

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1180 OF 2022**

Voltas Limited  
being a Company incorporated under  
the Companies Act, 1913 and having its  
registered office at Voltas House A,  
4<sup>th</sup> Floor, Dr. Babasaheb Ambedkar Road,  
Chinchpokli (East), Mumbai-400 033 ... Petitioner

V/s.

1. Assistant Commissioner of Income  
Tax Circle -8(3) (1), Mumbai  
having his office at Room No.615,  
6<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai-400 020.
2. Additional Commissioner of Income  
Tax, Circle - 8(3), Mumbai having his  
office at Room No.614,  
6<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai-400 020.
3. Principal Commissioner of Income  
Tax -8, Mumbai having his office  
at Room No.611, 6<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400 020.
4. Union of India,  
through the Secretary,  
Department of Revenue,  
Ministry of Finance, North Block  
New Delhi - 100 001. ... Respondents

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Mr. Nitesh Joshi a/w. Mr Rajesh Poojary i/b Mulla and Mulla and  
Craigie Blunt and Caroe for the Petitioner.  
Ms Swapna V. Gokhale for the Respondent.  
Mr. Yashraj Nain, ACIT, Circle 8(3)(1), Mumbai present.

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**CORAM : K.R. SHRIRAM &  
N.R. BORKAR, JJ.**  
**DATE : APRIL 05, 2022.**

**ORAL JUDGMENT** (PER K.R. SHRIRAM, J.)

1] Petitioner is a company engaged in the business, *inter alia*, of air conditioning and refrigeration etc. During the year under consideration, i.e., Assessment Year (A.Y.) 2015-16, petitioner incurred expenses of Rs.3,30,82,713 towards Corporate Social Responsibility (CSR) as per section 135 of the Companies Act, 2013. This fact was disclosed in “Note 25” of the notes forming part of Annual Accounts and Annual Reports in CSR activities. Petitioner had also claimed deduction in return of income under sections 35AC and 80G of the Income Tax Act, 1961 (“the Act”) for donations made to various institutions.

2] It is petitioner’s case that since the entire amount of donations had come out of CSR and CSR amount already debited to the profit and loss account, the donations in other expenses were shown as Nil in “Note 25”. The claim of deductions under sections 35AC and 80G of the Act was also reflected in clauses 19 and 33 respectively of the Tax Audit Report.

3] Petitioner filed its return of income for A.Y. 2015-16 on 18.11.2015 which came to be revised on 20.02.2017 declaring total income of Rs.396,12,52,460. In the return of income, petitioner made disallowance of the amount of Rs.3,30,82,713 being the CSR amount in accordance with Explanation 2 to section 37 of the Act. According to petitioner, since the donations made to various institutions qualified for deduction under section 35AC and 80G of the Act, it claimed the same.

4] Petitioner's return of income was selected for scrutiny and assessment order came to be passed under section 143(3) read with section 92CA of the Act on 18.02.2019. During the course of assessment proceedings, petitioner was asked queries including one in notice dated 08.10.2018 under section 142(1) of the Act. Petitioner was called upon to furnish evidence for claim of deduction under section 35AC and 35(2AB) and for claim of deduction under section 80G of the Act. Petitioner filed an elaborate reply dated 24.10.2018 to which petitioner annexed evidence for deduction claimed under section 35AC and 80G of the Act.

5] Thereafter, petitioner received a notice dated 31.03.2021 under section 148 of the Act for A.Y. 2015-16 asserting that there are reasons to believe that petitioner's income chargeable to tax for A.Y. 2015-16 has escaped assessment within the meaning of section 147 of the Act. In response, petitioner filed its return and requested for copy of reasons for reopening. The reasons for reopening was provided by communication dated 18.11.2021. From the said communication, it is quite clear that the reopening is based on change of opinion relying on materials already considered by Assessing Officer during the assessment proceedings in order to take a different view, which is not permissible, on the basis of audit scrutiny.

6] In the petition, petitioner has also raised an objection that the sanction obtained under section 151 of the Act was not a valid sanction since the proposed reopening is more than 4 years after expiry of relevant assessment year. As provided under sub-section (1) of section 151 of the Act only a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner could grant the

sanction. Since in this case, admittedly, sanction has been granted by an Additional Commissioner of Income Tax, it is not a valid sanction and therefore, notice issued based on an invalid sanction is also not valid and has to be quashed.

7] One more point raised is 4 years having expired from the end of relevant assessment year, proviso to section 147 of the Act would apply and there is a bar in reopening unless respondent discharges its onus to show that there has been escapement of income due to failure on the part of assessee to truly and fully disclose material facts in the relevant assessment year.

