onus of proving the source of a sum of money found to have been received by an assessee is on him where the nature and source of a receipt whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the Revenue to hold that it is the Income of the assessee and no further burden lies on the Revenue.⁴⁸

⁴¹ *Venkatkrishna Rice Company v CIT* (1987)163 ITR 129 (Mad).

⁴² Moot Proposition (n 7).

⁴³ *Rampyari Devi Saraogi v CIT* (1968) 67 ITR 84 (SC).

⁴⁴ *Smt. Tara Devi Aggrawal v CIT* (1973) 88 ITR 323 (SC).

⁴⁵ Income Tax Act 1961, s 263(1) Explanation (b).

⁴⁶ *CIT, Bangalore v Shree Manjunatheswar Packaging Products and Camphor Works* (1998) AIR 1478 (SC); see also Vinod K. Singhania and Kapil Singhania, *Direct Taxes Law and Practice* (15th edn 2013).

⁴⁷ Moot Proposition (n7) 14 - 15.

⁴⁸ *Roshan Di Haiti v CIT* (1977) 107 ITR 938 (SC); see also *Kale Khan Mohd. Hanif v CIT* (1963) 50 ITR 1 (SC).

[2.1.2] *That the identity and creditworthiness of the of the shareholders from whom share capital money was received remains to be verified.*

31. It is contended that the invocation of section 68 was justified since there was a huge involvement of unaccounted money in circular transaction and this is a case of ‘related assessment’ which was pursued by the AO.

[A] The onus of proof u/s 68 is primarily of the assessee.

32. It is contended that a distillation of precedents yield that the assessee has to *prima facie* prove the genuineness of the transaction, established identity and creditworthiness of the creditor/subscriber.⁴⁹

33. For establishing identity, it meant a condition or a fact of a person including place of work, recognition of company etc and merely producing PAN number or assessment particulars did not establish the identity of the person.⁵⁰ The actual and true identity of the person or a company was the business undertaken by them.⁵¹ In similar cases where money was rotated through banking channels, mere production of bank accounts and details does not prove the genuineness of the transaction.⁵² It was not the duty of the Revenue to adduce evidence to show from what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the accounting year.⁵³ It is not sufficient for an assessed to disclose that credits in their Books had been received through banking channels; the identity as well as the creditworthiness of the creditor must nevertheless be proved.⁵⁴

34. The Doctrine of ‘source of source’ and ‘origin of origin’ establishes that once the produced the relevant documents or is not aware of the bogus shareholders investing in the

⁴⁹ *CIT v Nivedan Vanijya Niyojan Ltd.* (2003) 263 ITR 623 (Cal); *see also CIT v Kundan Investment Ltd.* (2003) 263 ITR 626 (Cal).

⁵⁰ *CIT v NR Portfolio* (2014) IAD 681 (Del); *Aggrawal Coal Commissioner v Add. CIT* (2012) 135 ITD 270 (Indore).

⁵¹ *ibid.*

⁵² *NR Portfolio* (n 50).

⁵³ *A.Govindarajulu Mudaliar v CIT* (1958) 34 ITR 807 (SC).

⁵⁴ *CIT v Precision Finance Pvt. Ltd.* (1994)208 ITR 465 (Cal).

transaction, the onus of proof shifts to the Revenue.⁵⁵ However, it is contended that it can be made applicable depending on the facts and circumstances of the transaction.

*“When there is surrounding evidence and material manifesting and revealing involvement of the assessee in the “transaction” and that it was not entirely an arm’s length transaction, resort or reliance to the said doctrine may be counter-productive and contrary to equity and justice. The doctrine is not an eldritch or a camouflage to circulate ill gotten and unrecorded money. Without being oblivious to the constraints of the assessee, an objective and fair approach/determination is required.”*⁵⁶

35. A public company is not expected to know the details of each and every person subscribing its shares but a private company is supposed to verify and able to produce the identity and creditworthiness of its members.⁵⁷ The corporate veil can be lifted; if the assessee wished to convert his unaccounted money in the form of share capital, the court will not remain silent.⁵⁸ Also the wide power given to CIT u/s 263 should mean that he should revise any erroneous order passed by AO which is stereo-typed by simply accepting what the assessee has stated in his return.⁵⁹ The exercise of power becomes acute and essential in the special circumstances surrounding s.68 of the Act.⁶⁰

36. Hence, it is humbly submitted keeping in mind the above propositions of law that the Respondents have not produced requisite details and that the AO finalizing the assessment was prejudicial to the interests of the revenue. Hence invocation of powers u/s 263 is justified.

