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CGHC010444672024

2026:CGHC:41477-DB

Order reserved on 30.06.2026

Order delivered on 24/09/2026

Order uploaded on 24/09/2026

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HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 15 of 2025

1. The Joint Commissioner of Income Tax Range-1, Bilaspur C.G.

... Appellant

versus

1. M/s Jindal Power Limited Kharsia Road, Raigarh C.G. Pan-AABCJ4683J

... Respondent

For Appellant	:	Mr. Ajay Kumarani, Advocate
For Respondent	:	Mr. Salil Kapoor, Advocate with Ms. Katyayani Vishnupriya, Advocate

DB: Hon'ble Mr. Justice Parth Prateem Sahu,J

& Hon'ble Mr. Justice Sachin Singh Rajput, J

CAV Order

Per Parth Prateem Sahu, J

1. Appellant-revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 against the order dated 25.6.2024 passed in ITA No.200/RPF/2017 by which learned Income Tax Appellate Tribunal, Raipur Bench, Raipur (henceforth 'the

Tribunal') has allowed the appeal of the respondent assessee and quashed the reassessment order dated 13.2.2015.

2. Facts of the case, in brief, are that respondent filed e-return of income for the assessment year 2009-10 declaring income of Rs.95,29,85,465/-. The Assessing Officer (AO) had selected the case of respondent for scrutiny. A notice under Section 143 (2) of the Act of 1961 was issued to respondent, to which reply was submitted. Thereafter, the Assessing Officer passed an order on 28.12.2011, assessing the income chargeable to tax for the assessment year 2009-2010. Subsequently, the Assessing Officer (AO) noticed that deduction and disallowance under certain heads were wrongly allowed to the assessee and therefore, taking aid of Section 147 of the Act of 1961, reopened the assessment for the year 2009-10 after obtaining sanction under Section 151 (1) of the Act of 1961. Thereafter, following due process of law, vide order dated 13.2.2015, the AO enhanced the taxable income of respondent from Rs.9655.13 Lakhs to Rs.23890.05 Lakhs with book profit of Rs.193131.85 Lakhs.

3. The assessee thereupon preferred an appeal before the CIT (Appeals) against the order dated 13.2.2015. The CIT (Appeals) dismissed the appeal and sustained the order passed by the AO. The assessee then approached the Tribunal. The Tribunal after considering the relevant

provisions of the Act of 1961, the principles laid down by Hon'ble Supreme Court and the High Courts in various decisions, has arrived at a conclusion that reopening of the concluded assessment of the assessee was based on mere change of opinion on the same set of facts of the successor AO and accordingly, by the order impugned allowed the appeal of assessee and quashed the reassessment order of the Assessment Officer for want of valid assumption of jurisdiction under Section 147 of the Act of 1961. Hence, this tax appeal has been preferred by the department.

4. Learned counsel for appellant-revenue vehemently argued that the Tribunal erred in quashing the reassessment order passed by the AO under Section 147 of the Act of 1961 by holding it to be based on mere change of opinion and not on any fresh tangible material, without appreciating the fact that any inadvertent omission of addition or disallowance of deduction of income chargeable to tax discovered later on can constitute a reason to believe that the income chargeable to tax had escaped assessment.

5. He further submits that the information forming basis for reopening an assessment need not necessarily be derived from any external or extraneous source. Such information may be gathered from the record of the original assessment itself. Mere fact that the Assessing Officer derives the

requisite information upon a careful and close examination of the original assessment, record does not by itself, amount to a mere change of opinion. If any item has escaped from assessment which was otherwise includible within the assessment and the Assessing Officer notices it subsequently by his own investigation or by reason of some information received by him, cannot be termed as 'mere change of opinion'. Respondent assessee had claimed 100% depreciation on the DAM, without there being any provision in the depreciation rate schedule provided under the Act of 1961, which resulted in allowance of inadmissible depreciation in the sum of Rs.8,50,32,403/-. Further, the then AO has left the computation of depreciation to be decided on the basis of sub-section (2) of Section 115JB of the Act of 1961, which means that the AO did not compute total income to the extent by which Section 115JB could have become redundant. Even in the reply filed by respondent assessee the issue of 100% depreciation on dam has not been explained. On account of such failure on the part of respondent to disclose fully and truly all material facts, income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act of 1961. Hence, action of respondent assessee in claiming depreciation, which is otherwise not allowable, amounts to failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment.

