

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
MS. MADHUMITA ROY, JUDICIAL MEMBER**

<b>ITA No. 420/Bang/2023</b>
<b>Assessment Year : 2009-10</b>

M/s. Bharat Electronics Ltd., Registered Office, Outer Ring Road, Nagawara, Bangalore – 560 045. <b>PAN: AAACB5985C</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, LTU, Circle – 1, Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Richa B, CA & Shri Hemasundar P, CA
Revenue by	:	Dr. G. Manoj Kumar, CIT (DR)

Date of Hearing	:	12-09-2023
Date of Pronouncement	:	20-09-2023

**ORDER**

**PER MADHUMITA ROY, JUDICIAL MEMBER**

The instant appeal filed by the assessee is directed against the order dated 29.03.2023 passed by the NFAC, Delhi arising out of the order dated 28.03.2016 passed by the Ld.DCIT, Large Tax Payers Unit, Circle – 1, Bangalore u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2009-10 whereby and whereunder the addition made in the reassessment proceeding u/s. 148 of the Act for the A.Y. 2009-10 has been confirmed.

2. At the very threshold of the matter, the Ld.Advocate appearing for the assessee advanced her argument on the very point of the maintainability of the proceeding initiated u/s. 148 of the Act. The crux of the submission of the Ld.Advocate appearing for the assessee is on two fold.

According to her, though upon receipt of the notice u/s. 148 of the Act dated 01.10.2014 alleging escapement of assessment in regard to a sum of Rs.48,47,73,370/- being the deduction towards the provision for customer disallowances and disallowance u/s. 35(2AB) to the extent of Rs.1,02,76,500/-, the appellant duly made objections dated 28.10.2014 before the Ld.AO on merit on two counts as raised by him, the Ld.AO proceeded with the reassessment proceeding without first disposing of the said application preferred by the assessee dated 28.10.2014. As the Assessing Officer is bound to dispose of the said objection by passing a speaking order but proceeded to pass the order of assessment, the entire proceeding is not in terms of the statutory provisions and the impugned order is, therefore, bad in law and liable to be quashed. Secondly, it was argued by the Ld.Advocate appearing for the assessee that the issues as raised by the Ld.AO while reopening assessment u/s. 148 of the Act were already been dealt with during the original assessment proceeding. Upon examining the documents furnished by the assessee in support of the claim made out the original assessment was framed and in the absence of any new material given to the knowledge of the assessing officer subsequent to the original assessment proceedings,

reopening on the same set of facts was a clear case of change of opinion and the same is not, therefore, permissible. In this regard she has relied on very many following judgments including the judgment passed by the Hon'ble Supreme Court in case of CIT vs. Kelvinator of India Ltd. reported in (2010) 187 Taxman 312 (SC):

- *CIT v. Kelvinator of India Ltd [2010] 187 Taxman 312 (SC)*
- *Deepak Extrusions (P.) Ltd. vs. Deputy Commissioner of Income-tax, Central Circle 1(4), Bangalore [2017] 80 taxmann.com 77 (Karnataka)*
- *Hewlett Packard Financial Services (India) (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 152 taxmann.com 559 (Karnataka)*
- *M/s. Mahindra Electric Mobility Ltd. v. ACIT [IT Appeal No. 641 (Bang.)*
- *Provimi Animal Nutrition India Pvt. Ltd. v. Principal Commissioner of Income Tax, Bangalore [2021] 124 taxmann.com 73*

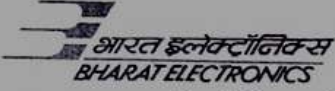
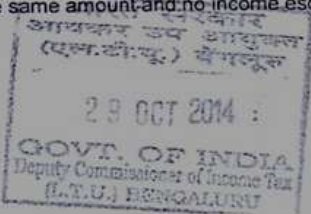
3. The ultimate prayer made by the Ld.AR is, therefore, to quash the impugned reassessment proceeding initiated u/s. 148 of the Act as without jurisdiction and not maintainable in the eye of law. On the other hand, the Ld.DR relied upon the order passed by the authorities below.
4. We have heard the rival submissions made by the respective parties, we have also perused the relevant materials available on record including the orders passed by the authorities below in different stages.
5. The brief facts leading to this case is this that the appellant filed its original return of income declaring total income at Rs.1004,29,76,670/-. Notice u/s. 143(2) was issued and served upon the appellant; followed by a revised return on