8] The reason why we say it is nothing but a change of opinion is because in this case, admittedly, the assessment proceedings have been completed under section 143(3) of the Act. The reasons recorded in paragraph 2 of the notice dated 18.11.2021 read as under:

*“2. On verification of records (Balance Sheet, Tax Audit Report, etc.), it is revealed that the assessee has debited an amount of Rs.3,30,82,713/- towards Corporate Social Responsibility (CSR) activities and NIL towards donation which were added back in the computation of income statement. Audit scrutiny*

*revealed that against the above amounts, the assessee has claimed deduction of Rs.1,07,50,000/- under section 35AC and Rs.70,25,000 (50% of Rs.1,40,50,000) under section 80G of the Act. As the expenditure, same expenses cannot be claimed as deduction under other heads and it will defeat very purpose of making CSR expenditure mandatory. There is specific provision in 80G and 35 AC to allow CSR deduction as expenditure. "*

8] Therefore, respondent No.1 admits that deduction has been allowed in the assessment proceedings. It is therefore, obvious that based on same primary facts, the Assessing Officer is proposing to, on change of opinion, commence the proceedings for reassessment. He is not entitled to do so. It is settled that where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on very same material with a view to take another view.

9] As noted earlier and admittedly, petitioner has filed annual returns with required documents as provided for under section 139 of the Act. As held by the Calcutta High Court in ***Income Tax Officer vs. Calcutta Chromotype (P) Ltd.<sup>1</sup>***, there was nothing more to disclose and a person cannot be said to have omitted or failed to disclose something

<sup>1</sup> (1974) 97 ITR 55 (Calcutta)

when, of such thing, he had no knowledge. One cannot be expected to disclose a thing or said to have failed to disclose it unless it is a matter which he knows or knows of. In this case, except for a general statement in the reasons for reopening, the Assessing Officer has not disclosed what were the material facts that petitioner had failed to disclose.

10] In our view, the statement in the reasons for reopening *“it is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening under section 147 of the Act”* is clearly made only as an attempt to take the case out of restrictions imposed by the proviso to section 147 of the Act.

11] Ms Gokhale relied upon a judgment of this Court ***in Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle 6 (2)***<sup>2</sup> to submit that even if the reason for reopening does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for

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<sup>2</sup> (2015) 55 taxmann.com59 (Bombay)

the relevant assessment year, it will not be fatal to the assumption of jurisdiction under sections 147 and 148 of the Act. We would certainly agree with Ms Gokhale but as held in *Crompton Greaves Ltd. (Supra)*, this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under sections 147 and 148 of the Act. The Court held “*However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act*”.

12] The factum of failure to disclose cannot be culled from the reasons in support of notice seeking reopen the assessment. This will certainly be fatal to the assumption of

jurisdiction under sections 147 and 148 of the Act.

13] As regards petitioner's submission that reopening is based on audit objection and the respondent's admission that there was audit objection. It will be appropriate to reproduce paragraph 8 of unreported judgment dated 23.03.2022 in

***Writ Petition No. 694 of 2021***<sup>3</sup>, which reads as under :

*"8. In Hamilton Housewares (P) Ltd. Vs. Deputy Commissioner of Income Tax<sup>4</sup>, this Court while quashing the notice issued u/s 148 of the Act reiterated settled position of law that the decision to reopen assessment must be on the basis of the belief found by the Assessing Officer. It must be open for the audit party to bring relevant aspect to the notice of the Assessing Officer. But thereafter it must be the independent decision of the Assessing Officer to reopen assessment upon formation of his belief that income chargeable to tax had escaped assessment. The Court had relied upon another Judgment of this Court in the matter of Commissioner of Income Tax Vs. Rajan N. Aswani <sup>5</sup>. Paragraph 11 of the said judgment reads thus;*

*"11. There is one more ground on which the impugned notice must be quashed. We may recall, the counsel for the petitioner had argued that the Assessing Officer was acting at the behest of the audit party. Such a ground was not taken in the petition. However, we had permitted the petitioner to raise the same in the rejoinder and provided sufficient time to the revenue to respond. This being a pure question of examination of contemporaneous documents, we*

3 Sodexo India Services Pvt. Ltd. vs. Assistant Commissioner of Income Tax- Circle -13(2) (1) and ors.

4 (2019) 104 taxmann.com 128 (Bombay)

