**15 NUJS 162**

***BEFORE***

**THE HON'BLE SUPREME COURT OF INDIA**

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**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA**

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COMMISSIONER OF INCOME TAX (APPELLANTS)

*v.*

M/S. ABC COMPANY PVT. LTD (RESPONDENTS)

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**WRITTEN SUBMISSION FOR RESPONDENT**

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## 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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**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 IS 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 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 order was passed by the AO, 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 properly 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 and such inaction rendered the order erroneous and prejudicial to the revenue. To this assessee-company replied back stating 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 AO to do the assessment afresh.

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

The Assessee-company preferred 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 question 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 Article 136 of the Constitution of India, 1950.

## SUMMARY OF PLEADINGS

### [ISSUE: I ] THAT THE SPECIAL LEAVE PETITION FILED BY THE REVENUE IS NOT MAINTAINABLE BEFORE THE HON'BLE SUPREME COURT OF INDIA

1. It is submitted that the appeal filed by the revenue is not maintainable as Special Leave cannot be granted when substantial justice has been done and no exceptional or special circumstances exist for case to be maintainable. Also, it will not be granted when there is no failure of justice or when substantial justice is done, though the decision suffers from some legal errors. Article 136 does not give a right to a party to appeal to the SC rather it confers a wide discretionary power on the SC to interfere in suitable cases.

2. Further, no substantial question of law is involved in the present case and interference is based on pure question of fact which is entitled to be dismissed. This Court had laid down the test which says if the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles the question would not be a substantial question of law. It might involve question of Law but not 'substantial' question of law. The present case doesn't involve such 'substantial' question even if we assume that it involves question of law.

### [ISSUE: II] THAT THE ORDER PASSED BY THE LEARNED TRIBUNAL WAS NOT PERVERSE AND IS NOT LIABLE TO BE QUASHED

3. It is submitted that the learned tribunal was justified in setting aside the order of CIT passed u/s 263 because the order passed by AO was not erroneous and prejudicial to the interests of revenue. When two views are possible and AO takes one of them with which CIT does not agree, it cannot be termed as erroneous and prejudicial. There must be a blatant error in compliance of law and total non-application of mind. Also, the provision does not call for substitution of judgment of two adjudicatory authorities with different hierarchy, AO and CIT being quasi-judicial authorities.

4. Primarily, AO was not supposed to make roving enquiries u/s 68 of IT Act during re-assessment. However, to contend on merits of the case, the identity and creditworthiness of shareholders does not remain to be verified because mere adverse inference cannot be drawn against the assessee as it had discharged the burden of proof after making a *prima facie* case.
5. It is also submitted that the order passed by the A.O is not a non-speaking order and hence, Revenue is not expected to initiate proceeding u/s 263 of the IT Act. It was rightly observed by the learned tribunal that I.T.O has exercised the quasi-judicial power vested on him in accordance with law and arrived at a conclusion and such conclusion cannot be termed to be erroneous simply because the commissioner does not feel satisfied with the conclusion. The error envisaged in this section is not one which depends on possibility or guesswork, it should be actually an error either of fact or of law. Revision cannot be resorted to in cases where the relevant information has been examined by the AO, though not recorded in the assessment order, as noted by Delhi and Bombay High Court. **[ARGUENDO]**Even if it is assumed that the order passed by A.O is a non-speaking order, the twin conditions (that the order must be erroneous and prejudicial to the interest of revenue) needs to be satisfied in order to initiate proceeding under section 263 of the IT Act.

**[ISSUE: III] THAT THE TRIBUNAL WAS JUSTIFIED IN HOLDING THAT THE AO IN THE RE-OPENED ASSESSMENT CANNOT MAKE ADDITIONS IN ESPECT OF ITEMS OTHER THAN ONE FOR WHICH RE-OPENING PROCEEDINGS U/S 147 WERE INITIATED**

6. It is submitted that the re-assessment should be limited to items initiated at the time of re-assessment proceedings since the original assessment had attained finality in terms of other issues. The power u/s 147 is of an extra-ordinary nature and provision has to be strictly construed to prevent any arbitrary exercise of powers by the authorities and undue harassment of the assessee by opening the assessment again and again. AO cannot assume jurisdiction and make roving and fishing enquiries.
7. When an A.O proceeds to make addition on an unconnected issue, in same set of proceedings, it must be ensured on revenue's part that said unconnected issue is otherwise interlinked to parent issue on which reopening was made and in case, if

both the issues are totally alien to each other, then without initiating separate proceedings u/s 148(2), nothing can be implied from reasons and no addition can be made on an 'alien' issue. Explanation 3 of section 147 cannot override the necessity of fulfilling the conditions set out in the substantive part and hence the AO should follow the issuance of notice u/s 148 before independently assessing other income. Any change of opinion on the part of AO makes re-assessment invalid. **[Arguendo]** If AO had taken one possible view, CIT cannot take recourse to section 263. Reason to believe must be of AO and not of any higher authority imposed upon AO.

