IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.11277 and 11291 of 2022

Ram Kumar Agrawal Engineers Private Limited, Bolangir	....	***Petitioner***
		Mr. R.P. Kar, Advocate

-versus-

Deputy Commissioner of Income Tax, Circle 1(1), Sambalpur and others	....	***Opposite Parties***
		Mr. S.S. Mohapatra, Senior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

ORDER
19.05.2022

Order No.

01. 1. Mr. S. S. Mohapatra, learned Senior Standing Counsel enters appearance for the Opposite Parties and files appearance memos in Court today, which are taken on record.

2. The challenge in the present petitions is to the notices dated 31st March, 2021 issued by the Assessing Officer (AO) under Section 148 of the Income Tax Act, 1961 (Act) seeking to reopen the assessment under Section 147 of the Act for the assessment years (AY) 2015-16 [W.P.(C) No.11277 of 2022] and AY 2014-15 [W.P.(C) No.11291 of 2022].

3. The reasons for the reopening of the assessments, as provided to the Petitioner, refer to the audit report and the Petitioner's claim for "works payment", which was already disclosed in the original assessment proceedings. It must be mentioned that the returns filed by the Petitioner were in fact picked up for scrutiny and assessment orders were passed under Section 143 (3) of the Act in thr fitrst instance.

4. The law in regard to reopening of assessment under Section 147 has been settled in a large number of cases including ***CIT v. Kelvinator of India Ltd. 320 ITR 561 (SC),*** which has been applied by this Court in its decision in ***Sri Jagannath Promoters & Builders v. Deputy Commissioner of Income Tax [2021] 133 taxmann.com 270 (Ori).***

5. Mr. S.S. Mohapatra, learned Senior Standing Counsel for the Opposite Parties–Income Tax Department is unable to dispute the fact that the reopening was not based on any new material but only on a revisiting of the material that already stood disclosed at the time of original assessment proceedings.

6. This appears to be a textbook example of reopening based on mere "change of opinion", which was disapproved by the Supreme Court in ***Kelvinator of India Ltd.*** *(supra).* On that short ground, the impugned notices under Section 148 of the Act in each of the two petitions and all the consequential orders, the re-assessment orders dated 28th March, 2022 and 30th March, 2022 respectively as well as the consequential demand notices of the same dates are hereby quashed.

7. Both the writ petitions are accordingly allowed.

8. Urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

M. Panda