[2.2] A NON-SPEAKING ORDER PASSED BY THE A.O UNDER SECTION 147 IS A SUFFICIENT GROUND IN ITSELF FOR THE EXERCISE OF REVISIONARY PROCEEDING U/S 263 OF THE IT ACT

37. It is humbly submitted that a non-speaking order passed by the A.O u/s 147 is a sufficient ground itself for the exercise of revisionary proceeding u/s 263 of the IT Act. Being a Quasi-judicial authority, A.O is bound to dispose the matter through a speaking order [2.1] and Power of revision by CIT under section 263 is very wide and includes order of CIT without

⁵⁵ *CIT v Stellar Investments* (2000)164 CTR 287 (SC).

⁵⁶ *NR Portfolio* (n 50).

⁵⁷ *CIT v Sophia Finance* (1994) 205 ITR 98 (Del).

⁵⁸ *Nova Promoter* (n 6).

⁵⁹ *Gee Vee Enterprises v Addl. CIT* (1975) 99 ITR 357 (Del) 386.

⁶⁰ *ibid*

application of mind or orders showing apparent error of reasoning [2.2]. Recording of reasons is not a formality, but mandatory⁶¹ and it has to be communicated to assessee not in law but on the principles of natural justice.⁶²

[2.2.1] A.O being a quasi-judicial authority, it needs to pass a speaking order

38. It is contended that, it is required that A.O must pass speaking order and though there is no specific law in India on this, the courts have made speaking orders mandatory. It has been held that where an authority in exercise of a quasi-judicial function, makes an order, it must record its reasons.⁶³ In USA, the Administrative Procedure Act, Section 8 stipulates the need for a speaking order.

39. The necessity for giving reason in support of the decision came up for consideration before this Court in several cases⁶⁴. This Court always opined that the face of an order passed by a quasi-judicial authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.⁶⁵ In the recent case, the main ground for challenging the order of the Central Government was that the Central Government had failed to pass a speaking order.⁶⁶

[A]. Importance of a speaking order.

40. It is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. A mere pretense of compliance would not satisfy the requirement of law.⁶⁷ One of the attributes of quasi-judicial functioning is the recording of reasons in

⁶¹ Income Tax Act 1961, s 148(2).

⁶² *GKN Driveshafts (India) Ltd v Income Tax Officer And Ors*, (2002)125 Taxman 963 (SC); see also *General Motors India (P) Ltd. v Dy. CIT* (2013) 257 CTR 123 (Guj); see also *Rabo India Finance Ltd. v Deputy Commissioner of Income Tax and Others* (2012) 346 ITR 81(Bom).

⁶³ *Siemens Engg & Manufacturing Company v UOI* (1976) AIR 1785 (SC).

⁶⁴ *M/S Kranti Asso. Pvt. Ltd. & Anr. v Masood Ahmed Khan & Ors* (2010) INSC 715(SC).

⁶⁵ *ibid*, see also *Bhagat Raja v UOI & Ors* (1967) AIR 1606 (SC).

⁶⁶ *GKN Driveshafts* (n 62).

⁶⁷ *Siemens Engineering and Manufacturing Co. of India Ltd. v UOI & Ors* (1976) AIR 1785 (SC).

support of decisions taken and the other requirement is following the principles of natural justice.⁶⁸

41. It has been said that reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court.⁶⁹ This Court insisted on the requirement of recording reason and further held that in exercising appellate powers, the Central Government acted as a tribunal in exercising judicial powers of the State and such exercise is subject to Article 136 jurisdiction of this Court.⁷⁰

42. While dealing with U.P. Sugar Dealers License Order under which the license was cancelled, this Court held that such an order of cancellation is quasi-judicial and must be a speaking one.⁷¹ The Court held that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. The principle is based on the jurisprudential doctrine that justice should not only be done, it should also appear to be done as well.⁷² Often the Latin maxim, *Ces-sante Ratione Legis Cessat Ipsa Lex* which means Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself⁷³ is relied upon by the courts. The reasons should be such that they demonstrate that the decision has been arrived at on an objective consideration.⁷⁴

43. In the present case, A.O has given clean chit to the assessee regarding the genuineness of the share capital. Also, no independent inquiries were carried out regarding the fact whether the subscribing companies were genuine corporate entities⁷⁵. It is contended that only when actual physical verification is done that it can be found out whether or not the company exists

⁶⁸ *Rama Varma Bharathan Thampuran v State of Kerala and Ors.* (1979) AIR 1918 (SC).