## 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 before this Hon'ble Supreme Court of India [hereinafter as SC] that the special leave petition filed by the revenue is not maintainable as Special Leave cannot be granted when substantial justice has been done and no exceptional or special circumstances exist for case to be maintainable **[1.1].** Also in the present case, no substantial question of law is involved and interference is based on pure question of fact which is entitled to be dismissed **[1.2].**

### [1.1] NO EXCEPTIONAL AND SPECIAL CIRCUMSTANCES EXISTS AND SUBSTANTIAL JUSTICE HAS BEEN DONE IN THE PRESENT CASE.

2. It is contended by the respondent that the appellant must show that exceptional and special circumstances exists and that if there is no interference, substantial and grave injustice will result and the case has features of sufficient gravity to warrant review of the decision appealed against on merits. Only then the court would exercise its overriding powers under Art. 136.[1] Special leave will not be granted when there is no failure of justice or when substantial justice is done, though the decision suffers from some legal errors.[2]

3. In the case at hand, no exceptional and special circumstances have been shown by the appellant. Appellant itself accepted that on identical facts and under similar circumstances, in a very large number of cases, orders u/s 148 of the IT Act were passed under different corporate CITs charges in Kolkata.[3] This shows that the law is well-settled in this regard and the present case is not an exception.

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[1] M.P Jain, *Indian Constitutional Law*, ( 16th edn Lexis Nexis Butterworth Wadhwa Nagpur 2011) 5776; *see also* Constitution of India,1950.

[2] *Council of Scientific and Industrial Research v K. G. S. Bhatt* (1989) AIR 1972 (SC); *see also State of H. P. v Kailash Chand Mahajan* (1992) AIR 1277 (SC).

[3] Moot Proposition, Annexure II, p 9.

4. Also, if the revenue has not challenged the correctness of the law laid down by the High Court [hereinafter as HC] in one case of one of the assessee, but challenged it in case of another assessee, was held not permissible, without just cause. Such a course is necessary for consistency of law.[4] The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs.[5]

5. It was also observed that, it is not possible to define the limitations on the exercise of the discretionary jurisdiction vested in this Court under Art. 136. It being an exceptional and overriding power, naturally, has to be exercised sparingly and with caution and only in special and extraordinary situations.[6] Article 136 does not give a right to a party to appeal to the SC rather it confers a wide discretionary power on the SC to interfere in suitable cases.[7]

*[1.1.1] No irregularity of procedure or violation of principle of natural justice is being done.*

6. In plethora of cases, it has been held that except that where there has been an illegality or an irregularity of procedure or a violation of principle of natural justice resulting in the absence of a fair trial or gross miscarriage of justice, the SC does not permit a third review of evidence with regard to question of fact in cases in which two courts of fact have appreciated and assessed the evidence with regard to such questions. [8]

7. It is contended that this court is not bound to go into the merits and even if it were to do so, and declare the law or point out the error, still it may not interfere if the justice of the case on

[4] *Berger Paints India Ltd v CIT* (2004)12 SCC 42 (SC).

[5] *M.A.Murthy v State of Karnataka* (2003) 264 ITR 1 (SC).

[6] *Dhakeswari Cotton Mills Ltd. v CIT West Bengal* (1955) AIR 65 (SC); *see also* H.M. Seervai, Constitutional Law of India (4th edn. Vol 1 2010).

[7] ibid.

[8] *State of U.P. v Ram Manorath* (1972) 3 SCC 215 (SC); *see also UOI v Rajeswari & Co*.(1986) AIR 1748 (SC).

facts doesn't require interference or if it feels that the relief could be molded in a different fashion. [9]

*8.* The power of SC in appeal under Article 136 is not intended to be exercised for complying with an idle formality of law, such as directing the income tax tribunal to refer a question of law for the decision of the court under s 66(1), when the matter was concluded by authority.[10]

9. Hence, it is submitted that the case is entitled to be dismissed on the above stated ground only.

## [1.2] INFERENCE FROM A PURE QUESTION OF FACT IS IN ITSELF A FACT AND HENCE NOT OPEN TO REVIEW.

10. It is contended by the Respondent that the appeal doesn't involve any substantial question of law rather it involves pure question of fact and hence, is not maintainable. Questions of fact cannot be permitted to be raised unless there is material evidence which has been ignored by the high court or the finding reached by the court is perverse.[11] In a case it was held that the SC cannot consistently with its practice convert itself into a third court of facts. [12]

11. Generally on finding of fact, no interference will be made.[13] Even in cases where conclusions are reached without proper discussion, yet if it involves finding on fact, no interference of SC is called for.[14] In a case, it was held that if the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arise.[15] Even in case of *Stellar Investments v CIT*[16], SC had held that it is a pure question of fact and when Tribunal comes to a

[9] *Raghunath G. Pauhale v Chagan Lal Sundarji & Co.*(1999) 8 SCC 1 (SC).

[10] *Badri Narayan v Kamdeo Prasad* (1967) AIR 338 (SC).

[11] *Union of India v Rajeshwari & Co*. (1986) 161 ITR 60 (SC).

[12] *Gurbakhsh Singh v State of Punjab* (1955) AIR 320 (SC).

[13] *CIT v Maganlal Chaganlal (P) Ltd*. (1997) 11 SCC 557 (SC).

[14] *Amarchand Sobhachand v CIT* (1971) AIR 720 (SC)

[15] *CIT v Orissa Corp ltd.* (1986) 159 ITR 0078 (SC).

[16] *Stellar Investments v CIT* (2000) 164 CTR 287(SC).

conclusion after AO applies his mind to the facts of the case, and then SC interference is uncalled for.