18.03.2011 declaring total income at Rs.1004,00,57,290/-. The appellant duly complied with all the notices by furnishing required information and documents as called for by and under the submissions dated 09.06.2011. By and under a further notice dated 07.06.2011 u/s. 142(1), the assessee was directed to submit the information relating to the deduction claimed u/s. 35(2AB), provision for customer disallowance, enhanced depreciation and disallowance u/s. 14A of the Act. The said assessment proceeding was completed with the following addition:

- a) Enhanced Depreciation of Rs.7,59,02,526/-
- b) Disallowance of Rs.6,00,425/- u/s. 14A r.w.Rule 8D of the Act

6. During the appellate proceedings, the disallowance of expenditure u/s. 14A stood upheld but the enhanced depreciation was allowed. Further that the TDS credit after due verification was also partly allowed whereupon the appeal before the Tribunal was filed by the appellant which was finalised upon allowing the whole TDS credit after due verification.
7. Thereafter on 01.10.2014 a notice u/s. 148 of the Act seeking to reopen the assessment was served upon the assessee. The assessee was also served with the copy of the reasons as asked for; On 28.10.2014, the assessee made his submissions explaining the issues before the Ld.AO with a prayer for dropping of the proceeding initiated u/s. 148 of

the Act. We have gone through the objection dated 28.10.2014 preferred by the assessee to the DCIT, Bangalore, a copy whereof has been submitted before us which is also reproduced hereinbelow:

<p>BEL/IT/AY 2009-'10 28.10.2014</p> <p>To, The Deputy Commissioner of Income Tax Large Tax Payers Unit (LTU), JSS Towers, 100 Feet Ring Road, Banashankari IIIrd Stage BANGALORE 560 085</p> <p>Dear Sir,</p>	 <p><b>भारत इलेक्ट्रॉनिक्स लिमिटेड</b> (भारत सरकार का उद्यम, रक्षा मंत्रालय) पंजीकृत कार्यालय आउटर रिंग रोड, नागवारा, बेंगलूर - 560 045, भारत</p> <p><b>Bharat Electronics Limited</b> (A Govt. of India Enterprise, Ministry of Defence) Registered Office : Outer Ring Road, Nagavara, Bangalore - 560 045, INDIA. फोन/Phone : +91 80 25039300 / 25039242 फैक्स/Fax : +91 80 25039233 वेब/Web : www.bel-india.com</p>
<p>Kind Attention: Mr.K.R.Narayana, I.R.S</p> <p>Sub: Notice u/s.148 of the IT Act, 1961 for the AY 2009-10 dt. 01.10.2014.</p>	
<p>This has reference to your letter dated <u>16.10.2014</u> providing us the reasons recorded before issue of notice u/s148 in response to our request vide letter dated 14.10.2014. We have gone through the reasons recorded for re-opening of the Assessment for the year. Our submissions in response to the reasons recorded before issue of notice u/s148 are given below:</p>	
<p><b>Reason 1:</b></p> <p>A sum of Rs.48,47,73,370/- being the deduction towards provision for customer disallowances has been debited to P&amp;L account. The same amount is also reduced in the computation of income statement. This has resulted in double deduction of the same amount. Hence income is under assessed to the extent of Rs.48.47 crore:</p>	
<p><b>Our submission:</b></p> <p>An amount of Rs. 43,33,71,424/- being net provisions created for the year on a/c of various provisions (provisions for doubtful debts, doubtful loans and advances, material in transit, obsolescence, provisions for performance guarantee etc.) was disallowed in the Revised Return filed by the Company as per Annexure-IV of the Computation of Income submitted vide our letter dated 28.06.2011 based on which regular Assessment was held. Since the amount of Rs. 43,33,71,424/- is being the difference of opening and closing balance of all the provisions made for the year, it includes provisions created for the year as well as provisions written off and written back.</p> <p>The net provisions disallowed as mentioned above, includes the net provisions on a/c of doubtful debts and customer disallowances of Rs.24,96,52,339/- (closing balance Rs.348,35,66,292/- less opening balance of Rs.323,39,13,953/-). This amount is the net off of the provisions made during the year for Rs.72, 76,50,096/- less provisions withdrawn/written off.</p> <p>Out of the provisions created for the year of Rs.72,76,50,096/-, on a/c of provisions for doubtful debts and customer disallowance, net provisions for customer disallowance is Rs.48,47,73,370/-. The detailed working was given at annexure IV of Computation of Income. Since the total provisions for doubtful debts and Customer disallowance was added back, net provision for customer disallowance of Rs.48,47,73,370/- was claimed separately. Hence there was no double deduction of the same amount and no income escaped assessment.</p>	
	

