IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE S SUJATHA

ITA NO.205 OF 2015

BETWEEN:

1. The Commissioner of Income-tax,
   C.R.Building,
   Queens Road,
   Bangalore

2. The Deputy Commissioner of Income-Tax,
   Circle-2(1),
   No.59, HMT Bhavan,
   6th Floor, Bellary Road,
   Ganganagar,
   Bangalore – 560032

...Appellants

(By Sri.K.V.Aravind, Advocate)

AND:

M/s. Chaitanya Properties Pvt.Ltd.,
No.17, Sankey Road,
Bangalore -560020
PAN: AAACC 5900A. ...Respondent

(By Sri.A.Shankar And Sri.M.Lava, Advocates)

This ITA is filed Under Section 260-A of Income Tax Act, 1961 arising out of Order dated 21.11.2014 passed in ITA No.557/Bang/2014, for the Assessment Year 2005-2006 praying to formulate the substantial questions of law stated above and allow the appeal and set aside the orders passed by the Income-Tax Appellate Tribunal, Bangalore in ITA No.557/Bang/2014 dated 21.11.2014 and confirm the order of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax, Circle-2(1), Bangalore.

This Appeal coming on for Admission this day, ***JAYANT PATEL J.***, delivered the following:

JUDGMENT

The Revenue has preferred the present appeal by formulating the following substantial questions of law:

1. Whether the Tribunal was correct in holding that the reasons recorded by the assessing officer did not spell out that escapement of income was due to the

assessee not fully and truly disclosing all material facts necessary for completion of assessment for the relevant assessment year without considering the fact that the assessing officer recorded that the assessee did not file any information regarding incidence of capital gains?

2. Whether the Tribunal was correct in holding that the initiation of reassessment has been merely on the basis of change of opinion and is not without appreciating that no opinion was formed in the original assessment on the issue and hence change of opinion does not arise?"

2. We have heard Mr.K.V.Aravind, learned Counsel for the appellants-Revenue and Mr.A.Shankar, learned Counsel for the respondent-assessee.

3. We may record that the Tribunal in its order dated 21.11.2014 (Annexure 'C') while dealing with the

said aspects has observed from paragraph 12 to paragraph 26 as under:

> "12. It could be seen from the facts narrated as above that the proceeding u/s. 147 of the Act were sought to be initiated after a period of four years from the end of the relevant assessment year. It is also clear from the facts narrated as above that in the case of assessee for the A.Y. 2005-06, an order of assessment u/s. 143(3) of the Act had already been made. Therefore, proviso to section 147 of the Act will apply.
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> 13. It can also be seen from the reasons recorded by the AO for initiating proceedings u/s.147 of the Act, that the narration in para 1 to 9 of the reasons recorded are facts which were well within the knowledge of the AO while completing the original assessment proceedings u/s.143(3) of the Act. The joint development agreement between the Assessee and PEPL was taken note by the AO in the order passed u/s.143(3) of the Act. The narration in para-10

in the reasons recorded by the AO relate to application of the provisions of Sec.45(2) of the Act. As we have already seen the Assessee held the Whitefield property as investment and converted the same as stock-in-trade of business. This fact has also been recorded by the AO in the order of assessment passed u/s.143(3) of the Act. Sec.45(2) of the Act provides that the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him. The taxable event for application of Sec.45(2) is conversion of capital asset into stock-in-trade of business. The point of time at which tax is levied is the year in which the stock-in-trade is sold. When the original assessment was completed u/s.143(3) of the Act, the AO did not think it fit to invoke provisions of Sec.45(2) of the Act either because he overlooked the applicability of those provisions or because he thought that the point

of time at which tax is to be levied u/s.45(2) of the Act, viz., sale of the stock-in-trade had not occurred during the previous year. In the reasons recorded by the AO, the AO makes a reference to the provisions of Sec.45(2) of the Act and claims that the said provisions are applicable because the assessee had entered into agreement for development of the Whitefield property on 5.2.2005 with M/S.PEPL and further executed a power of attorney on 01/03/2005 in favour of M/s. PEPL for transfer of stock for development. According to the AO, the above act by the Assessee amounts to transfer/relinquishment /sale of stock by the Assessee to M/S.PEPL. According to the AO, the consideration so received has to be brought to tax as capital gains as per the provisions of the income tax Act. In para 12 to 15 of the reasons recorded the AO has narrated as to how capital gain had to be computed. In para-16 of the reasons recorded the AO has referred to judicial pronouncements wherein a view has been expressed that whenever property is given on Joint Development, the date of transfer would be the date of the Joint Development

Agreement for the purpose of levy of capital gains tax. In the remaining paragraphs, the AO has computed capital gain that has to be brought to tax which in his opinion has escaped assessment.