12. If due to erroneous order of the Assessing Officer [hereinafter referred as AO], revenue is losing tax lawfully payable by a person, it will be prejudicial to interest of revenue. [17] However every loss of the revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interest of the revenue.[18] In the present case, order of AO might be erroneous but is not prejudicial to the interest of revenue and hence, no substantial question of law is involved. This court reiterated the principle that where the fact finding authority comes to a conclusion without ignoring the materials and relevant facts and bearing in mind the correct legal principles honestly and bonafide, the fact that other authority be it SC or HC may have different perspective is no ground to interfere in an appeal, especially when the tribunals have been entrusted with the authority and jurisdiction to decide the question involving determination.[19] In the case in hand, simply because the order of the tribunal is not elaborate or non-speaking in the view of commissioner, it doesn't render the appeal maintainable under Article 136.

13. The Tribunal being a final fact finding authority, in the absence of demonstrated perversity in its finding, interference therewith by this Court is not warranted.[20] It is now well-settled that the superior courts while exercising their jurisdiction under Article 136 may not exercise the same in appropriate cases.[21]

14. The contention of the appellant that the AO has not verified the source of funds properly does not hold water when the AO himself re-opened the assessment under section 147 of the IT Act and verified the same in the light of details given by the assessing company and shareholders.[22]

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[17] *CIT v Himanchal Pradesh Financial Corp*. (2010) 186 Taxman 105 (HP).

[18] *CIT v Gokuldas Exports* (2011) 333 ITR 214 (Kar).

[19] *Indira Kaur v Sheo Lal Kapoor* (1988) 2 SCC 488 (SC).

[20] *Vijay Kumar Talwar v CIT, Delhi* (2010) 236 CTR 454 (SC).

[21] *ONGC Ltd. v Sendhabhai Vastram Patel* (2005) 6 SCC 454 (SC).

[22] Moot Proposition, p1.

If he had failed to conduct an enquiry, which he should conduct, it will make an order erroneous. However, having satisfied himself after proper enquiry, not only once but twice, it cannot be said that the assessing officer has allowed the claim without verifying the claim in accordance with law.[23]

15. Hence, it is humbly submitted that in the light of the above mentioned authorities, the impugned order of the High court deserves to be affirmed and HC didn't err in dismissing the appellant's appeal holding that no substantial question of law is involved.

*[1.2.1] Even if it is assumed that the matter involves 'question of law', no 'substantial question of law is involved'.*

16. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation.[24] Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in Section 260A must be strictly fulfilled before an appeal can be maintained under Section 260A. An appeal under section 260A can be only in respect of a 'substantial question of law'[25]. It cannot be decided merely on equitable grounds.

17. In *Sir Chunilal Mehta & Sons Ltd. v Century Spinning & Mfg. Co. Ltd.,*[26] this Court had laid down the following tests to determine whether a substantial question of law is involved. The tests are: (1) whether directly or indirectly it affects substantial rights of the parties, or (2) the question is of general-public importance, or (3) whether it is an open question in the sense that there is no scope for interference by the High Court with a finding recorded when such finding could be treated to be a finding of fact. [27]

18. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those

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[23] *Infosys Technologies LTD. v JCIT* (2006)103 ITD 399 (Bang).

[24] *Hero Vinoth (minor) v Seshammal* (2006) AIR 2234 (SC).

[25] *M. Janardhana Rao v Joint Commissioner of Income Tax* (2005) 193 CTR 58 (SC).

[26] *Sir Chunilal Mehta & Sons Ltd. v Century Spinning & Mfg. Co. Ltd.* (1962) AIR 1314 (SC).

[27] *M. Janardhana Rao v Joint Commissioner of Income Tax* (2005) AIR 1309 SC.

principles the question would not be a substantial question of law. [28]*19. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned*.[29] Re-appreciation of evidence and substitution of the findings by the High Court is impermissible.[30]Hence, it is submitted that on account of the fact that the position is well-settled by this court in its earlier decisions[31], no substantial question of law is involved in the present case.

20. Therefore, after examining the case on the touch-stone of the afore-noted legal principles, it is humbly submitted before this Hon'ble SC of India that the special leave petition filed by appellant is not maintainable.

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## 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 ?

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21. It is humbly submitted that the order passed by learned Tribunal holds good in law and is not liable to be quashed when it was justified in setting aside the order of CIT u/s 263 of the IT Act **[2.1]** and the order passed by the Assessing Officer u/s 147 is not a non-speaking order and CIT was not justified in initiating proceedings u/s 263 of the IT Act. **[2.2]**

### [2.1] THE LEARNED TRIBUNAL WAS JUSTIFIED IN SETTING ASIDE THE ORDER OF CIT PASSED UNDER SECTION 263 OF INCOME-TAX ACT.

22. The Respondent contends that the CIT erred in exercising its power of revision u/s 263 for the purpose of directing the Assessing officer to hold another investigation.

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[28] *Sir Chunilal Mehta* (n 26).

[29] *Santosh Hazari v Purushottam Tiwari* (2001) 3 SCC 179 (SC).

[30] *Commissioner of Income Tax v P. Mohanakala* (2007) 210 CTR 20 (SC).

[31] *Malabar Industrial Co. Ltd. v CIT* (2000) 243 ITR 83 (SC); *see also CIT v. Lotus Capital Financial Services Ltd.,* ITAT 125 of 2012.

*[2.1.1] That the impugned assessment order of AO u/s 148 is neither erroneous nor prejudicial to the interests of the Revenue.*

[A] Where two views are possible and the AO takes one view with which CIT does not agree, it cannot be treated as erroneous or prejudicial to the interests of the revenue.