**Reason 2:**

In respect of Income from Wind Mill Energy, the assessee has arrived at income from Wind Mill of Rs.5,59,07,000/- in P&L account at schedule 17. This is after reducing the concerned expenditure. However in computation vide Annexure-I loss of Rs.2,67,60,535/- is claimed. Thus the income is under Assessed to that extent:

**Our submission:**

The Company is having two Wind Mill Plants at Davangere and Hassan. The Gross Income from the Wind Mill Business is Rs.5,59,06,797/- (Rs.3,09,88,169/- plus Rs.2,49,18,628/- for Davangere and Hassan respectively) for the year which was adjusted from the power and fuel expenditure as per Schedule 17 of Annual Report.

However the Company maintains separate Memoranda Accounts duly audited by the statutory Auditor of the Company. A copy of the Memoranda Accounts is enclosed. As per the Memoranda Accounts for Wind Mill Business for both the plants after adjusting expenditure of Rs.1,24,85,498/- (Rs.71,39,803/- plus Rs.53,45,695/- for Davangere and Hassan respectively) and depreciation of Rs.4,58,36,756/- (Rs.1,95,02,995/- plus Rs.2,63,33,761/- for Davangere and Hassan respectively) the loss from the Generation of Wind Mill business is Rs. 24,15,457/- [Rs.43,45,371/- plus Rs.(-)67,60,828/ for Davangere and Hassan respectively]. For the Computation of the Business Income from Manufacturing & Sales of Electronic Business, the profit before tax of the company of Rs.1096,83,59,004/- was increased by Rs. 24,15,457/- being the loss from the Wind Mill Business, since profit before tax for the Company includes loss from the Wind mill business also.

After add back and allowable deductions, the Business Income from Manufacturing & Sales of Electronic Business is Rs.1006,68,17,821/-. The Taxable Income from Generation of Power by Windmill Business is Rs. (-)2,67,60,535/-. Detailed working was given at Annexure-I of Computation of Total Income for the year.

The business loss of Rs.2,67,60, 535/- from the Wind Mill business was adjusted from the business profit of Rs.1006,68,17,821/- from Manufacturing & Sales of Electronic Business. Accordingly total Business Income for the Company is Rs.1004,00,57,286/- on which the Company paid tax.

Though the Company maintained separate Memoranda Accounts for Windmill Business no benefit u/s 80-IA was claimed by the Company for the year, since there was a business loss for the Wind Mill business. Thus no income was under Assessed.

From the above clarifications, it is clear that there were neither double deduction nor any income escaped assessment. Hence the Company objects to the proposed reopening.

In view of no omission or commission, the proceedings initiated under section 148 of the IT Act should be dropped. If any further clarification required, you may kindly feel free to let us know and we will be happy to clarify you.