⁶⁹ *State of Himachal Pradesh v Sardara Singh* (2008) 2 ALD (Cri) 627 (All).

⁷⁰ *Harinagar Sugar Mills Ltd. v Shyam Sunder Jhunjhunwala & Ors* (1961) AIR 1669 (SC).

⁷¹ *M/s. Mahabir Prasad Santosh Kumar v State of U.P & Ors* (1970) AIR 1302 (SC).

⁷² *M/s. Woolcombers of India Ltd. v Woolcombers Workers Union & Ors* (1973) AIR 2758 (SC).

⁷³ *Shri Swamiji of Shri Admar Mutt etc. etc. v The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors* (1980) AIR 1 (SC).

⁷⁴ *M/S. Shree Mahavir Carbon Ltd v Om Prakash Jalan (Financer) & Anr,* (2013) 40 SCD 911 (SC).

⁷⁵ *ibid.*

only on paper. Hence, the enquiry done actually amounts to no enquiry in real terms and is a mere formality carried out.⁷⁶

44. The lack of enquiry or inadequate enquiry by the Assessing Officer could be very much reason for assuming jurisdiction u/s. 263 of the Act. For non-consideration of relevant materials while making the assessment, the assessment order has rightly been set aside by the CIT. Therefore, it is contended that the A.O substantially erred in law in not conducting proper enquiry and has not taken into consideration all the relevant material on record.

[2.2.2] Power of revision by CIT under section 263 is very wide and includes order of CIT without application of mind or orders showing apparent error of reasoning.

45. The power of revision by the CIT u/s. 263 is very wide and it is in the nature of supervisory jurisdiction. The power u/s. 263 can be exercised even in cases where the issue is debatable and such power is not comparable with the power of rectification of mistake u/s. 154 of the IT Act.⁷⁷ It is well settled that the order passed by the A.O. without application of mind or orders showing apparent error of reasoning or the orders where the A.O. simply accepts what the assessee has stated in his return of income and fails to make the enquiries which are called for in the facts and circumstances of the case, (as is evident in present facts in issue), will also call for intervention u/s. 263 by the CIT.⁷⁸

46. It is also a trite law that the disclosure of facts by the assessee in the return of income or/and in the course of assessment proceedings cannot give immunity from revisionary jurisdiction of the CIT u/s. 263. The parameters and principles laid down by the Courts which govern the exercise of power by the Commissioner under the provisions of section 263 is well-settled⁷⁹

47. In the present set of facts, there is no evidence on record which show that the issue has been examined objectively. Therefore it appears that the order is passed without proper application of mind. The duty of the A.O. becomes even more onerous especially in view of

⁷⁶ *M/S. Shree Mahavir Carbon Ltd v Om Prakash Jalan (Financer) & Anr*, (2013) 40 SCD 911 (SC).

⁷⁷ *Rampyari Devi Saraogi v CIT* (1967) 67 ITR 84 (SC); *see also Tara Devi Aggarwal v CIT* (1973) 88 ITR 323 (SC); *see also Malabar Industries* (n 31).

⁷⁸ *ibid.*

⁷⁹ *CIT- XIII v Ashish Rajpal* (2009) 180 Taxman 623 (Del).

the fact that the *modus operandi* adopted by the assessee has been repeated in large number of cases.⁸⁰ Hence, in the areas where he didn't apply mind, section 263 proceedings is valid⁸¹. 48. This is a case where the AO mechanically accepted what the assessee wanted him to accept without any application of mind or enquiry. In case the assessment order does not contain the reasons for his findings and conclusions, then it may be construed as an order which is erroneous and prejudicial to the interest of the Revenue, whereby the action of revision by the CIT shall be justified u/s.263.⁸²

49. Hence, it is humbly submitted that, it was a fit case for the learned Commissioner to exercise his revisionary jurisdiction u/s 263 on the ground that A.O has passed a non-speaking order u/s 147 of the IT Act.