6. In view of the facts as narrated above, present cannot be said to be a case of 'mere change of opinion' because there was no opinion formed in the first instance, rather it is the case of satisfaction of income escaping assessment. In support of his contention, he placed reliance on the decision in case of Phool Chand Bajrang Lal & another vs ITO, reported in (1993) 203 ITR 456 (SC).

7. Per contra, learned counsel appearing on behalf of respondent assessee opposed the submissions made on behalf of the appellant-Department and supported the order passed by the Tribunal. He contended that at the time of original assessment, respondent assessee had disclosed all material facts regarding claim for depreciation on DAM, additional depreciation under Section 32 (ii)(a) of the Act of 1961, disallowance under Section 14A of the Act of 1961, earned interest and other income during pre-production period. In the reasons recorded for reopening the assessment, which is reproduced in the order of the Tribunal, nowhere it is mentioned that there is any failure on the part of the respondent-assessee to disclose fully and truly all material facts relevant for the purpose of assessment, which is sine qua non for exercise of power under Section 147 of

the Act of 1961. It is further submitted that in the course of original assessment proceedings, respondent assessee was called upon to furnish evidence in support of claim of 100% depreciation on DAM, who, in turn, furnished the details of additions of fixed assets on which 100% depreciation was claimed and only thereafter claim regarding depreciation @ 100% was allowed in original assessment proceeding. The then AO also queried regarding additional depreciation Section 32 (ii) (a) of the Act of 1961; disallowance made under Section 14A of the Act of 1961 as also regarding earned interest and other income, to which reply was duly submitted by respondent assessee. Thus, it is apparent that the grounds/reasons on which assessment in question was sought to be reopened, were infact gone into detail by the then Assessing Officer while framing the scrutiny under Section 143 (3) of the Act of 1961 and in course of scrutiny, the queries were raised with respect to 100% depreciation on DAM, additional depreciation under Section 32 (ii) (a) of the Act of 1961, disallowance under Section 14A of the Act of 1961 and income during pre-production period and in response, all the relevant materials were supplied/furnished by the respondent and only thereafter the AO framed the assessment.

8. He further submitted that it is not the case of appellant-Department that on the basis of any new material/information collected subsequently, the Assessing Officer has formed an opinion that income chargeable to tax has escaped assessment. In these circumstances, order passed by the learned Tribunal holding that reopening of assessment for the year 2009-10, is based on a mere change of opinion by the subsequent Assessing Officer on the same set of facts as were before his predecessor in the course of original assessment does not call for interference.

9. Heard learned counsel for the parties and perused the documents available in record of tax appeal.

10. The respondent assessee is doing business of mining and generation of power. They filed e-return for the assessment year 2009-10. Case of respondent was selected for scrutiny and notice under Section 143 (2) of the Act of 1961 was issued. Respondent assessee participated in the enquiry and submitted the details called for. On providing necessary details, clarification and information to the AO, the assessment order under Section 143 (1) of the Act of 1961 was passed on 28.12.2011 on a total income of Rs.19,19,78,85,663/-, after making various disallowances. Respondent challenged the assessment order by filing an appeal before the CIT (Appeals), who vide order dated

31.3.2014 partly allowed the appeal and determined total income of assessee at Rs.96,55,13,861/-. Subsequently, on 05.07.2013 a notice under Section 148 of the Act of 1961 was issued by the AO to respondent assesee through registered post directing to file its return of income in the prescribed form for the said assessment year 2009-10 stating that he had reasons to believe that the respondent's income chargeable to tax for the assessment year 2009-10 had escaped assessment and that he proposed to reassess the income. Respondent submitted reply requesting to treat the return filed under Section 139 (1) of the Act of 1961 on 30.9.2009 as return filed in compliance to the notice under Section 148 of the Act of 196 and further requested to supply a copy of the reasons recorded under Section 148 (2) of the Act of 1961 for reopening the assessment. On completion of reassessment proceeding, the AO passed the reassessment order on 13.02.2015 under Section 143 (3) read with Section 147 of the Act of 1961, assessed total taxable income of respondent assessee at Rs.238,90,05,000/- and raised a demand of Rs.1,93,13,18,000/-. Thereafter, respondent filed an appeal before the Tribunal, which came to be allowed vide order impugned on the ground that reopening of assessment is based on mere 'change of opinion' and not on any fresh tangible material.