Thanking you,

Yours faithfully,

For M/s Bharat Electronics Ltd



(Sanjoy Kumar Pal)


Sr. Dy. General Manager (Fin & Tax)

Encl: As above

8. The case of the assessee is this that this particular submissions is nothing but objection of the proceeding

initiated by the Ld.AO u/s. 148 of the Act; the same was not disposed of at the very threshold of the matter in terms of the provisions of the law, instead, the Ld.AO proceeded with the reassessment proceeding and finalised the same with the order as above. Upon perusal of the order passed by the Ld.AO, it appears that the Ld.AO duly mentioned the said objection dated 28.10.2014 made by the appellant to the initiation of the proceeding u/s. 148 of the Act; such observation is appearing at page 2, paragraph 3 of the assessment order. Once the Assessing Officer has taken note of the said objection filed by the appellant and mentions the same in the assessment order itself, we do not find any reason to undo the reassessment proceeding merely because of the observation has not been made independently before proceeding with the reassessment proceeding by the Ld.AO. Infact, we decline to accept such contention made by the assessee that since the objection has not been dealt with and disposed of at the very threshold by the Ld.AO, the entire proceeding is vitiated and thus liable to be set aside. Rather once the objection was taken into consideration in its proper perspective which is also reflecting while dealing with the matter on merit, by the Ld.AO upon consideration of the said objection dated 28.10.2014, in our considered opinion the same is not causing any prejudice to the appellant and therefore, the said ground is found to be devoid of any merit and thus dismissed.

9. So far as the maintainability of the reopening on the same set of facts is concerned, we find that the assessee was issued a notice u/s. 142(1) dated 07.06.2011, the copy whereof has been annexed in the paper book filed before us. The same is reproduced hereinbelow.

  
 ASSISTANT COMMISSIONER OF INCOME TAX  
 Large Tax Payers Unit (LTU), JSS Towers,  
 100 Feet Ring Road, Banashankari IIIrd Stage  
 BANGALORE - 560 085  
 Tel: Epabx - 080 26893900; Direct - 26893949

*20/146*  
*G.M.F.) : may kindly see*  
*Recd on 9/6/2011*  
*ASD*  
*9/6*

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Ref : AAACB5985C / Asst/ACIT/11-12 Dated : 07<sup>th</sup> June 2011

**NOTICE UNDER SECTION 142 OF THE INCOME TAX ACT, 1961.**

To

The Managing Director,  
 M/S Bharat Electronics Limited  
 Bharat Electronics Limited Corporate Office  
 Outer Ring Road  
 Nagavara  
 Bangalore  
 Karnataka 560045

Kind attention: Sri. **Sanjay Pal**

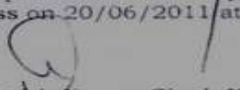
Sir,


In connection with the assessment of M/S Bharat Electronics Limited for the assessment year 2009-10, you are required to:

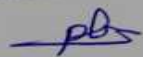
(a) ~~Prepare a true and correct return of your firm's/company's income in respect of which you are assessable under the Income tax act, 1961 during the previous year relevant to the assessment year mentioned above. The return should be in the appropriate form as prescribed in Rule 12 of the Income tax Rules, 1962. A blank return form is enclosed. It should be duly verified and signed in accordance with the provisions of section 140 of the said Act and delivered at my office on or before.~~

(b) ~~Produce or cause to be produced before me at my office at JSS Towers, 100 Feet Ring Road, Banashankari III Stage, Bangalore on at / the accounts and /or documents specified .~~

(c) Furnish in writing and verified in the prescribed manner information called for as per annexure and on the points or matters specified therein before me at my office at the above address on 20/06/2011 at 12:00 noon.

  
 (Satish Kumar Singh N)  
 Assistant Commissioner of Income Tax,  
 LTU, Bangalore



**TRUE COPY**  
  
 CA. HEMASUNDARA RAO,  
 M. No : 260111

10. In reply the appellant duly filed the details as asked for particularly the details of capital expenditure on which deduction u/s. 35(2AB) is claimed and details of provisions for customer disallowance created during the year, the same is also annexed to the paper book filed before us. The relevant extract whereof is reproduced hereinbelow.