ISSUE: III: WHETHER THE TRIBUNAL WAS JUSTIFIED IN HOLDING THAT THE ASSESSING OFFICER IN THE RE-OPENED ASSESSMENT CANNOT MAKE ADDITIONS IN RESPECT OF ITEMS OTHER THAN THE ONE FOR WHICH RE-OPENING PROCEEDING UNDER SECTION 147 WERE INITIATED?

50. It is submitted that the tribunal was not justified in holding that the AO in the re-opened assessment cannot make additions in respect of the items other than the one for which re-opening proceeding under section 147 were initiated since it is a settled law that once assessment is re-opened, it is an assessment at large [3.1] and the change of opinion doctrine is not applicable on part of AO [3.2].

[3.1] It is a settled law that once assessment re-opened, it is an assessment at large.

51. It is contended that explanation 3 of S.147 was introduced by the Finance Act, 2009 which clarified⁸³ the position regarding assessment of *any* item of income by the A.O even though they are not subject-matter of the recorded reasons.⁸⁴ The legislative intention behind

⁸⁰ Moot Proposition (n 7).

⁸¹ *CIT v Hindustan Lever Ltd.* (2012) 343 ITR 161 (Bom.).

⁸² *CIT v Infosys Technologies Ltd.* (2012) 341 ITR 293 (Kar).

⁸³ Circular No. 549 w.r.e.f 1st April, (1989) [182 ITR (St) 1, 20]

⁸⁴ *Phool Chand Bajrang Lal v ITO* (1993) 203 ITR 456 (SC) 477, *see also ALA Firm v CIT* (1991)189 ITR 285 (SC)298.

the 1948 amendment was also to substitute the words 'definite information' with 'reason to believe' which press upon the stronger authority of AO⁸⁵ and the flexibility in re-assessment cases so as to prevent fraud being exercised by many companies. Reason to believe means cause or justification and need not be an established fact of assessment at this stage.⁸⁶

52. The validity of an assessment depends on the reasons recorded in the notice issued u/s 148.⁸⁷ However, reasons indicating AO satisfaction for reassessment, though not stated in the notice, if present on record, re-opening is valid.⁸⁸ It is not necessary that such reasons originate out of a firm belief or the materials present; belief may be tentative as otherwise it would negate the very object of re-assessment.⁸⁹

53. A presumption is raised u/s 114(e) of the Evidence Act that all the judicial or quasi-judicial acts of an authority are performed regularly.⁹⁰ Hence if AO pass an order u/s 143(3), it hardly matters that his reasons are recorded on every point in issue; that could be reasonably inferred.⁹¹ The reason for the presumption was explained in *CIT v. Nirma Chemical Works*⁹² that if the assessing officer is required to discuss all issues in the assessment order, an assessment order would cease to be an order and become an epic tome and would cast an almost impossible burden on the assessing officer.

54. This Hon'ble Court has opined that for the proceedings u/s 147, the previous underassessment is set aside and whole proceedings start afresh.⁹³ It is a settled law that once the proceedings were initiated validly by the officer with regard to a part of the income, the jurisdiction of the ITO could not be confined only to that portion but is extended to the entire

⁸⁵ M.B Gabhawala & A.M Gabhawala, *Tax Practice Manual* (3rd edn Taxmans 2011).

⁸⁶ *ACIT v Rajesh Jhaveri* (2007) 291 ITR 500 (SC); see also *Central Provinces Managanese Ore Pvt Ltd v CIT* (1991)191 ITR 662 (SC).

⁸⁷ *Hindustan Lever v Wadkar* (2004) 268 ITR 332 (Bom).

⁸⁸ *ITO v Biju Patnaik* (1991) 188 ITR 247 (SC).

⁸⁹ *Arun Kumar Goyal v CIT* (2013) 81 DTR 123 (P & H).

⁹⁰ *R&D Law of Evidence* (Lexis Nexis Butter Wadhwa Nagpur 2002)986.

⁹¹ *CIT v Kalvinator of India Ltd.* (2002) 174 CTR (Del)(FB) 617 affirmed in *CIT v Kelvinator of India Ltd.* (2012) 28 CTR 48 (SC).