14. On the facts as narrated above and on the basis of provisions of section 147 as well as proviso to section 147 of the Act, the ld. counsel for the assessee contended as follows:-

a) Initiation of reassessment proceedings is bad in law because proviso to Sec.147 will apply in the present case and therefore the initiation of reassessment proceedings can be only if there was failure on the part of the assessee to fully and truly disclose material facts necessary for assessment of income for AY 05-06.

b) Initiation of reassessment proceedings are merely on a change of opinion and therefore bad in law.

14.1 On point (a) as above, the learned counsel for the Assessee submitted that the fact that assessee owned 100.02 acres of land in Whitefield and the fact that the aforesaid property was treated as investment as on 31.3.2004 and shown as stock-in-trade as on 31.3.2005 are all facts within the knowledge of the AO, while completing the original assessment u/s. 143(3) of the Act. The fact that the property was subject matter of the joint development agreement ("JDA") between the assessee and PEPL under an agreement dated 5.2.2005 to develop the same as a residential complex by name 'Shantiniketan' is also within the knowledge of the AO. All the relevant books of account as well as agreements had been filed before the AO. The fact that the land which was held as investment in A.Y. 2004-05 was converted into stock-in-trade during the previous year relevant to A.Y. 2005-06 was also well within the knowledge of the AO. These facts have been duly recorded by the AO in the order of assessment passed u/s. 143(3) dated 31.12.2007.

14.2 Our attention was drawn to the provisions of section 147 of the Act and proviso to section 147 which reads as under:-

"147: Income escaping assessment.
If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the

relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section
(1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year:"

14.3 As per the proviso to section 147 of the Act, where an assessment u/s. 143(3) of the Act has been made in any assessment year and if after expiry of four years from the end of the relevant assessment year, action is sought to be taken u/s. 147 of the Act, such action can be only in cases where income chargeable to tax has escaped assessment for such assessment year, by reason of failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment for that assessment year. He drew our attention to the reasons recorded by the AO u/s. 147 of the Act before issue of notice u/s. 148 of the Act and submitted that in the reasons so recorded by

the AO, there has been no allegation that there was escapement of income due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of income of the assessee for A.Y. 2002-03.

14.4 Our attention was also drawn to the decision of the Hon'ble Karnataka High Court in the case of CIT and ACIT v. *Hewelett Packard Digital Global Solutions Ltd., ITA No.406 of 2007, judgment dated 19.09.2011,* wherein the Hon'ble Karnataka High Court after making a reference to the decision of the Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd. v. R.B. Wadkar (2004) 137 Taxmann 479 (Bom)* observed as follows:-

> "7. It is observed in the said judgment that the reason recorded by the Assessing Officer no where state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is for the Assessing Officer to disclose

and open his mind through reasons. He has to speak through his reasons. It is for the Assessing Officer to reach the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the-concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose, his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The order passed by the Assessing Authority did not state anywhere that there was a failure on the part of the assessee to disclose fully and truly all material facts

necessary for the assessment of that year. All that has been stated in the order is that the assessee has appended the note and at no point of time, the assessee has disclosed as to the nexus between the amount of Rs. 10,06,617/- and the 10A unit. The disclosure has to be full and true. Both the criteria have to be met. In the assessee's case, by failing to bring out the nexus between the 10A unit and the interest income, the assessee has not discharged its responsibility of furnishing full disclosure of facts. As set out above, the note clearly sets out the interest income earned by the STP unit and the claim of the assessee for exemption under Section 10A. It is not the requirement of law that further the assessee should show the nexus between the amount claimed and 10A unit. When he has categorically stated that the interest, which is earned from STP unit, is eligible for exemption under Section 10A, even that nexus is manifest. The Assessing

Authority has not properly applied his mind towards the statutory provisions and has not taken into consideration that the original assessment passed under Section 143(3) which was also reopened once and adjustment was made. It is for the second time, he was raising all these objections. When admittedly the second reopening of the assessment is beyond four years, under law, it is barred by time and the findings recorded by the Tribunal is legal and valid and does not suffer from any legal infirmity. In that view of the matter, no substantial question of law arises for consideration in these appeals. Accordingly, the appeals are dismissed."

