IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO 584 of 2025

Mark Steels Limited
Versus
Assistant Commissioner of Income Tax, Circle 1(1), Kolkata & Ors.

For the petitioner	:	Mr. Abhrotosh Mazumdar, Sr. Adv. Mr. Saumya Kejriwal, Adv. Mrs. Ananya Rath, Adv. Mr. Navin Mittal, Adv. Mr. Debarghya Banerjee, Adv.
For the respondents	:	Mr. Aryak Dutt, Adv. Mr. Amit Sharma, Adv. Mr. Abhishek Kr. Agrahari, Adv.
Heard on	:	11.09.2025.
Judgment on	**:**	**24.12.2025**.

RAJA BASU CHOWDHURY, J:

1. The petitioner is a limited liability company within the meaning of the Companies Act, 2013 and is an assessee within the meaning of Income Tax Act, 1961 (hereinafter referred to as the "said Act"). By the instant writ petition the petitioner seeks to challenge not only an order passed under Section 148A(3) of the said Act, dated 26th June, 2025 but also the notice issued under Section 148 of the said Act in respect of the

assessment year 2021-22 on the specific ground that the same are based on change of opinion.

2. Mr. Mazumdar, learned senior advocate representing the petitioner, at the very outset, has drawn the attention of this Court to the notice issued under Section 148A(1) of the said Act dated 11th March, 2025 and would submit that such notice was based on information which had been uploaded in the Insight Portal of the Income Tax Department, wherefrom it has been deduced that the income chargeable to tax has escaped assessment in respect of the financial transactions made by the assessee to the tune of Rs. 383,56,66,066/- concerning a cash purchase of coal from Majee Group amounting to Rs. 2,45,00,000/- and the information uploaded in the taxpayer annual summary (TAS) report amounting to Rs. 381,11,66,066/-. Along with the above show-cause, the entire documents received from the investigation had been enclosed. Mr. Mazumdar has also drawn the attention of this Court to an information being F. No. ADIT (Inv.), Unit-2(4), Kolkata dated 24th February, 2022, addressed to the assessing officer of the petitioner. By identifying the transactions appearing at pages 107 and 108 of the writ petition, Mr. Mazumdar would submit that nine (9) several transactions for the relevant assessment year have been identified, and it has been alleged that the petitioner has made huge cash payments to Majee Group and that since, the petitioner is engaged in manufacturing of steel products and has a factory at Purulia, where, coal is an essential raw material,

such coal had been purchased by the petitioner from Anup Majee Group. By comparing the above information with that of the notice issued under Section 142(1) of the said Act dated 15th November, 2022 for the relevant assessment year, it is submitted that when the said notice under Section 142(1) of the said Act was issued, the above information was obviously within the notice of the assessing officer. Notwithstanding the above and despite noting the aforesaid transactions as would corroborate from the observations made in the said notice, under the head "*verification of transactions*", the petitioner was called upon to explain the noted nine several transactions and the cash payments made to the said Majee Group.

3. Records would reveal that the petitioner had responded to the above notice by a communication in writing dated 28th November, 2022 and in paragraph 7 thereof, had claimed that it had never entered into any alleged cash transactions and therefore, the allegation was unfounded. By placing before this Court the assessment order issued under Section 143(3) of the said Act, for the relevant assessment year dated 22nd December, 2022, it is submitted that the aforesaid issue was not only scrutinised before the assessing officer, the assessing officer chose to drop the same. According to Mr. Mazumdar, once, an issue is dropped and an assessment order is passed, jurisdictional assessing officer is no longer competent to review his opinion and pass a fresh order so as to re-open the proceedings by issuing a notice under Section 148 of the said

Act, which has already been closed. According to Mr. Mazumdar, the petitioner upon receipt of the notice issued under Section 148A(1) of the said Act for the assessment year 2021-22 dated 11th March, 2025, had duly responded to the same by a communication dated 20th March, 2025. He would submit that while reiterating his earlier stand that although, the assessment proceedings were concluded and the assessment order was passed under Section 143(3) of the said Act dated 22nd December, 2022, no addition was made on the above issue. It was also reiterated that in respect of the assessment year 2018-19 similar allegations had been levelled though, the same could not be substantiated. On the issue of TAS report, it was stated that all the transactions as are reported in TAS report are part of regular books of accounts and as such the same cannot be said to be an income escaping assessment and as such the proceeding should be dropped.