11. Before we proceed further, let us have a look at the Section 147 of the Act of 1971 which deals with reopening of the assessment. Relevant portion of Section 147 of the Act of 1961 is extracted herein below for ready reference :-

> "147. Income escaping assessment.-If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year,he may, subject to the provisions of ss. 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 (hereinafter in this section and in ss. 148 to 153 referred to as the relevant assessment year):
>
> Provided that where an assessment under sub-s. (3) of s. 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 s.139 or in response to a notice issued under sub-s. (1) of s. 142 or s. 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.
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> Explanation 1- 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".

12. Reading of Section 147 of the Act of 1961 makes it clear that 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 Section 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 Section 147 or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Proviso to Section 147 lays down that where an assessment under Section 143 (3) or 147 has been made for the relevant assessment year, no action can be taken under Section 147 after expiry of four years from the end of 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 Section 142 (1) or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year. In substance, aforementioned two conditions have to be satisfied before an Income Tax Officer reopens an assessment and both these conditions must co-exist to confer jurisdiction on the Income Tax Officer.

13. Here, it will be useful to understand the meaning and scope of the phrase "reason to believe" used in Section 147 of the Act

of 1961. In case of **The Income Tax Officer, I Ward, District VI, Calcutta and others vs. Lakhmani Mewal Das**, reported in **(1976) 3 SCC 757** Hon'ble Supreme Court had occasion to examine and explain the scope of phrase 'reason to believe' in the context of reopening of assessment on the ground that income had escaped assessment and it was held thus:-

> "11. As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. ……. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.
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> 12. The powers of the Income Tax Officer to reopen assessment though wide are not plenary. The words of the statute are "reason to believe" and not "reason to

suspect" The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax Authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. ……………..."

14. In case of **Phool Chand Bajrang Lal and another V. Income Tax Officer and another,** reported in **(1993) 4 SCC 77** Hon'ble Supreme Court has held as under:-

"25. ……. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a

> conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment……."

15. Reading of above decisions shows that 'reason to believe' is a common feature in taxing statutes. The word 'reason' means cause or justification and the word 'believe' means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. It does not mean a purely subjective satisfaction on the part of the Income-tax Officer. The reason must be held in good faith. It cannot be merely a pretence. In other words, the material on which the AO bases its opinion to reopen assessment must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the AO in pursuance of such belief. If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion". The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened.

16. Turning back to the facts of present case. Appellant revenue has filed present appeal assailing the impugned order passed by the Tribunal mainly on the ground that assessment in question was sought to be reopened for the reason that certain part of income of assessee chargeable to tax escaped assessment on account of failure of the assessee in truly and fully disclosing the material facts relevant for assessment. Whereas, it is a specific case on behalf of the respondent-assessee that while framing the scrutiny assessment under Section 143 (3) of the Act of 1961, the grounds/reasons on which the assessment has been sought to be reopened were already considered in detail by the then AO, specific queries were raised with respect to 100% depreciation on dam, additional depreciation under Section 32 (ii) (a) of the Act of 1961, disallowance under Section 14A of the Act of 1961 and income during pre-production period and in response, all the relevant materials were supplied/furnished by the respondent and only thereafter the AO framed the assessment.

17. Learned Tribunal in the order impugned has reproduced the reasons which led the AO to believe that income chargeable to tax escaped assessment during assessment year 2009-2010, warranting initiation of reassessment proceeding under Section 147 of the Act of 1961 and the same reads as under:-

“(i) Excess allowance of depreciation: - Assessee has claimed 100 percent deprecation on dam of Rs.8,50,32,403/-. In the depreciation rate schedule of IT Act there is no provision of depreciation on dam. Thus depreciation of Rs.8,50,32,403/- has been allowed excessively.

(ii) Disallowance u/s.14A:- Assessee had made substantial investment in shares and securities income from which does not form part of total income. However no expenditure in accordance with section 14A of the Act was disallowed in this respect. The disallowance on this account comes to Rs. 11.53 crores. The same was remained to be added in the income of the assessee.

(iii) Allowance of additional depreciation:- Assessee has claimed additional depreciation of Rs. 377.81 crore under section 32(iia) of the Act. The additional depreciation u/s. 32(iia) of the Act is applicable to assesses engaged in the business of manufacture/production of any article/thing of in the business of generation or generation & distribution of power. The benefit is extended to the assesses engaged in the generation or generation and distribution of power w.e.f. A.Yr. 2013-14. Thus, assessee is not eligible for additional depreciation for the year under consideration even the generation of power cannot be equated with the production of article or thing. Thus the sum of Rs. 377.81 crore on this count has allowed excessively.