**BHARAT ELECTRONICS LTD.**  
Nagavara, Outer Ring Road, Bangalore 560 045  
Assessment year 2009-2010  
AAA CB 5985 C

1. Revised statement of computation of income
2. Revised report of audit in Form 3CD if any
3. Revised Return of Income:
  - i. Schedule BP; Part A; Column 26: Reconciliation of the deduction under section 35 with the computation of income
  - ii. Schedule BP; Part A; Column 28: Reconciliation of the deduction under section 43B with Annexure IX of the computation of income
  - iii. Schedule BP; Part A; Column 30: Details of 'Other Deductions'
4. Computation of Income:
  - i. Annexure III: Details of the capital expenditure on which deduction under section 35(2AB) is claimed
  - ii. Annexure III:
    - a. Copy of the certificate from DSIR
    - b. Details of capital expenditure for which deduction is claimed under section 35(1)(iv)
    - c. Confirmation that depreciation mentioned in this Annexure is not on the capital expenditure on which deduction is claimed under section 35
  - iii. Annexure IV: Reconciliation of balance of provision for doubtful debts as on 31.03.2009 with the P&L Account

- iv. Annexure IX: Justification for claiming deduction towards amortization of leasehold land
- v. Annexure IX: Schedule V of Annual Accounts
- vi. Annexure X: Confirmation that the expenditure on VRS was first disallowed in the respective assessments (Refer the Note in the Annexure that the amounts paid have been fully charged off in the respective years)
- vii. Annexure XI: Reconciliation of the deduction under section 43B with the return of income (Schedule BP; Column 28)
- viii. Justification for reducing provision for customer disallowance
- ix. Details of the provisions for customer disallowance created during the year

5. 3 CD Report:

- i. Annexure III; Depreciation Schedule:
  - a. Copy of the certificate for claiming enhanced depreciation under Rule 5(2)
  - b. Reconciliation of sale of assets with the cashflow statement
  - c. Clarification if the assets on which additional depreciation is claimed include those which are eligible for deduction under section 35(2AB)
- ii. Annexure IX: Confirmation that interest has been paid for the delay in remitting TDS

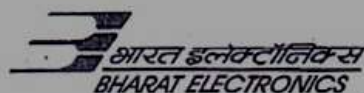
6. BS and P&L Account:

- i. Clarification if any carbon credit is claimed and if so, accounting treatment of the same
- ii. Schedule 3: Treatment of Government grants for research to calculate the deduction under section 35(2AB)

- iii. Schedule 5: Treatment of assets acquired for sponsored research in the calculation of depreciation as per Income-tax Act
- iv. Schedule 13: Reconciliation of provision for contingencies towards long term contracts
- v. Schedule 17:
  - a. Reconciliation of various provisions debited to the Profit and Loss account with the computation of income
  - b. Details of miscellaneous expenses
- vi. Schedule 18: Note on deductibility of interest due to micro and small enterprises
- vii. Schedule 20(B): Details of prior period expenses and justification for claiming the same as deduction
- viii. Schedule 23; Para 5: Note on the impact of the change in the accounting policies on the taxable income
- ix. Cashflow statement: Reconciliation of sale of assets with the depreciation schedule (Annexure III to the audit report in Form 3 CD)

BEL/IT/AY 2009-'10  
20.07.2011

The Assistant Commissioner of Income Tax  
Large Tax Payers Unit (LTU), JSS Towers,  
100 Feet Ring Road,  
Banashankari IIIrd Stage  
**BANGALORE 560 0085**



**भारत इलेक्ट्रॉनिक्स लिमिटेड**

(भारत सरकार का उद्यम, रक्षा मंत्रालय)

पंजीकृत कार्यालय

आउटर रिंग रोड, नागवारा, बेंगलूर - 560 045, भारत

**Bharat Electronics Limited**

(A Govt. of India Enterprise, Ministry of Defence)

Registered Office :

Outer Ring Road, Nagavara

Bangalore-560 045, INDIA

फोन/Phone : +91 (080) 25039300 / 25039284

फैक्स/Fax : +91 (080) 25039233

वेब/Web : www.bel-india.com

Kind Attention: Mr.Satish Kumar Singh N.  
Sub: Income Tax Assessment for the AY2009-'10  
Ref: Notice U/s 142 dt. 07.06.2011

This has reference to your above referred Notice u/s 142 dt.07.06.2011 for the Income Tax Assessment for AY 2009-10. Further to our submission vide our letter dt.20.06.2011 and personal hearing attended on 20.06.2011 in your office we are submitting following scrutiny clarification as desired by you as per Sr. No. of your queries.