23. The power u/s 263 is a supervisory power which states that The Commissioner *may* exercise such power on any proceeding or order under the Act. This connotes the power exercised by a quasi-judicial authority which must be exercised judicially.[32] This is a power coupled with duty and in the very nature of things; this provision for re-assessing a finally settled assessment has to be strictly construed.[33]

> *The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the assessing officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent – if the order of the Income Tax Officer is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1) of the Act.*[34]

24. The word 'prejudicial' should be in conjunction with 'erroneous order' where there must be a *prima facie* demonstrable error of fact or law.[35] There must be a total non-application of mind and a consequent prejudice to the revenue which is not found in present factual matrix. Here the Respondent had shown every detail regarding share subscription and expenses and AO had applied his mind and passed a final order.[36] For the CIT to exercise a supervisory jurisdiction, it should be exercised in strict terms on blatant error on part of AO since AO has the ultimate authority u/s 147/148 to reopen the assessment and pass a final order. It is contended that this Hon'ble court has held in its recent ruling[37] that every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the revenue. The case of *CIT v M/S Lotus*

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[32] *Band A. Plantation and Industries v CIT* (2007) 290 ITR 395 (Gau).

[33] *H.L.Sibal v CIT* (1975) 101 ITR 112 (P & H).

[34] *Malabar Industries Co.*(n 31).

[35] *CIT v Amalgamations* (1999)238 ITR 963(Mad); *see also CIT v Neyveli Lignite* (2001) 248 ITR 611(Mad).

[36] Moot Proposition, p.2.

[37] *CIT v Max Industries* (2007) 213 CTR 266 (SC).

*Financial Services*[38] passed by the jurisdictional HC entailed similar facts as the facts in issue and the assessee had duly filed name, address, no. of shares applied for and allotted, cheque numbers, name of the bank, letters with PAN allotment and details of bank statement.[39] The Court held that there was no inaction on part of AO or the assessee and struck down the revisionary order passed by CIT.

[B] The provision does not call for substitution of the judgment of the Commissioner for the Income Tax Officer, while both exercise quasi-judicial authority.

25. The Respondent contends that this Hon'ble Court has opined in a recent ruling:

> *When a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order; by no stretch of imagination a higher authority can interfere with the independence which is the basic feature of any statutory scheme involving adjudicatory process.*[40]

26. It is the AO who has primary obligation of being satisfied with the explanation offered by the assessee by applying his mind to the facts and circumstances and the CIT may not interfere unless there is a grievous error, which is not the case here. Once all the material was before the AO and he chose not to deal with the several contentions raised by the company in final assessment, it cannot be said that he had not applied his mind to the material placed before him.[41] Non-application of mind cannot be inferred merely because the assessment order does not specifically discuss the issue.[42]

27. Jurisdiction u/s 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.[43] A recent Kolkata HC Bench ruled in a case where the AO had verified

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[38] *Lotus Capital Financial Services Ltd*. (n 31).

[39] Moot Proposition, Annexure III, p.26.

[40] *CIT v Greenworld Corporation* (2009) 224 CTR 113(SC).

[41] *Idea Cellular Ltd. v CIT* (2008) 301 ITR 407(Bom).

[42] *CIT v Ashish Rajpal* (2009) 23 DTR 266 (Del).

[43] *CIT v Ganpat Ram Bishnoi* (2005) 198 CTR 546 (Raj).

details u/s 133(6) and formed an opinion on the matter, the assessment does not become erroneous where queries raised during the proceedings are not recorded in the final order and CIT has no power to impose his opinion on findings of AO.[44] In such cases where assesses have adopted surreptitious method to convert unaccounted money into share application money, AO is an investigator and adjudicator and it is his factual assertion whether he requires a deeper inquiry into the verifications provided by the company; a universal method of inquiry cannot be jotted down.[45]

[A] Lack of Inquiry and Inadequate Inquiry

28. If there is some enquiry by the A.O. in the original proceedings even if inadequate that cannot clothe the Commissioner with jurisdiction under Section 263 merely because he can form another opinion.[46] There should be total lack of inquiry or no inquiry, which is not the present case.

*[2.1.2] The identity and creditworthiness of the shareholders from whom share capital was received does not remain to be verified as it was a completed assessment.*

[A] Section 68 of the IT does not apply to present re-assessment proceedings.

29. Primarily, In the *CIT v Bharat Construction Ltd*[47], it was held that finding of unexplained cash credits is a pure question of facts and hence not a question of law. It is contended primarily that the AO was not supposed to make roving enquiries and send a notice u/s 133(6) to add share capital u/s 68 of the IT Act because the re-opening was done only for wrongful allowance. Also if the shareholders are identified and it is established that they have invested in the purchase of shares, then the income will be a capital receipt and section 68 will not be applicable as it only applies to cash credits.[48]

[44] *V B Constructions v Dept of Income Tax* ITA No.5/Hyd/2010.

[45] *CIT v NR Portfolio Pvt. Ltd*, ITA NO. 1018/2011.

[46] *CIT v Sunbeam Auto Ltd.* (2011) 332 ITR 167 (Del).

[47] *CIT v Bharat Construction Ltd* (1968) 067 ITR 0273 (Kar).

[48] *CIT v Sophia Finance* (1994) 205 ITR 98 (Del).

[B] If Section 68 is resorted to, then mere adverse inference cannot be drawn against the assessee as it has discharged the onus of proof in accordance with law.