4. By referring to the order issued under Section 148A(3) of the said Act dated 26th June, 2025, it is submitted that although, the assessing officer in paragraph 7 of the above order had recorded that in respect of the assessment year 2018-19, the case was re-opened by issuing a notice under Section 148 of the said Act and in such re-assessment proceedings the transactions made with Majee Group had been considered in the hands of the assessee for the assessment year 2018-19, this, according to Mr. Mazumdar, is a fraud practice by the assessing officer. He has stated that the assessing officer had suppressed available information to

substantiate his contention. Mr. Majumdar has however, relied on the entirety of the assessment order, which has been disclosed in the petition. According to him, the claim made by the assessing officer in such case pertaining to the assessment year 2018-19 that the petitioner had transactions with Majee Group, could not be substantiated and such contention was dropped. In the factual backdrop as aforesaid, it is submitted that because of mere change of opinion, the above proceeding which has been sought to be re-opened, cannot be continued as the same would constitute a change of opinion. In support of his aforesaid contention, Mr. Mazumdar has placed reliance on the following judgments:

i. ***Mangalam Publications v. Commissioner of Income Tax***, reported in **[2024] 461 ITR 159 (SC)**

ii. ***Seema Gupta v. Income Tax Officer & Ors.***, reported in **[2023] 457 ITR 642 (Delhi)**

iii. ***Bajaj Allianz Life Insurance Company Ltd. v. Deputy Commissioner of Income Tax, Circle 1(1)***, reported in **[2020] 113 taxmann.com 238 (Bombay).**

5. *Per contra*, Mr. Dutt, learned advocate appears on behalf of the income tax department. He has drawn the attention of this Court to the notice issued under Section 143(2) of the said Act dated 27th June, 2022 as also to the assessment order passed under Section 143(3) of the said Act and would contend that in the said case the issue pertaining to the aforesaid

transactions with Majee Group had been dropped on the consideration that no data in respect of Anup Majee/Majee Group could be gathered and hence, in absence of documentary evidence, benefit of doubt was given to the petitioner. It is submitted that the petitioner did not make appropriate disclosure and had held back information. According to him, simply because, the assessing officer had previously refused to interfere by reasons of lack of evidence, the same does not preclude the assessing officer from re-opening a case upon laying its hand on relevant documents. In support of his aforesaid contention, he has placed reliance on the judgment delivered in the case of ***Principal Commissioner of Income Tax v. I.T.C. Ltd.,*** reported in **[2024] 163 taxmann.com 294 (Calcutta).**

6. Heard the learned advocates for the respective parties and considered the materials on record.

7. Record would reveal that in the instant case pertaining to the assessment year 2021-22, scrutiny had already been initiated in respect of the return filed by the petitioner by issuing a notice under Section 142(1) of the said Act. In such notice as rightly pointed out by the Mr. Mazumdar, learned senior advocate representing the petitioner, the transactions which have been noted and formed part of the show cause under section 148A(1) of the said Act were under scrutiny, the petitioner was called upon to explain the series of cash payments made to Majee Group, Salt Lake. Records would reveal that in response to the aforesaid

notice, the petitioner had categorically contended that the allegations made in such notice dated 15th November, 2022 was unfounded and it was submitted that it was not aware of any Majee Group.

8. From the above, it is apparent that the entirety of the allegations has been denied by the petitioner. Following the aforesaid, the jurisdictional assessing officer had passed an order under Section 143(3) of the said Act read with Section 144B thereof, dated 22nd December, 2022. On the aspect of the petitioner transacting with Majee Group, the assessing officer had noted as follows:

> **"***Summary of information/evidence collected which proposed to be used against it (attach documents if required) :-*
> *On the issue of information available, that M/s Marks Steel Ltd., (PAN-AACCM8187B) has made cumulative cash payment of Rs.2,45,00,000/- on various dates to M/s Majee Group in lieu of purchase of coal during the year under consideration. It denied of have any relationship with any Majee Group and informed that it has not made any payment to Majee Group during the period under consideration. As per the information supplied, another letter of requisition was issued to Central Circle-2(1), Kolkata but no response was submitted.*
> *In order to cross verify the information uploaded through VRU another letter of verification was sent to Sri Anup Majee/Director of M/s Anup Majee Group, but no response was received.*
> *On analysis of the ITR of M/s Marks Steel Ltd. filed for A.Y-2021-22 and the audit report filed for F.Y-2020-21, no data in respect of Anup Majee/Majee Group could be gathered. Hence, it could not be verified whether these parties have any business relation with the assessee or not.***"**

9. From the aforesaid, it is crystal clear that the above issue though scrutinized, the jurisdictional assessing officer could not identify data in respect of Majee Group and hence, the alleged business relationship between the Majee Group and the assessee could not be verified. It is on such ground this issue was dropped. The question that falls for consideration in the present writ petition is whether the jurisdictional assessing officer after having dropped the aforesaid issue, though, on the ground of lack of evidence was competent to re-open such issue upon gathering necessary information. In this context, I may note that on the basis of a change of opinion of the assessing officer, a notice under Section 148 of the said Act cannot be issued. In support of his contention, Mr. Majumdar has also placed reliance on the judgment delivered in the case of ***Mangalam Publications*** (supra), I find that in the aforesaid judgment, the case of ***Calcutta Discount Co. Ltd. v. ITO***, reported in **[1961] 41 ITR 191 (SC)** has been considered. The Hon'ble Supreme Court in paragraph 32 of the aforesaid judgment has been, *inter alia,* pleased to observe as follows:

> ***"32.*** *Let us now discuss some of the judgments cited at the Bar. First and foremost is the decision of a Constitution Bench of this Court in Calcutta Discount Co. [Calcutta Discount Co. Ltd. v. CIT, 1960 SCC OnLine SC 10 : (1961) 41 ITR 191] That was a case under Section 34 of the Income Tax Act, 1922 which is in pari materia to Section 147 of the Act. The Constitution Bench explained the purport of Section 34 of the Income Tax Act, 1922 and highlighted two conditions which would have to be satisfied before issuing a notice to reopen an assessment beyond four*

years but within eight years (as was the then limitation). The first condition was that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to income tax had been under-assessed. The second condition was that he must have also reason to believe that such under-assessment had occurred by reason of either : (i) omission or failure on the part of the assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. It was emphasised that both these were conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years from the end of the year in question. The words used in the expression "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" would postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment though what facts are material and necessary for assessment would differ from case to case. On the above basis, this Court came to the conclusion that while the duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this. This position has been reiterated in subsequent decisions by this Court including in CIT v. Lakhmani Mewal Das [CIT v. Lakhmani Mewal Das, (1976) 3 SCC 757 : (1976) 103 ITR 437] . The expression "reason to believe" has also been explained to mean reasons deducible from the materials on record and which have a live link to the formation of the belief that income chargeable to tax has escaped assessment. Such reasons must be based on material and specific information obtained subsequently and not on the basis of

surmises, conjectures or gossip. The reasons formed must be bona fide."

10. From the above, it would be clear that there are two most important conditions which authorises the jurisdictional assessing officer to re-open an assessment proceedings. The first of which being that the jurisdictional assessing officer must have reasons to believe that income, profit or gains chargeable to income tax had been under-assessed and secondly, omission or failure on the part of the assessee to make a return of his income under Section 22, or omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. From the above, it is also clear that both the aforesaid conditions have to be satisfied before the ITO to exercise jurisdiction to issue a notice under Section 148. Though, several other judgments have been considered, I find that in the case of ***Kelvinator of India Ltd. v. ITO,*** reported in **(1996) 9 SCC 534**, the Hon'ble Supreme Court had examined the concept of "change of opinion". Again in the case of ***Income Tax Officer, Ward No.16(2) v. Techspan India Pvt. Ltd. & Anr.,*** reported in **(2018) 6 SCC 685**, the Hon'ble Supreme Court had observed that to check whether it is a case of change of opinion or not, one has to see its meaning in literal as well as legal terms. The words "change of opinion" would imply formulation of opinion and then a change thereof.

11. Having regard to the above, I find that for a case of change of opinion to be established an assessing officer must arrive at an opinion that there has been no escapement of income on the ground noted therein. Admittedly, in this case, I find that the transactions of the petitioner with Majee Group had been considered by the jurisdictional assessing officer. However, I find that the jurisdictional assessing officer was unable to form an opinion in the said case in absence of data and as such was not in a position to verify whether the parties have any business relationship. It is on such ground, the issue was dropped. The above, in my view, would not constitute formation of an opinion by the jurisdictional assessing officer. It is well settled that reassessment of income under Section 148 of the said Act cannot be made on the basis of a change of opinion. If the assessing officer had earlier made an assessment for a relevant assessment year expressing an opinion on the matter either expressly or by necessary implication, a reassessment proceeding for alleged escapement of income from assessment of tax cannot be initiated, as it would be a case of change of opinion. If such order is non-speaking, cryptic, it may be difficult to attribute to the assessing officer any opinion on the question that was raised in the proposed reassessment proceedings. However, if, on a conscious application of mind, an opinion is made based on the relevant facts and the materials available or existing at the relevant point of time while making the assessment, and if, again a different or a divergent view is

reached, it would tantamount to change of opinion. In this context, reliance may be placed to the judgment delivered by this Hon'ble Court in the case of ***Principal Commissioner of Income Tax*** (supra). Having regard to the aforesaid for formation of some opinion, there has to be materials available before the assessing officer, however, in the instant case, simply because, the transaction details were available at that stage without the available data in relation to Majee Group, the same cannot, in my view, tantamount to an opinion. Especially when the petitioner disclaims to have any business relationship with the said Majee Group, the verification was not possible. I find that in the order impugned, a relationship between the petitioner and the Majee Group has been identified on the basis of additional materials, which were non-existent at the time when the scrutiny proceedings were initiated under Section 142(1) of the said Act. It is apparent from the above that the subsequent notice issued under Section 148 of the said Act is based on an order, which takes note of new and tangible material and is not a mere reference to a financial statement of the petitioner.

12. In the facts noted hereinabove, I find that the petitioner has failed to make out any case of jurisdictional error committed by the jurisdictional assessing officer, on the ground of change of opinion.

13. Although, the issue of the competence of the jurisdictional assessing officer to issue a notice under section 148 of the said act, after the scheme having been notified and published under section 151A of

the Act, had not been argued, however, taking into consideration the fact that the same goes to the root of jurisdiction of the jurisdictional assessing officer to issue the notice, and since, several matters have been entertained on such ground, I am of the view that the aforesaid issue may require a detailed consideration. In the light of the observations made herein above, while permitting the proceedings to go on, I am of the view that though a decision may be taken by the jurisdictional assessing officer, such decision shall not be implemented without express leave of this Hon'ble court.

14. Liberty to mention.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)