**3. Revised Return of Income:**

**i) Schedule BP; Part A; Column 26:**

In Column 26 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 123,42,89,000/- is shown as amount of deduction u/s 35 in excess of the amount debited to Profit and Loss account for expenditure on R&D.

As per Annexure III of Computation of Income total eligible expenditure U/s 35(2AB) of the Income Tax Act 1961, is Rs. 208,94,94,000/- (Rs 189,99,52,000/- is on account of Revenue and Rs. 18, 95, 42,000/- is on account of Capital Expenditure). U/s 35(2AB) of the IT Act 1961, deduction of 150% of total expenditures is available which comes to Rs. 313, 42, 41,000/-. Out of total Eligible expenditure u/s 35(2AB) only revenue expenditure for Rs. 189, 99, 52,000/- has been debited to P&L account. Balance of Rs.123,42,89,000/- (Rs. 313,42,41,000 less Rs 189,99,52,000/-) is shown as amount of deduction u/s 35(2AB) but not debited to P&L account.

**ii) Schedule BP; Part A ; Column 28:**

In Column 28 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 1,59,37,834/- is shown as deduction u/s 43B against pre-existed liability as on 01.04.2008 and paid during FY 2008-09.

Detail of same has been given in Annexure XI of Computation of Income for the year, which is as follow:

Customs Duty:	Rs. 1,11,90,968/-
Excise Duty:	Rs. 3,94,287/-
Sales Tax:	Rs. 22,86,653/-
Central Sales Tax:	Rs. 1,32,160/-
Service Tax:	Rs. 7,33,962/-
Tax on Works:	Rs. 11,84,270/-
Contribution to ESI:	Rs. 15,534/-

**Total** Rs. 1,59,37,834/-



The above amount is based on Annexure –VI of Form 3CD of the tax Audit Report.

iii) Schedule BP; Part A; Column 30: Detail of 'Other Deduction' Rs.4,89,55,441/-  
The total of other deduction has been taken from Computation of Income for the year. The detail of the same is enclosed at Annexure-1

#### 4. Computation of Income:

i) Annexure III : Details of Capital Expenditure on which deduction u/s 35(2AB) is claimed  
List of Capital Items on which deduction u/s 35(2AB) has been claimed is given at Annexure-'2'.

#### ii) Annexure III:

##### a. DSIR Certificate :

- i) Copy of Certificates No. (i) TU/IV-RD/2680/2007 dated 06.08.2007 and (ii) TU/IV-RD/1211/2007 dated 19.11.2007 received from DSIR is enclosed at Annexure-'3'  
ii) Copy of 3CM ref no; TU/IV-15(14)/35(2AB)/3CM/2010 dt.26.08.2010 received from DSIR is enclosed at Annexure-'4'

##### b. Detail of Capital Expenditure for which deduction is claimed u/s 35(1)(iv)

No Capital expenditure has been claimed u/s 35(1)(iv).

##### c. Confirmation that depreciation mentioned in this Annexure is not on the Capital Expenditure on which deduction is claimed under section 35:

Depreciation of Rs. 15,59,67,000/- which is shown in Annexure III of the Computation of Income is on account of the Capital items used for R&D purpose has been excluded in the Computation of Net Revenue Expenditure claimed u/s 35(2AB). This is reflected in Para'4' to Schedule 21 of Annual Report. U/s 35(2AB) of the Income Tax Act 1961, net revenue expenditure other than depreciation of Rs.15,59,67,000/- has been claimed in the Return.