30. Section 68 creates a fiction by which initial onus is placed on the assessee to prove the genuineness of the transaction, creditworthiness and identity of the shareholders[49] and once an assessee makes out a *prima facie* case, burden shifts on the Department.[50] The Hon'ble Court has opined in a case:

> *Where subscribed share capital of the assessed had been increased, verification completed by AO and CIT refused on the basis that it amounted to unaccounted black money circulation, the Court confirmed that even if the transaction is assumed to be not genuine, an adverse inference cannot be drawn against the assessee and bogus shareholders may be proceeded separately.*[51]

Similarly, the jurisdictional HC observed that the ITO ought to have investigated the matter more but after production of materials, the assessee had discharged its burden of proof.[52] Since the facts in issue prove that the company had honestly produced all the details of the share subscription, no presumption can be drawn against it.

31. The counsel contends that u/s 68 it is the 'satisfaction' of the AO on the explanation given by the assessed which matters. In all cases in which a receipt is sought to be taxed as income, the burden lies on the Department to prove that it is within the taxing provision and if the receipt is in the nature of income, the burden of proving that it is not taxable because it falls within the exemption provided by the Act lies upon the assessed.[53] It is the AO who can lift the veil and enquire into the real nature of the transaction.[54] Thus the ultimate authority lies with the AO in

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[49] *Hindustan Tea Trading Co. Ltd. v CIT* (2003) 263 ITR 289(Cal)

[50] Gabhawala & Gabhawala , *Taxmann's Tax Practice Manual*, (3rd edn.Taxman 2012) 124.

[51] *CIT v Stellar Investments* (2000) 164 CTR 287 (SC).

[52] *CIT v Korlay Trading Co. Ltd* (1998) 232 ITR 820 (Cal).

[53] *Sumati Dayal v CIT-Bangalore* (1995) 214 ITR 801 (SC).

[54] *CIT v Ruby Traders and Exporters Ltd* (2003) 263 ITR 300 (Cal); *see also CIT v Nivedan Vanijya Niyojan Ltd.* (2003) 263 ITR 623 (Cal); *see also CIT v Kundan Investment Ltd.* (2003) 263 ITR 626(Cal).

his quasi-judicial capacity to look into the nature of the transaction and creditworthiness of the shareholders,[55] and hence the respondents cannot be liable for the same.

32. Therefore, based on above propositions, the counsel humbly submits that the order passed by the Tribunal is good in law and is not liable to be quashed.

## [2.2] THE ORDER PASSED BY THE A.O UNDER SECTION 147 OF THE IT ACT IS NOT A NON-SPEAKING ORDER AND HENCE NOT A SUFFICIENT GROUND IN ITSELF FOR THE EXERCISE OF REVISIONARY PROCEEDING UNDER SECTION 263 OF THE IT ACT

33. It is humbly submitted that the order passed by the A.O under section 147 of the IT Act is not a non-speaking order and hence, Revenue is not expected to initiate proceeding u/s 263 of the IT Act. In the case in hand, It was rightly observed by the learned tribunal that I.T.O has exercised the quasi-judicial power vested on him in accordance with law and arrived at a conclusion and such conclusion cannot be termed to be erroneous simply because the commissioner does not feel satisfied with the conclusion.[56]

34. It is contended that the A.O has passed the order after applying his mind and after conducting proper enquiry **[2.2.1]** and Being a Quasi-Judicial Authority, CIT should exercise its revisionary power based on reasons and only in genuine cases **[2.2.2].**

### *[2.2.1] That the A.O has passed the order after applying his mind and after conducting proper enquiry.*

35. In the present case, it can be said that the reasons given by the A.O are quite brief and not as elaborate as the revenue would have liked to have but it is a well settled principle of law that the true nature of transaction has to be ascertained in the light of surrounding circumstances.[57] In the instant case, the A.O has considered the relevant material and has highlighted the important features of the case and has given reasons for its order. Hence, it cannot be said that the order of

[55] *Master Guide to Income Tax Rules: A Rule-wise Commentary on Income-Tax Rules* ( 20th edn. Taxmans 2013).

[56]Moot proposition, p.3.

[57] *Sumati Dayal* (n 53).

the A.O is not a speaking order. Same issue arose in earlier decisions of this court and considering the fact and circumstances of the case, this court ruled in favor of assessee.[58]

36. It has been held that areas where Assessing Officer had applied mind, Section 263 proceedings is not valid.[59] If it could not be said that it was lack of enquiry and therefore, the assessment order passed by the Assessing Officer cannot be revised under section 263.[60]

37. In a case it was said that, where the assessing officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the assessing officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction u/s 263 of the Act.[61] In the present case, the contention of CIT that A.O has not verified the source of funds does not hold water. Assessee filed various details along with the supporting evidences in respect of the share capital concerned as asked by the A.O.[62] The A.O also verified the same by issuing letters u/s 133 (6) of the IT Act to the shareholders.[63] However, the only ground contended before the tribunal by the CIT was on non-enquiry or inaction on the part of A.O.[64]

38. Also, if the AO allows the claim, on being satisfied with the explanation of assessee, on an enquiry made during the course of Assessment Proceedings, the decision of Assessing Officer cannot be held to be erroneous, on ground that there is no elaborate discussion in that regard in

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[58] *State of Madras v AR Srinivasan* (1966) AIR 1827 (SC); *see also Tara Chand v Delhi Municipality* (1977) AIR 567 (SC).

[59] *CIT v Hindustan Lever Ltd* (2012) 343 ITR 161 (Bom).

[60] *CIT v Sunbeam Auto Ltd.* (2009) 289 Taxman 436 (Del); *see also Vodafone Essar South Ltd. v CIT* (2011) 141 TTJ 84 (Delhi).