14.5 Our attention was drawn to the decision of the Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd. Vs. DCIT, 360 ITR 527 (Guj) wherein the Hon'ble Gujarat High Court held:

" It is required to be noted that in the present case notice u/s 148 of the Act had been issued on 27/4/2011 in relation to the Assessment Year 2005-06. Hence, admittedly the same had been issued after expiry of a period of four years from the end of the relevant assessment year. Under the circumstances, in light of the proviso to section 147 of the Act, in case, where assessment has been framed under section 143(3) of the Act, no action can be taken under section 147, unless income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for the assessment year. There was not even a whisper to the effect that income has escaped assessment on account of any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. Even while considering the objections raised by the assessee and replying to the assessee, there was no such case pleaded on behalf of the revenue even in the Affidavit-in-reply filed, there was no allegation of any such failure on

the part of the assessee. The AO was not in a position to satisfy the Court with respect to compliance / satisfaction of the requirement of the proviso to section 147 of the Act. Under the circumstances, it was apparent that the requirement of the proviso to section 147 was not satisfied. **Secondly, in absence of any satisfaction having been recorded by the Assessing Officer that the income has escaped by reason of the failure on the part of the assessee to disclose fully and truly all mater ial facts necessary for its assessment for the Assessment Year under consideration, assumption of jurisdiction u/s 147 of the Act was failure and therefore, the impugned notice u/s 147 of the Act, cannot be sustained.** Identical question came to be considered by the Division Bench of this Court in the case of Kanak Fabrics Vs. Income Tax Officer in Special Civil Application No. 335 of 2001 and in absence of any such satisfaction by the Assessing Officer, the Division Bench of this Court has quashed and set aside the notice of reassessment u/s 148. In view of the above

and for the reasons stated above notice of reassessment u/s 148 quashed and set aside."

(emphasis supplied)

14.6 It was thus submitted by the ld. counsel for the assessee that reopening of the assessment should be held to be bad in law, as the AO in the present case has not recorded specifically that escapement of income was due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the A.Y. 2005-06. It was also submitted that factually there was no failure on the part of the Assessee to disclose fully and truly all material facts necessary of his assessment for AY 05-06. In this regard our attention was drawn to the fact that all facts relating to the Joint Development Agreement between the Assessee and PEPL had be duly disclosed and even considered by the AO while concluding the original assessment proceedings. It was emphasized that no new material whatsoever has been referred to in the reasons recorded.

15. The ld. DR, on the other hand submitted that there was a failure on the part of the Assessee to fully and truly disclose material facts and in this regard drew our attention to para-19 of the reasons recorded wherein the AO has recorded the fact that the Assessee has not filed any information to the effect that there was incidence of capital gain u/s. 45(2) of the Act, as per the return of income. Further reference was also made to Expln.1 to Sec.147 of the Act which lays down that merely filing of documents before AO from which facts regarding escapement of income could be gathered, will not necessarily amount to disclosure of all facts by an Assessee.

Further reference was made to the fact that while completing the original assessment u/s.143(3) of the Act there was no discussion regarding applicability of Sec.45(2) of the Act. Reliance was placed on page-10 and 11 of the CIT(A)'s order wherein the CIT(A) has upheld the action of the AO in initiating proceedings u/s.147 of the Act.

16. The ld. counsel for the assessee, in rejoinder, pointed out to Explanation 1 to section 147 of the Act, which reads as under:-

> "Explanation 1.— Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

17. According to him, Explanation 1 to section 147 will not be applicable in the present case because Explanation only lays down that production before the AO of account books or other evidence from which material evidence could with due diligence have been discovered by the AO "will not necessarily" amount to disclosure within the meaning of the foregoing proviso. The expression **"will not necessarily mean"** found in Expln.-1 as above, will only mean that one has to look into the facts and circumstances of the given case to come to a conclusion, whether there was failure on the

part of the assessee to fully and truly disclose all necessary facts for his assessment for that assessment year. The fact that the Assessee filed all documents and accounts and other evidence from which material evidence could with diligence have been discovered by the AO, will not be conclusive in the matter. According to him, elaborate discussion in the order of AO while completing the original assessment will clearly show that there was a complete disclosure by the assessee of all material facts. According to him, there is nothing brought on record to show that there was failure on the part of assessee as contemplated by the proviso to section 147. Primary facts have been disclosed by the Assessee and the legal inferences to be drawn from such primary facts lies in the domain of the AO. The Assessee cannot therefore be said to have failed to disclose fully and truly material facts. In this regard, it was submitted by him that reasons recorded only mention the fact that assessee has not filed any information regarding capital gains u/s. 45(2) of the Act in the return of income filed. According to him, this allegation

cannot tantamount to an allegation by the AO that assessee has failed to fully and truly disclose all material facts.