⁹² *CIT v Nirma Chemical works* (2009) 309 ITR 67 (Guj).

⁹³ *V Jaganmohan Rao & Ors v CIT* (1970) 75 ITR 373 (SC); see also *CIT v Rangnath Bangur* (1984) 149 ITR 487 (Raj); see also Archita Agnihotri and Medha Srivastava, *Interpretation of section 147 of the Income Tax Act, 1961: Judicial Trends* available at Manupatra (accessed on 04/08/2014, at 10:30).

income⁹⁴ and this does not come under the ambit of ‘change of opinion’ doctrine. It is submitted that the present facts in issue do not relate to addition of any unrelated income but the sum of Rs. 12, 20, 50,000 was raised from interest income apart from previous year’s filed income return of Rs.1,406; hence reassessment mainly concerned the entire income of the assessee.⁹⁵ Hence it is submitted that there was a live nexus between the reasons recorded and belief made by the AO on the material available.⁹⁶ The apparent conflict between *Jagmohan Rao*⁹⁷ and *Sun Engineering*⁹⁸ is clarified by a 3-judge bench in *ITO case*⁹⁹ and made a passing reference that HC was right in proceeding on the basis that earlier assessment order was effaced by the subsequent order.¹⁰⁰

55. Also the Calcutta HC in *Assam Oil Co. Ltd case*.¹⁰¹ following its earlier judgment in *Ramsevak Paul case*¹⁰² dealt with the scope of clause (b) of section 147 and opined that once an assessment is reopened in such a case, the Income-tax Officer has not only the jurisdiction but also a duty to levy tax on the entire income that had escaped assessment *de novo*. The power of re-assessment under section 147 is an extraordinary power in nature and the same should not be construed strictly but it has to be construed liberally to make the provision workable, however it is to be exercised for the benefit of the revenue.¹⁰³

[3.2] *The ‘change of opinion’ doctrine is not applicable on part of AO.*

56. It is a settled law that a change of opinion can only be effected on the pre-supposition of same facts and formation of the opinion of AO, when no such opinion is formed then a

⁹⁴ *ibid*

⁹⁵ Moot Proposition, p.6, Re-assessment Order, para 1 & 2.

⁹⁶ *CIT v Raman & Co.* AIR 1968 SC 49.

⁹⁷ *V Jaganrao* (n 93)

⁹⁸ *CIT v Sun Engineering Works (P) Ltd.* (1992) 198 ITR 297 (SC)

⁹⁹ *ITO case v K.L. Srihari* (2002) 176 CTR 99 (SC).

¹⁰⁰ Arvind P.Datar *The Law and Practices of Income Tax II* (10th edn LexisNexis 2014) 2193.

¹⁰¹ *CIT v Assam Oil Co. Ltd* (1982) 133 ITR 204 (Cal).

¹⁰² *CIT v Ramsevak Paul* [1977] 110 ITR 527 (Cal); *see also State Bank of Hyderabad v CIT* (1988) 171 ITR 232 (AP).

¹⁰³ *New Kaiser-I-Hind v CIT* (1977)107 ITR 760 (Bom).

assuming a change in it is a far-fetched argument.¹⁰⁴ An adverse inference cannot be drawn that the authority has not applied his mind if the assessment record does not cite a reason.¹⁰⁵ It is contended that an assessee does not have a premium control over the drafting of an assessment order and if there is no elucidation on certain aspects in the order, then the order cannot be assailed on change of opinion.¹⁰⁶

*If a subject-matter, entry or claim/deduction is not examined by an AO, it cannot be presumed that he must have examined the claim/deduction or the entry, and therefore, it is the case of “change of opinion”. When at the first instance, in the original assessment proceedings, no opinion is formed; principle of “change of opinion” cannot and does not apply. There is a difference between change of opinion and failure of the AO to form an opinion on a subject-matter, entry, claim, and deduction. When the AO fails to examine a subject-matter, entry, claim or deduction, he forms no opinion.*¹⁰⁷

57. Alternatively, where the AO comes into possession of fresh information or new facts, which lead him to form a reasonable belief that income has escaped assessment, he can reopen the assessment.¹⁰⁸ The fact that an assessment becomes final in appeal would not preclude AO from exercising his powers under this section if the requirements of law are satisfied.¹⁰⁹

58. It is a basic principle of taxation that only one assessment at one point of time is permissible.¹¹⁰ The effect of re-assessment is that initial order is inoperative even though justification for re-opening arises because of a turnover escaping assessment in a limited field.¹¹¹ Also section 147 mandates a differential procedure for re-assessment as J. Hegde puts *what is true of assessment must also be true of re-assessment because re-assessment is*

¹⁰⁴ *Kelvinator of India Ltd* (n 91) see also *CIT v Usha International* (2012) 348 ITR 485 (Del).