[61] *CIT v. Ashish Rajpal* (2009) 320 ITR 674 (Del), *see also CIT v Vikash Polymers* (2010) 194 Taxman 57 (Del).

[62] Moot Proposition, p.1.

[63] Moot Proposition, p.1.

[64] Moot Proposition, p.24.

the order.[65] It is the practice that whenever any claim of the assessee is accepted, Assessing Officer may not discuss the same in his order.[66]

39. Also, the Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders, which are already concluded. It is because the AO has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feels satisfied with the conclusion.[67] Hence, it is submitted that A.O has passed the order after applying his mind and after conducting proper enquiry and this cannot be termed as a non-speaking order.

*[2.2.2] Being a Quasi-Judicial Authority, CIT should exercise its revisionary power based on reasons and only in genuine case.*

40. In the present case, CIT didn't give proper reason for initiating proceeding under section 263 of the IT Act. It exercised its power merely on the ground of a doubt that the AO had not properly applied his mind while doing assessment under section 147 of the IT Act. CIT being a Quasi-judicial authority is required to satisfy himself and give reasons before invoking the powers of revision. The error envisaged in this section is not one which depends on possibility or guesswork, it should be actually an error either of fact or of law.[68] This legal proposition is also approved in the several decisions rendered in the context of section 263.[69]

41. In the light of above stated precedents, it is contended that the findings of the Karnataka High Court in the case of Infosys Technologies Ltd.[70] may require reconsideration. Otherwise, practically, considering the manner in which orders are passed by the AOs, wherein the reasons

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[65] Kanga, Palkhivala and Vyas, *The Law and Practice of Income Tax* (9th edn 2004).

[66] *Anil Shah v ACIT* (2007) 162 Taxman 39 (Mum).

[67] *CIT v Vikas Polymers* (2012) 341 ITR 537 (Delhi).

[68] *CIT v Trustees, Anupam Charitable Trust,* (1987) 167 ITR 129 (Raj).

[69] *CIT v T. Narayana Pai* (1975) 98 ITR 422 (Kar); *see also CIT v Associated Food Products*, (2006) 280 ITR 377 (MP); *see also CIT v Jai Mewar Wine Contractors*, (2001) 251 ITR 785 (Raj); *see also CIT v Duncan Brothers* (1994) 209 ITR 44 (Cal); *see also CIT v Kanda Rice Mills*, (1989)178 ITR 446 (P&H); *see also CIT v R. K. Metal Works*, (1978)112 ITR 445 (P&H).

[70] *CIT v Infosys Technologies Ltd*. (2012) 341 ITR 293 (Kar).

for the conclusions and findings are only spelt out with regard to the issues where the claims of the assesses are not accepted, such a view may give a free hand to the CIT to exercise powers of revision u/s.263 in almost all cases and revise all such settled assessments, which is unwarranted[71].

42. It is also pertinent to note that the same high court in the case of *T. Narayana Pai*[72] had decided otherwise regarding want of satisfaction and recording of a finding by the CIT in the context of section 263. It is rightly pointed out by the tribunal that cases may be visualized where the Income-Tax Officer while making assessment examines the accounts, makes enquiries, apply his mind to the facts and circumstances of the case.[73] The CIT with power to re-examine cannot term the same as erroneous simply because he does not feel satisfied with the conclusion.[74]

43. It is submitted that the observation made by the Bombay[75] and Delhi High Courts[76] that revision cannot be resorted to in cases where the relevant information has been examined by the AO, though not recorded in the assessment order, therefore seems to be the better view. The revisionary power under section 263 cannot be exercised in respect of a matter which falls within the power to assess escaped income under section 147 of the Act.[77] It is a quasi-judicial one hedged with limitation and has to be exercised subject to the same and within its scope and ambit.

44. CIT has to apply his mind for coming to a firm conclusion which should be based on proper material and he must mention that material in his order.[78] A mistake or omission in the

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[71] Pradip Kapasi, Gautam Nayak, '*Scope of Revision of orders by the Commissioner u/s.263'* Available at https://www.bcasonline.org/articles/artin.asp?1052 (accessed on 05/08/2014 16:30).

[72] *T. Narayana Pai* (n 69).

[73] *Parashuram Pottery Works Co. Ltd. v ITO* (1977) 106 ITR 1(SC).

[74] Moot Proposition, p. 24

[75] *CIT v Gabriel India Ltd.* (1993) 203 ITR 108 (Bom).

[76] *CIT v Ashish Rajpal* (2009) 320 ITR 674 (Delhi).

[77] *Rajesh Goyal & Sons v CIT, Gwalior* (2009) 29 SOT 253 (Agra).

[78] ibid.

assessment order would not justify the setting aside of the whole order.[79] This Hon'ble Court has held that there is no provision in the statute to pass a reasoned order and held that:

> *A proceeding for assessment is not a suit for adjudication of a civil dispute. That an income tax proceeding is in the nature of a judicial proceeding between contesting parties, is a matter which is not capable of even a plausible argument. The Income Tax authorities who have power to assess and recover tax are not acting as judges deciding a litigation between the citizen and the State: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the taxpayer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State*.[80]

45. Hence, it is humbly submitted that CIT has not exercised its revisionary power on just cause and therefore, the proceeding under section 263 was uncalled for.

46. **[Arguendo]** Even if it is assumed that the order passed by A.O is a non-speaking order, the twin conditions as stated in the previous issues needs to be satisfied in order to initiate proceeding under section 263 of the IT Act.

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## 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?