18. On the reopening of assessment being merely on a change of opinion, the learned counsel for the Assessee submitted that while completing the original assessment the AO was fully aware of the fact that the land at Whitefield was converted into stock in trade during the previous year relevant to AY 05-05 and the fact that the said property was subject matter of a Joint Development Agreement with Prestige Estates and Properties Ltd. It was his contention that the AO while completing the assessment did not deem it proper to consider the act of the Assessee entering into a Development agreement in respect of the property as resulting to a transfer giving raise to charge of capital gain u/s.45(2) of the Act. It was pointed out by him that in the reasons recorded the AO has not referred to any material which had come into his possession subsequent to the passing of the order u/s.143(3) of the Act based on which he

entertained belief that Development Agreement resulted in a Transfer and thereby provisions of Sec.45(2) of the Act became applicable. There being no material which has come to the possession of the AO since the conclusion of the original assessment proceedings, it was not possible for the AO to change or form a different opinion on the same set of facts and resort to reopening of a completed assessment. According to him, doing so will result in the AO reviewing his own order which is not legally permissible. According to him even assuming that there was a failure on the part of the AO in this regard, the appropriate action can only be under section 263 of the Act. It was his submission that the law is well settled that to assume jurisdiction u/s. 147 of the Act, there should be reason to believe that income chargeable to tax has escaped assessment. Such reason to believe cannot be on a mere change of opinion. This position is well settled by the decision of the Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India Ltd., 320 ITR 561 (SC)*. Attention was also drawn to a decision of the Hon'ble Karnataka High Court

in the case of *CIT Vs. Hardware Trading Co., 248 ITR 673 (Karn)* laying down identical proposition.

19. The ld. DR submitted that in the original order of assessment, the AO had not made any discussion with regard to applicability of section 45(2) of the Act and therefore it cannot be said that there was any expression of opinion in the order originally passed u/s. 143(3). It was his submission that there cannot be any change of opinion in the given circumstances.

20. With regard to the contention of the ld. DR regarding change of opinion, ld. counsel for the assessee brought to our notice the following observations of the Hon'ble Supreme Court in the case of *Kelvinator of India Ltd.*:-

> "On going through the changes, quoted above, made to s. 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and

fulfillment of the said conditions alone conferred jurisdiction on the AO to make a back assessment, but in s.147 of the Act (w.e.f. 1st April, 1989), they are given a go by and only one condition has remained, viz., that where the AO has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post 1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the

> Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the AO. Hence, after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

He laid emphasis on the fact that there was absence of tangible material in possession of the AO to come to conclusion that there was escapement of income from assessment. According to him, the present action of the AO is clearly a case of resort to reassessment proceedings merely on change of opinion.

21. We have given a very careful consideration to the rival submissions. As we have already seen the Assessee held the Whitefield property as investment and converted the same as stock-in-trade of business during the previous

year relevant to AY 05-06. This fact has also been recorded by the AO in the order of assessment passed u/s.143(3) of the Act. Sec.45(2) of the Act provides that the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him. The taxable event for application of Sec.45(2) of the Act is conversion of capital asset into stock-in-trade of business. The point of time at which tax is levied is the year in which the stock-in-trade is sold. When the original assessment was completed u/s.143(3) of the Act, the AO did not think it fit to invoke provisions of Sec.45(2) of the Act either because he overlooked the applicability of those provisions or because he thought that the point of time at which tax is to be levied u/s.45(2) of the Act, viz., sale of the stock-in-trade had not occurred during the previous year. It is clear from a perusal of the order u/s. 143(3) of the Act dated 31.12.2007

that AO was fully aware of the fact that property at Whitefield which was held as investment got converted into stock-in-trade during the previous year relevant to A.Y. 2005-06. It is also clear from the order u/s. 143(3) of the Act that AO was fully conscious of the fact that property at Whitefield having been given under joint development agreement to PEPL on 5.2.2005. In the said assessment order, the AO despite knowing the fact that property at Whitefield was stock-in-trade of the business of the assessee and that it was subject matter of joint development agreement, by which property was to be developed as a residential complex, did not consider the JDA dated 5.2.2005 as giving rise to a transfer within the meaning of section 45(2) of the Act. In the reasons recorded by the AO before issue of notice u/s. 148 of the Act, the AO has come to the conclusion that by virtue of JDA dated 5.2.2005, there was a transfer of the capital asset giving rise to capital gains u/s. 45(2) of the Act. In this regard, the AO has relied on two important factors viz., (i) assessee has executed POA in favour of developer and the fact that

