



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION NO. 1250 OF 2022

1. **DCW Limited,**  
3<sup>rd</sup> Floor, Nirmal Building, Backbay  
Reclamation, Nariman Point,  
Mumbai 400 021. ...Petitioner
- Versus*
1. **Assistant Commissioner of Income Tax,**  
Circle – 3(4), Mumbai, 29<sup>th</sup> Floor, Centre I,  
World Trade Centre, Cuffe Parade,  
Mumbai 400 005.
2. **Principal Commissioner of Income Tax,**  
Mumbai-3, Mumbai Aayakar Bhavan, M. K.  
Road, Mumbai 400 020.
3. **National Faceless Assessment Centre,**  
Delhi.
4. **Union of India,**  
Through the Joint Secretary & Legal  
Adviser, Branch Secretariat, Department of  
Legal Affairs, Ministry of Law and Justice,  
2<sup>nd</sup> Floor, Aayakar Bhavan, M. K. Mark, New  
Marine Lines, Mumbai 400 020. ...Respondents

Mr. Sukhsagar Syal a/w Mr. P. C. Tripathi i/b Mr. Atul K. Jasani for  
Petitioner.

Mr. Akhileshwar Sharma for Respondents-Revenue.

CORAM : K. R. SHRIRAM &  
DR. NEELA GOKHALE, JJ.  
DATED : 10<sup>th</sup> November 2023.

**ORAL JUDGMENT: (Per K.R.Shriram, J.)**

1. Since pleadings are completed, with the consent of Counsels,  
we take up the Petition for hearing at the admission stage. **Rule.**  
Rule returnable forthwith.

2. Petitioner had filed its return of income for Assessment Year 2014-15 on 29<sup>th</sup> November 2014. It was processed and intimation under Section 143(1) of the Income Tax Act, 1961 (“**the Act**”) was issued. Subsequently, Petitioner’s case was selected for scrutiny assessment. Petitioner was called upon to file several details pertaining to Petitioner’s claim for deductions under Section 32AC of the Act. These include details of the installation of the machinery with respect to which a claim for deduction was made. Details of money borrowed, interest paid, etc. was also called for. All details were made available along with Auditor’s Certification for the purpose of calculation of allowance under Section 32AC of the Act.

3. The assessment came to completed by an order dated 17<sup>th</sup> November 2016 under 143(3) of the Act.

4. An audit objection came to be raised by a letter dated 16<sup>th</sup> August 2018 on Petitioner’s claim of deduction under Section 32AC of the Act. In reply, the concerned Assistant Commissioner of Income Tax vide a letter 14<sup>th</sup> March 2021 stated that the audit objection/Observation was not acceptable. Notwithstanding that a notice under Section 148 of the Act came to be issued on 30<sup>th</sup> March 2021 alleging there was escapement of income within the meaning of Section 147 of the Act.

5. Petitioner filed its objections and the objections came to be

rejected vide an order dated 8<sup>th</sup> February 2022. In the said order rejecting objections, the stand taken is that a mere change of opinion cannot be a basis for reopening completed assessment will not be applicable because it would be applicable only to situation where Assessing Officer has applied his mind and taken a conscious decision on a particular matter in issue. Since the assessment order dated 17<sup>th</sup> November 2016 does not discuss the claim of deduction under Section 32AC of the Act, the defence of change of opinion available to Petitioner was not available to Petitioner.

6. Section 147 of the Act provides for income escaping assessment. It states if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income subject to the further conditions mentioned therein. The proviso to Section 147 of the Act states that where an assessment order under Section 143(3) has been passed and more than four years had expired 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 assessee to disclose fully and truly all material facts necessary for assessment for that assessment year, reopening of assessment was not permissible.

7. In this case, an assessment order under Section 143(3) of the Act has been passed and more than four years have expired from the  
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end of the relevant year. Therefore, the proviso to Section 147 applies.

8. The reasons given to reopen assessment read as under:

*“2. Subsequently on perusal of the records it was observed that the assessee was allowed the deduction of Rs.20,91,45,934/- under section 32AC. The assessee contended that for the purpose of calculation of allowance, all Plants & Machineries in respect of which the assessee has become the owner and which have been put in the position for service or use during the previous year has been considered. It was seen that the addition to Fixed Assets in Note 11 of the Annual Accounts for the relevant period was Rs.4139.09 Crore only. As both the essential limb that the new assets must be purchased as well as installed in the same previous year was not fulfilled, the allowance of deduction was not in order.*