¹⁰⁵ S.K. Tyagi, ‘*Validity of Reopening of Assessments*’ 363 ITR (Jour.) p.46 available at <http://sktyagidt.com/upload/article/Validity%20of%20reopening%20of%20assessments.pdf> (Accessed on 05/08/2014, at 15:30)

¹⁰⁶ *Hari Iron Trading Co. v CIT* (2003) 263 ITR 437 (P&H); *CIT v Eicher Ltd.* (2007) 294 ITR 310 (Del)

¹⁰⁷ *ALA Firm* (n 84).

¹⁰⁸ *Phool chand Bajrang Lal* (n 84).

¹⁰⁹ *In Re Halder & Sons* (1942)10 ITR 79 (All).

¹¹⁰ *Arvind P.Datar*, (n 100).

¹¹¹ *Dy. Comm of Commercial Taxes v Ramulu* (1977) 1 SCC 703 (SC).

*nothing but a fresh assessment.*¹¹² From above proposition, it is clear that re-assessment is not rendered invalid by change of opinion because there was no opinion formed on previous facts and also the original assessment is merged with the fresh assessment.¹¹³

59. [ARGUENDO] It is contended that the opinion formed on wrong or incorrect facts do not get protection under doctrine of 'change of opinion'. Hence power can be exercised u/s 263 of the Act by CIT if the order is erroneous and prejudicial to the revenue.¹¹⁴ Hence if the facts were unavailable at the time of assessment, re-opening is justified and also if the facts were available, they should not be too remote and the question of concealment is not a pre-condition to re-open the assessment and hence even if the order of AO is wrong, power of CIT can be exercised u/s 263 to remedy the same and hence, re-assessment still remains valid.¹¹⁵

60. Hence, it is humbly submitted that, it was a fit case to hold that tribunal is not justified in holding that A.O cannot make additions in respect of items other than the one for which re-opening proceeding under section 147 were initiated.

¹¹² *CST v Esufali* (1973) 90 ITR 271 (SC) 280

¹¹³ *CIT v Mysore Iron & Steel Ltd* (1986) 157 ITR 531.

¹¹⁴ *CIT v DLF Powers Limited* (2013) 350 ITR 555 (Del); *Kelvinator of India Ltd* (n 91)

¹¹⁵ *Dalmia Private Limited v CIT Delhi*, R.P No. 650/2011 in W.P. (C) No. 6205/2010; *see also The Indian Hume Pipe Company Limited v The Assistant CIT* (1969) 74 ITR 762 (Bom).

PRAYER

Wherefore it is prayed, in light of the issues raised, arguments advanced, and authorities cited, that this Hon'ble Court may be pleased to:

1. *Declare that the Special Leave Petition is maintainable under Article 136 of the constitution of India, 1950.*
2. *Declare that the Hon'ble High Court of Calcutta erred in dismissing the appeal u/s 260A on the ground that no substantial question of law is involved.*
3. *Declare that the Learned Tribunal was not justified in setting aside the order passed by CIT u/s 263 of the IT Act.*
4. *Declare that the order passed by the Learned Tribunal was perverse and is liable to be quashed.*
5. *Declare that the Learned Tribunal was not justified in holding that the A.O in the Re-opened assessment cannot make additions u/s 147 of the IT Act.*
6. *Declare that the non-speaking order passed by the A.O u/s 147 of the IT Act is a sufficient ground itself for initiating revisionary proceeding u/s 263 of the IT Act.*

And Pass any other Order, Direction, or Relief that it may deem fit in the Best Interests of Justice, Fairness, Equity and Good Conscience.

For This Act of Kindness, the Appellant Shall Duty Bound Forever Pray.

Sd/-

(Counsel for the Appellant)