##### iii) Annexure IV: Reconciliation of balance of provision for doubtful debts as on 31.03.2009 with the P&L Account:

The reconciliation of Provision for Doubtful Debts as on 31.03.2009 is as follow:

Particulars	Amount in Rs Thousand
Opening Balance as on 01.04.2008 (As Per Schedule 9 of Annual Report)	3233914
Add: Provision created during the year (As Per Schedule 17 of Annual Report)	727650
Less: Bad Debts & Advance written off charged to Provision (As per Schedule 17 of Annual Report)	263690
Less: Provision withdrawn –others (As per Schedule 14 of Annual Report)	214308
Closing Balance as per Schedule 9 of Annual Report	3483566

**iv) Annexure IX: Justification for claiming deduction towards amortization of leasehold land:**

Amortization of leasehold land is a periodical expenditure during the lease tenure and revenue in nature. It is allowable expenditure under the provisions of sec 37 of the Income Tax Act 1961.

**v) Annexure IX: Schedule V of Annual Accounts:**

Schedule V (Fixed Assets) of Annual Accounts is enclosed at Annexure-'5'. The detail of Leasehold land i.e. the opening balance, amortization during the year and closing balance is given in the separate line item in the schedule.

**vi) Annexure X: Confirmation for claiming expenditure on VRS paid during FY 2004-05:**

During FY 2004-05 (AY 2005-'06) VRS paid by the Company is Rs 31,17,63,980/-. The amount has been added back in the respective year Return of Income. A copy of the Computation of the above referred year is enclosed at Annexure '6'. U/s 35DDA of the Income Tax Act 1961, 1/5<sup>th</sup> of amount paid as VRS is allowed for 5 years including the year of payment. Accordingly 1/5<sup>th</sup> of the amount of VRS paid for the FY 2004-05 (AY 2005-'06) has been claimed during the year being the 5<sup>th</sup> Instalment as per Annexure-X of the Computation of Income.

**vii) Annexure XI: Reconciliation of deduction U/s 43B with Return of Income (Schedule BP; Column 28):**

In Column 28 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 1,59,37,834/- is shown as amount of deduction u/s 43B for pre-existed liability u/s 43B as on 01.04.2008 and paid during FY 2008-09.

Detail of same has been given in Annexure XI of Computation of Income for the year, which is as follow:

Customs Duty:	Rs. 1,11,90,968/-
Excise Duty:	Rs. 3,94,287/-
Sales Tax:	Rs. 22,86,653/-
Central Sales Tax:	Rs. 1,32,160/-
Service Tax:	Rs. 7,33,962/-
Tax on Works:	Rs. 11,84,270/-
Contribution to ESI:	Rs. 15,534/-
<b>Total</b>	<b>Rs. 1,59,37,834/-</b>

The above amount is based on Annexure -VI of Form 3CD of the tax Audit Report.

**viii) Annexure XII: Justification for reducing provision for Customer Disallowance:**

Customer Disallowances (LD) are contractual obligations and provision is made based on terms and conditions of contracts concluded. This is a crystallized liability and revenue expenditure allowable u/s 37 of the Income Tax Act, 1961. This has been upheld in Assessee's own case in ITA No 632/96 by the ITAT, Bangalore Bench for AY 1992-93.

ix) Details of the provisions for Customer Disallowance created during the year:

Unit wise detail of the Net Provisions for Customer Disallowance created during the year is as below:

Sl No	Name of Unit	Amount in Rs
1	Bangalore Complex	242374063
2	Ghaziabad	105228839
3	Navi Mumbai	3303027
4	Machilipatnam	16782114
5	Panchkula	15646954
6	Kotdwara	12143104
7	Hyderabad	97603411
8	Chennai	(8308142)
	<b>Total</b>	<b>484773370</b>

Further details of the provisions for Customer Disallowance are given at Annexure-7

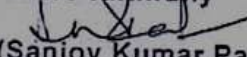
**B. Reason for increase in Customer Disallowance in the Revised Return:** As desired by you furnished below the reason for increase in Customer Disallowance by Rs. 32, 24,545/- :

The Company has claimed Customer Disallowance of Rs. 48, 15, 48,825/- in the Original Return filed by the Company on 17.09.2009 based on the information received from the Unit. Subsequently it was observed that BEL-Ghaziabad Unit has inadvertently reported Provision for Customer Disallowance for Rs.10,20,04,294/- instead of Rs. 10,52,28,839/-. Hence in the Revised Return filed by the Company, claim for Provision of Customer Disallowance was rectified to Rs. 48, 47,73,370/- instead of Rs. 48,15,48,825/- after incorporating the above mentioned changes.