(iv) Irregular disallowance of depreciation for the pre-production period (Before September):-

> Assessee has earned interest and other income worth of Rs. 3.47 crore (2.06 + 1.41) during pre production period. The same instead of showing in P&L account was actually deducted from closing work in progress. In case of Tuticoran Alkalies Chemical & Fertilizer Limited (227 ITR 172) the Supreme Court categorically stated that pre-production interest income should be taken in P & L Account as other source of income. Thus the said amount of Rs. 3.47 crore remained to be added in the income of the assessee."

18. Perusal of above would demonstrate that the reasons recorded by the AO for initiation of reassessment proceeding rest on the information derived from the materials on the record of original assessment. Hence, in above factual background, the test is not as to whether there has been an escapement of income, but whether there exist reasons to believe that the income chargeable to tax had escaped assessment, and in the present case there is sufficient tangible material on record which justifies the prima facie belief of A.O. regarding escapement of taxable income.

19. In case of **Ganga Saran And Sons Pvt. Ltd. Calcutta vs Income Tax Officer & Ors,** reported in **(1981) 3 SCC 143,** Hon'ble Supreme Court has held thus:-

> "It is well settled as a result of several decisions of this Court that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to issue notice under section 147 (a). First,

he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under section 147 (a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147 (a). It there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to he struck down as invalid.”

20. In case of **Phool Chand Bajrang Lal vs Income-tax Officer,** reported in **(1993) 4 SCC 77**, Hon'ble Supreme Court has observed thus:-

> "27. <u>From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true ana full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment</u>. He may start reassessment proceedings either because some fresh facts come to light which where not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-

> tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief……"

21. In the matter of **Commissioner of Income Tax Delhi vs Kelvinator of India Limited,** reported in **(2010) 2 SCC 723**, a three Judges Bench of Hon'ble Supreme Court has held thus:-

> "6. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place.
>
> 7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief……"

22. In case of **State of Uttar Pradesh and Ors. v. Aryaverth Chawl Udyoug and Ors**. Reported in **2014 SCC OnLine SC 1205** Hon'ble Supreme Court has observed that discovery of an inadvertent mistake or non- application of mind during the

assessment would not be a justifiable ground to initiate reassessment proceedings, has observed thus:-

> "27. This court has consistently held that such material on which the assessing authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing authority in pursuance of such belief. In case of absence of such material, this Court in clear terms has held the action taken by assessing authority on such "reason to believe" as arbitrary and bad in law. In case of the same material being present before the assessing authority during both, the assessment proceedings and the issuance of notice for reassessment proceedings, it cannot be said by the assessing authority that "reason to believe" for initiating reassessment is an error discovered in the earlier view taken by it during original assessment proceedings. (See DCM v. State of Rajasthan: [1980] 4 SCC 71).
>
> 28. The standard of reason exercised by the assessing authority is laid down as that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a "reason to believe" that a case of escaped assessment exists requiring assessment proceedings to be reopened….."

23. In case of **Income Tax Officer, Ward No.62 vs. Tech Span India (P.) Ltd. and another**, reported in **(2018) 6 SCC 685** , Hon'ble Supreme Court held as under:

> “14. The language of Section 147 makes it clear that the assessing officer certainly has the power to re-assess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153………. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.
>
> 15. Section 147 of the IT Act does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to re-assess and not the power to review.

24. In case of **Radha Krishna Industries vs State of H.P.**, reported in **(2021) 6 SCC 771**, Hon’ble Supreme Court, referring to its earlier decision in the matter of Kelvinator of India Ltd. (supra), has held that the power to reopen an assessment must be conditioned on the existence of "tangible material" and that "reasons must have a live link with the formation of the belief".

25. Recently, in case of **Sanand Properties Pvt. Ltd. vs Joint Commissioner of Income-tax and others**, reported in **2026 SCC Online SC 851**, which has also been relied upon by

learned counsel for appellant herein, Hon'ble Supreme Court has observed thus:-

> "68. In the light of the above rival contentions, it is crucial for us to ascertain whether the "tangible material" that the Revenue sought to rely upon had already been considered, appreciated and accepted by the Revenue in the original assessment orders. If such "tangible material" had already been relied upon by the Assessing Officer to form an opinion in the original assessment orders, then relying upon the same for the purpose of reopening assessment would amount to review instead of reassessment, and that would not be permissible in law, as noted by this court in CIT v. Kelvinator of India Ltd. However, if the "tangible material" is extraneous to the original assessment records, or was present but not considered or acted upon by the Assessing Officer during the initial proceedings, such information provides a valid jurisdictional basis for the Revenue to reopen the assessment."

