Darshan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1530 OF 2022

Lupin Limited …Petitioner

Versus

Deputy Commissioner of Income Tax-3(4), Mumbai and Ors. …Respondents

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Mr Jeet Kamdar, i/b Mr Atul K Jasani, for the Petitioner.
Mr Suresh Kumar, for the Respondent.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 18 February 2025

Oral Judgment (*per M S Sonak, J.*):-

1. Heard learned counsel for the parties.

2. Rule. The Rule is returnable at the request of and with the consent of learned counsel for the parties.

3. This Petition relates to the assessment year 2016-2017.

4. The Petitioner challenges the notice dated 31 March 2021 issued by the first Respondent under Section 148 of the Income Tax Act, 1961 ("IT Act") seeking to reopen the assessment for A.Y. 2016-17 together with consequential notices and orders and order dated 30 November 2021 rejecting the Petitioner's objections to the reopening of the assessment.

5. The Petitioner filed its return of income on 26 November 2016, declaring a total income of Rs.26,36,01,64,390/-. The Petitioner's case was selected for scrutiny, and various details were called for via notices dated 19 September 2017, 13 July 2018, 18 September 2018, 24 October 2018 and 03 December 2018.

6. In the notice dated 18 September 2018, the Petitioner was called upon to furnish information and explain the amounts considered disallowable and allowable in the computation of income. The Petitioner was also called upon to furnish information regarding certain exemptions and deductions claimed by the Petitioner.

7. Particular reference can usefully be made to queries 47 and 48 in the notice dated 18 September 2018, which read as follows:-

> "47. In respect of amounts considered **Disallowable and Allowable in the Computation of Income**, Please furnish detailed working of each of such amounts along with documentary evidence thereof.
>
> 48. In connection with exemption under Chapter III or deduction under Chapter VIA (heading C) claimed in the return for the year under consideration, the details thereof and the evidences in support of eligibility of such claim. In case, any income/ expenditure/ receipt/ payment is a part of the annual accounts for the year under consideration in respect of which such exemption or deduction is to be claimed in any subsequent year, the details thereof."

8. The Petitioner, vide replies dated 30 July 2018 and 03 August 2018, responded to various queries raised on behalf of the Respondents. In the response dated 03 August 2018, the Petitioner submitted the following clarifications, which are relevant in the context of the issue raised in this Petition:

> ". Details of deductions under section 80G amounting to Rs.31,931,237 in respect of donations made during the year is enclosed at *Annexure C* and hardcopies of donation receipts and 80 G Certificates will be submitted at your office, as the data is large.
>
> . During the year under assessment, the Company has claimed deduction of Rs.181,297,969 under sec 35AC of the Act. Copies of Form No.58A for claiming deduction under sec 35AC in respect of payments made to Lupin Human Welfare & Research Foundation ("LHWRF") and People for Animals is enclosed at *Annexure D*."

9. After assessing the Petitioner's return, an assessment order under Section 143(3) was made on 28 December 2018, accepting the claims made by the Petitioner *inter alia* under Section 35AC and deductions under Section 80G of the IT Act.

10. On 31 March 2021, the impugned notice was issued for the reopening of this assessment. Upon the Petitioner's request for reasons for reopening, the same was furnished on 05 August 2021. Those reasons read as follows: -

> "The assessee has filed the e-return on 23.11.2016 declaring its income at Rs. 2636,01,64,390/- under normal provisions of the Act and book profit of Rs. 3928,91,45,216/- u/s 115JB of the Act. This case was selected for scrutiny and assessment for A.Y. 2016-17 was completed on 28.12.2018 after scrutiny and assessed income of Rs.3211,08,49,540/- under normal provision of the Income Tax Act and Book profit of Rs.3937,58,15,562/- u/s 115JB of the Income Tax Act.
>
> 2. Subsequently on perusal of the records esp. from computation of income it was observed that the assessee had added back the donation amount of Rs.24,97,02,795, which included CSR Expenses of Rs.14,89,06,832 and Rs.3,11,00,000. These CSR expenses were claimed by the assessee under section 35AC and 80G respectively.
>
> Thus, the total CSR expenditure of Rs.18,00,06,832, which was originally disallowed as CSR expenses was again claimed entirely under section 35AC and to the

> extent of 50% through the route of 80G deductions, as mentioned in the computation itself.
>
> Since both CSR expense and 80G donations are two different mode of ensuring fund for public welfare, hence treating the same expense under two different heads would defeat the very purpose of it. As mentioned in budget memorandum explaining provisions of the Finance Bill (No.2), 2014, the legislative intention was to ensure that companies with certain strong financials make the expenditure towards this purpose and by allowing deduction, the Government would be subsidizing one third of it by way of revenue foregone thereon and hence the same was required to be disallowed in the assessment. This resulted into underassessment to the same extent.
>
> 2.1 Therefore I am of the view that income to the extent of amount of Rs. 18,00,06,832/-, as explained above, has escaped assessment.
>
> 3. In view of the above the undersigned has reason to believe that the income exceeding Rs. 1,00,000/- has escaped assessment within the meaning of Section 147 of the Act. Therefore proposal for reopening of AY 2016-17 by issuing notice u/s 148 of the Act is being made u/s 151 of the Act for your kind perusal and approval.
>
> 4. In view of the reasons recorded above, I am of the opinion that income chargeable to tax has escaped assessment for A.Y. 2016-17 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for A.Y. 2016-17."