*The figures for FY 2014-15, 2013-14 and 2012-13 were considered. It was seen from the FY 2014-15 that there was addition of only Rs.24.67 crore during the FY 2014-15. It was also considered that only requirement was purchase and installation and not put to use the assets. However, Installation means to make something ready to use. It seems far-fetched that the machinery worth Rs.162.90 crore was installed during AY 2014-15 but was not entered in the block next year. No prudent businessman would keep idle any plant and machine after making it ready to use for more than one year. However, only Fixed Assets of Rs.24.67 crore were added instead of ready to use fixed assets of Rs.162.90 crore. Thus, the machines were not ready to use and hence could not be considered as installed.*

*This resulted in underassessment of income of Rs.20,91,45,934/-.”*

9. There is not even a hint in the reasons to reopen, that there has been a failure to truly and fully disclose. The reason itself indicates that everything has been disclosed because it reads *“..... on perusal of the records it was observed that the assessee was allowed the deduction of Rs.20,91,45,934/- under Section 32AC. The assessee contended that for the purpose of calculation of allowance..... it was*

*seen that the addition to fixed assets in Note 11 of the annual account for the relevant period ..... the allowance of deduction was not in order.”*

10. Moreover, during the course of assessment proceedings, Petitioner was told to provide detailed break-up of various plants and machinery installed and commissioned pursuant to Section 32AC of the Act duly weighted by its Chartered Accountant. Petitioner provided the details vide letter dated 5<sup>th</sup> July 2015. Vide letter dated 7<sup>th</sup> October 2016, Petitioner also forwarded the details, which were called for during the hearing held on 22<sup>nd</sup> September 2016, of installation date item-wise in respect of the plant. In view of voluminous data falling under the eligible category of Section 32AC of the Act, Petitioner made available few important and high value equipment details running into about 67 pages. Copies of these documents are also annexed to the Petition.

11. In the order disposing the objections, there is no denial of the fact that these materials were made available or these details were called for during the assessment proceedings. The only explanation is that these have not been discussed in the assessment order. In ***Aroni Commercials Ltd. v Deputy Commissioner of Income Tax 2(1), Mumbai & Anr.***<sup>1</sup> this Court has held that once a query is raised during the assessment proceedings and assessee has replied to it, it follows

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<sup>1</sup> 2014 (44) taxmann.com 304 (Bombay).  
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that the query raised was the subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised.

12. It is also settled law that change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.

13. Mr. Sharma submitted that an audit query was raised and there was misapplication of provision of Section 32AC of the Act. However, the Assessing Officer himself has replied to the audit objection raised denying that there was any escapement of income. In fact, in the letter dated 4<sup>th</sup> March 2021 a copy whereof is annexed to the Petition it is stated “*audit objection/observation is not acceptable to the Department*”

14. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings.

15. In ***Bennett Coleman & Company Limited v. Deputy***  
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***Commissioner of Income-tax Circle-1(1)(1), Mumbai & Ors.<sup>2</sup>***

paragraphs 6 and 7 read as under:

*“6. This Court in Ananta Landmark (P) Limited Vs. Deputy Commissioner of Income-tax has relied upon Indian and Eastern Newspaper Society Vs. Commissioner of Income Tax, New Delhi where the Court held that in every case, the Income Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has come to his notice he can reasonably believe that income had escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. Therefore, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax Officer.*

*7. Moreover, it is not at all a case that petitioner has not disclosed anything in his response. Petitioner had given the full particulars. The stand taken by petitioner was also accepted by respondents on merits. The Assessing Officer even disagreed with the audit objections but on second thought, to the objections from the auditors he has re-opened the assessment. In our view, re-opening of the assessment without any basis and merely change of opinion is not permissible while exercising the powers under Section 147 read with Section 148 of the Act.”*

16. Where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it is not open to reopen the assessment based on the very same material with a view to take another view. (***Ananta Landmark Pvt. Ltd. v. DCIT, Central Circle 5(3), Mumbai<sup>3</sup>***).

17. In the circumstances, Rule made absolute in terms of prayer clause (a) which reads as under:

*“(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*

<sup>2</sup> Writ Petition No. 4 of 2022 decided on 18<sup>th</sup> January 2022.

<sup>3</sup> (2021) 131 taxmann.com 52 (Bombay).  
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*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 30<sup>th</sup> March, 2021 (Exhibit-L) issued by Respondent No.1 under section 148 of the Act seeking to reopen the assessment for the assessment year 2014-15 and the order dated 8<sup>th</sup> February, 2022 (Exhibit-S) passed by Respondent No.3, disposing of the objections raised by the Petitioner"*

Petition disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

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signed by  
RAJU  
DATTATRAYA  
GAIKWAD  
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