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47. It is humbly submitted that the tribunal was justified in holding that the assessing officer in the re-opened assessment cannot make additions in the respect of items other than the one for which re-opening proceeding under section 147 were initiated. As the re-assessment should be limited to the items initiated at the time of proceedings since the original assessment has attained finality in terms of other issues **[3.1].** The re-opening should was a result of mere change in opinion on part of AO **[3.2].**

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[79] ibid.

[80] *Gadgil (SS) v Lall & Co.* (1964) 53 ITR 231 (SC).

## [3.1]THAT THE RE-ASSESSMENT SHOULD BE LIMITED TO THE ITEMS INITIATED AT THE TIME OF PROCEEDINGS SINCE THE ORIGINAL ASSESSMENT HAS ATTAINED FINALITY IN TERMS OF OTHER ISSUES

48. The Respondent contends that an assessment once made is final and it is not open to department to go on making fresh computation orders to the end of the time.[81] The power of re-assessment under section 147 is an extraordinary power in nature[82] so the provision have to be strictly construed such that once there is finality in assessment then the same cannot be disturbed unless the requirements of the law are satisfied.[83] The policy of law is that there must be a point of finality in all legal proceedings and accordingly, re-opening is not permitted unless a case falls within four corners of law providing for re-opening of assessment.[84] In the facts in issue, the commercial interests need to be kept in mind and the revenue could not ask the AO to open the assessment again and again.[85] The unbridled power would be a mockery of other provisions of the statute.[86]

47. This Hon'ble court has opined that what is set aside is only previous under-assessment and not original assessment proceedings.[87] An order made in relation to the escaped turnover does not affect the operative force of the original assessment, particularly if it has acquired finality, the original order retains both its character and identity[88] and also AO cannot forego his jurisdiction to independently assess other income.[89] The ratio in *Jagmohan Rao*[90] cannot be read

[81] *ITO v Habibullah (S.K)* (1962) 44 ITR 809 (SC).

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

[83] Gabhawala and Gabhawala, *Tax Practice Manual*, (3rd edn Taxmann Allied Services Pvt. 2011) 174.

[84] *Parashuram Pottery Works* (n73).

[85] Moot Proposition, p 3.

[86] Arvind P.Datar, *The Law and Practices of Income Tax*, (10th edn. Lexis Nexis) 2193.

[87] *CIT v M/S. Sun Engineering Works* (1992) Supp 1 SCR 732 (SC), *see also CIT, Delhi v Kelvinator of India Limited* (2010 ) 228 CTR ( SC ) 488.

[88] ibid.

[89] *CIT, Mumbai v Jet Airways (I) Ltd.* (2011) 331 ITR 236 (Bom).

[90] *V.Jagmohan Rao v CIT* (1970) 75 ITR 373 (SC).

as implying grant of right to assessee to re-agitate matters frequently and claim credit because *it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete " law " declared by this court*.[91] The legislative intention behind the intro of 1989 amendment to section 147 of the Act had been clarified[92] by the Department where the words 'reason to believe' were re-inserted in place of ''opinion of AO' since many fraudulent and arbitrary re-assessments were noticed in frequent cases of evasion. That the A.O had travelled beyond the reasons recorded and assumed jurisdiction[93] thereby making addition/disallowance and hence assessee must object to roving and fishing enquiries made by AO.[94]

48. When an A.O proceeds to make addition on an unconnected issue, in same set of proceedings, it must be ensured on revenue's part that said "unconnected issue" is otherwise interlinked to parent issue on which reopening was made and in case, if both the issues are totally alien to each other, then without initiating separate proceedings u/s 148(2), nothing can be implied from reasons[95] and no addition can be made on an 'alien' issue.[96] The words 'such income' in u/s 147 clearly refer to the income which is chargeable to tax but has escaped assessment and the AO's jurisdiction under the section is confined only to such income which has escaped assessment.[97] Re-opening in the absence of fresh tangible material is invalid.[98] Reasons must have a live link with the formation of the belief.**[99]** It is important that notice under 148 is made on basis of some material and not on mere information in return.[100]

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[91] *Sun Engineering* (n 87)

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

[93] *Ranbaxy Laboratories Ltd v Dept. CIT* (2011)200 Taxman 242 (Del).

[94] *Vipan Khanna v CIT* (2002) 175 CTR 335(P&H); *see also Travancore Cements Ltd. v Ast. CIT* (2008) 219 CTR 359 (Ker).

[95] *Hindustan Lever v Wadkar* (2004) 268 ITR 332 (Bom).

[96] ibid.

[97] *Sun Engineering* (n 87).

[98] Ajay R.Singh, *Guide to the law of re-opening of Assessments u/s 147 of Income Tax Act*, Available at http://www.itatonline.org/articles_new/index.php/guide-to-the-law-on-reopening-of-assessments-us-147-of-the-income-tax-act/ (accessed on 04/07/2014).

49. Explanation 3 u/s 147 cannot override the necessity of fulfilling the conditions set out in the substantive part[101] and hence the AO should follow the issuance of notice u/s 148 before independently assessing other income.[102] The wide power of re-assessment is conferred in wide connotation when there is an alleged concealment of income but the courts have opined that since assessee has to disclose only primary material facts (no legal inferences to be disclosed) there is no implied concealment of income.[103]

### [3.2] THAT THE RE-OPENING WAS A MERE CHANGE OF OPINION ON PART OF AO.

50. It is contended that any re-assessment is if there is a change of opinion on part of revenue authorities.[104] The formation of opinion is premised on existing facts[105] and even if AO passes non-speaking order or does not record reasons, non-application of mind cannot be inferred[106] rather deemed opinion will be taken only if the assessee had produced all the relevant materials.[107] Hence, it will be struck by 'change of opinion' doctrine.[108] The substratum of above rulings is explained below:

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[99] *Kelvinator of India* (n 87)

[100] Assistant CIT v Smt. Jyoti Devi (2004) 84 TTJ 689 (JD).