assessee received refundable and nonrefundable deposits under the JDA, and (ii) the fact that several courts have held that capital gains is liable to tax on account of JDA entered into by the land owners with the builder on handing over of the possession of the property for joint development. In coming to the aforesaid conclusion, the AO has placed reliance on the decision of the Hon'ble Bombay High Court in the case of *Chaturbhuj Dwarkadas Kapadia v. CIT, 260 ITR 491 (Bom)* rendered on 13.2.2007, which was much before when the AO concluded the original assessment proceedings u/s. 143(3) of the Act on 31.12.2007. The other decision referred to by the AO in the reasons recorded is *CIT v. T.K. Dayalu, 202 Taxman 531*. This decision was rendered on 20.6.2011, after the conclusion of the original assessment proceedings. The decision rendered subsequent to the original assessment proceedings will not mean that assessee did not fully and truly disclose material facts. If reassessment proceedings are initiated on the basis of a subsequent judicial decision, then that would also be a case of

change of opinion, as was held by the Hon'ble Bombay High Court in the case of *Sesa Goa Ltd. v. JCIT, 294 ITR 101 (Bom)* on which reliance was placed by ld. counsel for the assessee.

22. In the present case, the facts on record and reasons recorded clearly show that all facts were available before the AO when he completed the original assessment proceedings u/s. 143(3) of the Act. There is no tangible material which has come to the possession of the AO justifying initiation of reassessment proceedings. On the facts and circumstances of the present case, we are of the view that initiation of reassessment proceedings has been merely on the basis of change of opinion and in view of the law laid down by the Hon'ble Supreme Court in the case of *Kelvinator of India Ltd.* (supra), initiation of reassessment proceedings has to be held as not proper.

23. We are also of the view that initiation of reassessment proceedings will have to be held

as invalid for the reason that reasons recorded by the AO do not spell out that escapement of income was due to the assessee not fully and truly disclosing all material facts necessary for completion of assessment for the relevant assessment year. In this regard, we are also of the view that allegations in para 19 of the reasons recorded do not spell out the belief that there was a failure on the part of the assessee to fully and truly disclose all material facts. In fact, the assessee had disclosed all facts in the original assessment proceedings u/s. 143(3) of the Act.

24. With regard to reliance placed by the ld. DR on Explanation to section 147, we are of the view that Explanation 1 only lays down that facts and circumstances of each case will have to be looked into to ascertain as to whether there was failure on the part of the assessee to fully and truly disclose material facts. As rightly contended by the ld. counsel for the assessee, the expression *"will not necessarily"* in Explanation 1 will only mean that facts and circumstances of each case will have to be seen

as to whether production of books of account and other evidence before the AO will amount to full and true disclosure of material facts. In the present case, as we have already seen, evidence was produced before the AO in the course of the original assessment proceedings u/s.143(3) of the Act and the same was perused by the AO and he had not chosen to draw any conclusion that there was a transfer by the assessee to PEPL. The fact that assessee was following completion method of accounting for income from the JDA, has also been acknowledged by the AO. In the given circumstances, we are of the view that Explanation 1 cannot be resorted to by the revenue. Explanation-1 to Sec.147 cannot be read in a manner so as to override Proviso to Sec.147 of the Act.

25. Before us, the ld. DR had placed reliance on the order of the CIT(Appeals) on the issue of validity of initiation of reassessment proceedings. In our view, the ld. CIT(Appeals) has merely proceeded on the basis that income arises on executing joint development

> agreement to the assessee. He has not addressed the issue with regard to applicability of proviso to section 147 of the Act or the question whether reassessment proceedings were initiated merely on change of opinion.
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> 26. We are, therefore, of the view that in the given facts and circumstances of the case, initiation of reassessment proceedings u/s 147 of the Act is held to be illegal and consequently, order passed u/s. 147 of the Act is cancelled on this ground."

4. As such, whether it was a case of change of opinion or the non-disclosure of true and correct facts, if considered in light of the report, one may say that such may fall in the arena of question of fact which may include the consideration of the earlier proceedings of the assessment. The Tribunal having found that the relevant material including that of transfer by the assessee to PEPL was on record and therefore it was not a case where there was non-disclosure of true and

correct facts. The aforesaid finding, in our view, could be said to be rather pertaining to the questions of fact to be examined on the basis of the material on record which would fall outside the judicial scrutiny in the present appeal.

5. On the questions of law, the Tribunal has gone by the decision of the Apex Court in case of ***Commissioner of Income Tax Vs. Kelvinator of India Ltd.,*** reported at **(2010) 320 ITR 561** in addition to other decisions of Karnataka High Court. In our view, if the Tribunal has taken the view based on the decision of the Apex Court and also of the jurisdictional High Court i.e., High Court of Karnataka, we do not find that any substantial questions of law would arise for consideration, as sought to be canvassed.

6. Under the circumstances, the appeal is dismissed.

Sd/-
JUDGE

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