11. The Petitioner filed objections, but such objections were rejected by 30 November 2021. Hence the present Petition.

12. From the reasons furnished to the Petitioner, we find that no fresh tangible material could be said to have come to the knowledge of the assessing officer for reopening of the assessment. Admittedly, the Petitioner's case was selected for scrutiny, and several queries were raised. In particular, the queries were raised regarding the claims under Section 35AC and deductions under Section 80G of the IT Act. Upon

considering the Petitioner's response, these claims were allowed in the assessment order under Section 143(3) of the IT Act.

13. Though, this was a case of reopening within 4 years, still, in the absence of any fresh tangible material coming to the knowledge of the assessing officer, reopening of the assessment only on re-examination of the very same material based on which the original assessment order was passed cannot be permitted. In a similar fact situation, the coordinate bench in **Castrol India Ltd. Deputy Commissioner of Income-tax**[1], struck down the notice seeking to reassess.

14. The coordinate bench relied upon several precedents emanating from the Hon'ble Supreme Court and coordinate benches and held that the assessment could not be reopened merely on a change of opinion. By following the reasons in *Castrol India Ltd. (supra)* and various precedents referred therein, the impugned notice and consequential orders warrant interference.

15. Mr Suresh Kumar, however, submitted that after the introduction of amendments vide Finance Act No.2 (2014) w.e.f. 01 April 2015, the CSR expenses were not permitted deductions. He submitted that from this, it was clear that the CSR expenses of Rs.18,00,06,832/-, which were originally disallowed, given the amendments, could not once again be claimed under Section 35AC or through the route of Section 80G deductions. He submitted that such claims were apparent from the computations provided by the Petitioner itself. He submitted that since CSR expense and Section 80G donations

[1] [2024] 161 taxmann.com 18 (Bombay)

were two different modes of ensuring funds for public welfare, by treating the same expenses under two different heads would defeat the very legislative intent and the purpose for introducing amendments.

16. In this case, the Petitioner has not claimed any benefits under Section 37 of the IT Act. The Petitioner has, however, claimed deductions under Section 35AC. No provision was shown to us based on which we could infer that such a deduction could not, at least prima facie, be claimed. On the contrary, Mr Kamdar referred us to the statement of objects and reasons accompanying the Finance (No.2) Bill, 2014 by which these amendments were introduced.

17. The relevant extract, which was highlighted by Mr Kamdar, reads as follows: -

> "The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. **However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein."**

18. Objects and reasons do suggest that the CSR expenditure, which is of the nature described in Sections 30 to 36 of the Act, shall be allowed as deductions under those Sections subject to the fulfilment of conditions, if any, specified therein.

19. The above-referred extract from the statement of objects and reasons finds echo in the circular dated 21 January 2015 issued by the CBDT. Clause 13.3 of this circular also clarifies that the CSR expenditure, which is of the nature described in Sections 30 to 36 of the IT Act, shall be allowed as deductions under those Sections subject to fulfilment of conditions if any specified therein. The Delhi High Court, in the case of the **Principal Commissioner of Income Tax-7 Vs. PEC Ltd.1** has taken cognisance of the CBDT circular dated 21 May 2015 and observed that it was well established that the circulars of CBDT are binding on the Revenue [*See:**Catholic Syrian Bank Vs. CIT (2012) 343 ITR 270 (SC)***].

20. Mr Kamdar also submitted that several tribunals, including the jurisdictional tribunal, have taken the view that CSR expenditure, which is of the nature described in Sections 30 to 36 of the IT Act, shall be allowed deductions under those Sections subject to fulfilment of conditions, if any, specified therein. He submitted that the argument now raised by Mr Suresh Kumar was already considered and rejected by various tribunals, including the jurisdictional tribunal. He also submitted that such tribunal's views bind the assessing officer.

21. In any event, we do not propose to go into the merits of the matter. This Petition must be allowed because there was no tangible fresh material based upon which the assessing

officer could have reason to believe that any income had escaped assessment. This is, as noted earlier, a scrutiny case where several queries, including queries particular to this issue, had been raised. The queries were answered by the Petitioners, and upon consideration of all these materials, an assessment order was made under Section 143(3) of the IT Act.

22. On the ground that some other view was possible, the assessing officer could not have changed his earlier opinion and, based upon such change of opinion, issued the impugned notice seeking to reopen the assessment. For all these reasons, the impugned notice and the consequential orders will have to be set aside.

23. For all the above reasons, we allow this Petition by making the Rule absolute in terms of prayer clause (a), which reads as follows: -

> "a. This Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated March 31, 2021 issued by Respondent No.1 under section 148 of the Act seeking to reopen the assessment for AY 2016-17 (Exhibit P) (together with consequential notices and orders) and the order dated November 30, 2021 issued by Respondent No. 1 (Exhibit Y);"

24. There shall be no order for costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**