For the balance queries, you may kindly allow us some more time to submit the information.

Thanking you,

Yours faithfully

  
(Sanjoy Kumar Pal)

Dy. General Manager (Fin & Tax)

Encl. As above

11. Thus it appears from the above that both the alleged issues relating to escaping assessment as raised in the reopening proceeding initiated u/s. 148 of the Act, were duly verified by the assessing officer while completing the assessment u/s.

143(3) of the Act and no new material came to the knowledge of the Assessing Officer subsequent to the original assessment proceeding is reflecting in recording reasons or in the notice u/s. 142(1) of the Act by the Ld.AO. Thus the facts which was available during the regular assessment and duly verified and examined by the Ld.AO, reopening on the same set of facts is nothing but a clear case of change of opinion as submitted by the Ld.AR appears to be acceptable.

12. In this regard, we have also dealt with the judgment passed by the Hon'ble Supreme Court in case of CIT vs. Kelvinator of India Ltd. (supra). While affirming the decision of the Full Bench of the Hon'ble Delhi High Court, the Hon'ble Apex Court was pleased to observe as follows:

*“Prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under two conditions, viz., if (a) the ITO had reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or (b) the ITO had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year. The fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 with effect from 1-4-1989 those conditions are given a go-by and only one condition has remained, viz., where the Assessing Officer has reason to believe that income has escaped assessment, the section confers jurisdiction to reopen the assessment. Therefore, post 1-4-1989, the power to re-open is much wider. However, one needs to give a schematic interpretation to the words 'reason to believe, failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. One*

*must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions 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 Assessing Officer. Hence, after 1-4-1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment. Under the Direct Tax Laws (Amendment) Act, 1987, the Parliament not only deleted the words 'reason to believe' but also inserted the word 'opinion' in section 147. However, on receipt of representations from the companies against omission of the words 'reason to believe', the Parliament re-introduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the Assessing Officer."*

13. We find that in the case in hand, the allegation of the assessing officer to disclose fully or truly of material facts for assessment for the year under consideration or the income chargeable to tax has escaped assessment for the year under consideration has no legs to stand upon. Moreso, once the issue has already been dealt with during the original assessment proceeding and only upon due application of mind and upon examination of the same, the Ld.AO passes an order in the original assessment, the Assessing Officer cannot exercise the power to review or reassess the same. The same, in this case, is a change of opinion which cannot be appreciated, which is a product of uncanalised and unguided power exercised by the Assessing Officer in the garb of reassessment. We also find that the ratio laid down by the Hon'ble Apex Court in the present facts and

circumstances of the case, to this effect that the reopening of the assessment on the basis of mere change of opinion cannot be per se reason to reopening, has been duly followed in all the other judgments relied upon by the Ld.AR. Thus on identical facts and circumstances of the matter, respectfully relying on the judgments cited by the Ld.AR, we find the reassessment proceeding initiated u/s. 148 of the Act merely on the basis of change of opinion, in the absence of any new evidence/material in the hands of the revenue on the same set of information which was available at the time of original assessment, is found to be void-ab-initio, bad in law and thus, the entire proceeding is quashed.

**In the result, the appeal filed by the assessee stands allowed.**

Order pronounced in the open court on 20<sup>th</sup> September, 2023.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(MADHUMITA ROY)  
Judicial Member

Bangalore,  
Dated, the 20<sup>th</sup> September, 2023.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore

By order

Assistant Registrar,  
ITAT, Bangalore