26. Having regard to the aforesaid legal position, this Court now adverts to the material on record to test whether there was reason to believe that income had escaped assessment; whether the AO has tangible material before him for the formation of that belief and whether respondent assessee had failed to disclose truly and fully all necessary material facts during the original assessment proceedings.

27. From the order impugned passed by the Tribunal it can be seen that in the notice dated 07.12.2011 issued under Section 142 (1) of the Act of 1961 to the respondent assessee during the original assessment proceedings, the AO has called upon the respondent assessee to furnish evidence in support of

claim for 100% deprecation on dam, additional depreciation under Section 32 (11)(a) of the Act of 1961, disallowance under Section 14A of the Act of 1961 and period interest and other income during pre-production period. Respondent assessee submitted reply to aforementioned specific queries raised at the time of original assessment. The then AO having satisfied with the genuineness with respect to claim for 100% deprecation on dam; additional deprecation under Section 32 (ii) (a) of the Act of 1961; disallowance under Section 14A of the Act of 1961 and deduction of earned interest and other income during preproduction period, framed scrutiny assessment under Section 143 (3) of the Act of 1961. All these facts clearly indicate that the then AO before allowing depreciation/deductions in the original assessment, had applied his mind and arrived at a conscious decision thereafter for grant of such deductions.

28. The AO while recording reasons under Section 148 (2) of the Act of 1961 has observed that he has reason to believe that income chargeable to tax has escaped assessment in view of the fact that during original assessment proceeding for assessment year in question, depreciation rate schedule of the Act of 1961 there is no provision of deprecation on dam; no expenditure in accordance with Section 14A of the Act of 1961 was disallowed; an amount of Rs.377.81 Crore towards

additional deprecation was allowed and a sum of Rs.3.47 Corore towards earned interest and other income during preproduction period remained to be added in the income of assessee.

29. From the the reasons recorded by the AO itself it is clear that the reasons to believe are based on information and details which were available to the AO at the time of the original assessment proceedings, i.e., assessment records, and not on any tangible material that has come to the notice of the AO after passing original assessment order to conclude that there was an escapement of assessment. The reasons so recorded by the assessing officer show that reassessment proceedings has been initiated in view of the fact that the AO while passing the original assessment order, had allowed such deductions/depreciation which according to the successor AO, who initiated such reassessment proceedings, have resulted in escapement of income chargeable to tax from being assessed in the original assessment. This shows that the AO has drawn an inference on the basis of material already existing on the records of the original assessment proceedings and has arrived at the conclusion that some deductions were erroneously allowed in the original assessment.

30. That apart, while recording the reasons, the AO has nowhere recorded his satisfaction that such income has escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly material facts relating to claim of depreciation etc. or the assessee had made any false or untrue statement in the course of original assessment proceedings. The AO has also not indicated that any fresh facts had come to light, which were not previously disclosed.

31. Aforementioned facts and circumstances of the case clearly reflects that there was no failure on the part of the assessee to make a full and true disclosure of the material facts at the time of the original assessment and that is why the successor AO, who recorded the reasons under Section 147 (a) of the Act of 1961, could not record his satisfaction about any such failure on the part of the assessee. Recording of such reasons without a specific satisfaction that such escapement of income had resulted on account of failure on the part of the assessee to make a full and true disclosure of the material facts or any tangible material has come to the notice after passing original assessment order, cannot confer jurisdiction to the assessing officer to reopen the assessment under Section 147 of the Act of 1961.

32. Proceedings for reassessment cannot be initiated merely because income liable to tax has escaped assessment due to

mistake committed by the Assessment Officer. After the assessment order is framed, the successor Assessing Officer cannot at a later point of time reopen the assessment merely on forming an opinion after examining of the material disclosed by the assessee that the Assessment Officer, who had passed the assessment order, had committed an error in computing the taxable income of the assessee during original assessment proceeding. It will fall within the purview of change of opinion, which is not permissible.

33. The upshot of above discussion, therefore, is that the "reasons to believe" recorded by the AO was totally unfounded and not bonafide and as such, initiation of reassessment proceeding by the AO under Section 147 of the Act of 1961 was patently invalid and without any jurisdiction. Being so, the view taken by the Tribunal in the order impugned for setting aside quashing the assessment order of the AO dated 13.02.2015 was correct and justified.

34. In the result, the appeal is dismissed. No order as to costs.

Sd/-	Sd/-
(Parth Prateem Sahu)	(Sachin Singh Rajput)
Judge	Judge

roshan/-