[101] V.K. Subramani, *Reassessment Must Compulsorily Cover Escaped IncomeiIn Respect of Which Notice Under Section 148 Was Issued, Available at* http://www.taxmann.com/TaxmannFlashes/Articles/flashart11-11-10_1.htm (accessed on 01/07/2014).

[102] *Jet Airways,* (n 89), *see also Ranbaxy Laboratories Ltd (n* 93), *see also CIT v Shree Ram Singh*, (2008) 306 ITR 343 (Raj).

[103] *Calcutta discount v ITO*, (1961) 41 ITR 191 (SC).

[104] Dr. Girish Ahuja & Dr. Ravi Gupta, *Income Tax*, (11th edn. Bharat Law House)2013.

[105] *CIT v Kalvinator of India Ltd.(*2002) 174, CTR (Del)(FB)617, affirmed *Kelvinator of India Ltd.* (n 85).

[106] *Usha International v CIT* (2012) 73 DTR 153 (Del); *see also Idea Cellular Ltd. v CIT* (2008) 301 ITR 407 (Bom).

[107] *CIT v Eicher Ltd.(*2007) 213 CTR 57 (Del); *see also CIT v H.P. Sharma* (1980) 122 ITR 675 (Del).

[108] Archi Agnihotri & Medha Srivastava, *Interpretation of Section 147 of the Income Tax Act, 1961: Judicial* Trends, available at http://manupatra.com/roundup/334/Articles/Interpretation%20of%20Section%20147%20of%20the%20Income.pdf (accessed on 06/08/2014).

> *It does not necessarily imply that AO had discharged his duties in a perfunctory manner. The ratio is rooted to the salutary principle that the assessee shall not be subjected to harassment if they have furnished full particulars.*[109]

51. The presumption that official acts have been performed regularly[110] is always available but such premium to the authority exercising quasi-judicial function to take benefit of its own wrong cannot be given.[111] This power is not mandatory but permissive[112] and presumption is rebuttable.[113] It is a settled position of law that reviews under the garb of reassessment is not permissible.[114] The intention of the legislature was not to confer power upon the AO to initiate reassessment proceedings upon a mere change of opinion.[115] Also nor can AO make piecemeal assessments i.e knowing at the time of original assessment he cannot omit to charge certain income knowing that it is assessable and leave the assessment of such income for proceedings under this section.[116]

52. **[ARGUENDO]** It has been held that when two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, power u/s 263 cannot be exercised.[117] 'Reason to believe' u/s 147 must be of AO[118], not of any higher authority imposed upon AO.[119] The exercise of power by CIT u/s 263 is not justified since the finding which it sought to be

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[109] *Kalvinator of India Ltd* (n 105).

[110] The Evidence Act, 1872, Section 114(e).

[111] *Sun Engineering* (n 87).

[112] *Suresh Budharmal Kalyani v State of Maharashtra* (1998) 7 SCC 337 (SC).

[113] *In International Woollen Mills v M/s Standard Wool (U.K.) Ltd*. (2001) 5 SCC 265 (SC).

[114] *CIT v Amitabh Bachchan*, ITA 4646/2010 (Bom).

[115] *Kalvinator of India Ltd* (n 105).

[116] *Manavedan Timmalpad v CIT* (1955)28 ITR 615(Mad); *Sayaji Iron & Engg. Co. Ltd. v CIT (*2002) 253 ITR 749 (Guj).

[117] *Malabar Industrial Co. Ltd. v CIT* (2000) 243 ITR 83 (SC).

118 Pradip Kedia, *Reassessment - When illegal*, Available at https://www.bcasonline.org/articles/artin.asp?17 (accessed on 03/08/2014).

[119] *Sheo Narain Jaiswal v ITO* (1989) 176 ITR 352 (Pat).

revised was part of the original assessment proceedings and not dealt in the new proceedings.[120] This, however, is subject to the condition that view taken by Assessing Officer is permissible and not erroneous. Since the order of AO was only restricted to wrongful allowance and the view was in accordance with law without prejudice to the revenue, recourse by CIT cannot be taken to revise the order on premise of unaccounted share capital.[121] Also in the facts in issue, neither in the order passed by CIT nor the Tribunal has made any attempt to contend that the receipt of premium money on share capital was a capital receipt and not revenue receipt, hence if the AO had taken a possible view, CIT does not get jurisdiction to tinker with the order.[122]

53. Hence, it is humbly submitted that, it was a fit case to hold that tribunal is 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.

[120] *CIT v A Lagrendram Finance*, (1992) AIR 66 (SC).

[121] Moot Proposition, p.2.

[122] *CIT v Morrison Ltd*. ITA No.168 of 2011 & GA No. 1541 of 2012.

## 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 not maintainable under Article 136 of the constitution of India, 1950.*
2. *Declare that the Hon'ble High Court of Calcutta didn't err 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 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 not perverse and hence, is not liable to be quashed.*
5. *Declare that the Learned Tribunal was 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 not a sufficient ground 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 Respondent Shall Duty Bound Forever Pray.***

Sd/-

(Counsel *for* the Respondent)