5 (2018) 91 taxmann.com 313/403 ITR 30

*had requested the counsel for the revenue to make available for our perusal the original file of the department, which he had so done. The perusal of the file would clearly show that the audit party had brought to the notice of the Assessing Officer the possibility of invoking Section 2(22)(e) of the Act in relation to the loan transaction in question. The Assessing Officer under a detailed reply dated 9th June, 2015 had opposed any such invocation of Section 2(22)(e) of the Act. He had given reasons why in his opinion Section 2(22) (e) of the Act was inapplicable. Despite this, upon further insistence by the audit party, impugned notice came to be issued. It is well settled through series of judgments that the decision to reopen the assessment must be on the basis of the belief found by the Assessing Officer. It may be open for the audit party to bring the relevant aspect to the notice of the Assessing Officer. However, thereafter it must be the independent decision of the Assessing Officer to reopen the assessment upon formation of his belief that income chargeable to tax had escaped assessment. Reference in this respect can be made to a decision of this Court in case of Commissioner of Income-Tax Vs. Ranjan N. Aswani (2018) 91 taxmann.com 313/403 ITR 30.”*

14] It will also be useful to reproduce paragraph 5 of unreported order dated 20.01.2022 in **Writ Petition No. 163 of 2020**<sup>6</sup>, which read as under:

*“5. As stated in the Petition and also in the objections filed by Petitioner through their Chartered Accounts’ letter dated 23 September, 2019, reopening is made on the basis of the*

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<sup>6</sup> Maharashtra State Power Generation Company Ltd. vs. Dy. Commissioner of Income – Tax, Circle -14(2)(1), Mumbai and ors.

*objections received from the revenue audit cell, usually referred as audit objections. Identical objection, as raised in the reasons for reopening, was raised and communicated to Petitioner on 14.03.2019. Petitioner, in response to the audit queries, had provided clarifications to the Assessing Officer. It is a well laid down principle that the re-assessment proceedings initiated merely on the basis of the audit objections are illegal and not valid in law and as such re-assessment proceedings have been repeatedly again quashed and set aside by the Courts. As held in :*

**(i) Indian and Eastern Newspaper Society v/s. CIT (1979) 119 ITR 996 (SC) :**

*“AO having allowed assessee’s claim for depreciation in the regular assessment and reopened the assessment pursuant to audit objection, it cannot be said that he had formed his own opinion that the income had escaped assessment, and the reopening being based on mere change of opinion, same was not valid.”*

**(ii) ICICI Home Finance Co. Ltd., v.s. ACIT (2012) 25 taxmann.Com 241 (Bom.):**

*“The reasons do not rely upon any tangible material in the audit report but merely upon an opinion and the existing material already on record. This itself indicates that there was no independent application of mind by the Assessing Officer before he issued the impugned notice. On this ground alone, the assumption of jurisdiction by the Assessing Officer can be faulted.”*

**(iii) IL & FS Investment Managers Ltd., v/s. ITO and Ors (2008) 298 ITR 32 (Bom.) :**

*“Reopening of assessment pursuant to audit*

*objection that depreciation was not admissible on intangible assets was not valid. Thus, reopening of the assessment without any basis and merely on change of opinion, was not permissible."*

**vi. Jagat Jayantilal Parikh vs. DCIT (2013) 32 taxmann.com 161 (Guj.) :**

*"The reasons for reopening of the assessment are almost identically worded as that of audit report. No material worth the name emerges to indicate any independent application of mind. Facts are quite glaring and they clearly establish absence of subjective satisfaction of Assessing Officer. Thus the ground raised by the assessee that such notice of reopening is invalid for the Assessing Officer having not formed his independent belief requires to be sustained."*

15] Therefore, it is quite clear that reopening of the assessment is also at the behest of audit party and therefore, reopening is misconceived, incorrect and bad in law.

16] When it was pointed out to Ms Gokhale that in the affidavit-in-reply of one Mr. Yashraj Nain, Assistant Income Tax Commissioner, affirmed on 25.03.2022 at paragraphs 9 and 20, it is stated that *"..... it is no where mentioned that the case was reopened on the basis of audit objection....."*

17] On instructions from Mr. Nain, who is present in the Court, Ms Gokhale stated it is an incorrect statement made inadvertently. Ms Gokhale, on instructions from Mr. Nain, requests that the said portion quoted herein above be treated as not mentioned in the affidavit.

18] Ms Gokhale also tenders apology, on instructions from Mr. Nain, to this Court for the inadvertent error, which is accepted.

19] It is also petitioner's case that the approval obtained for issuing notice under section 148 of the Act is not in accordance with the mandate of Section 151 as the said approval is of Additional Commissioner of Income Tax instead of Principal Commissioner of Income Tax. It is petitioner's case that the reasons put up for approval on 26.03.2021, which is after the expiry of four years from the end of the relevant assessment year 2015-2016 and approval was granted on 30.03.2021. Therefore, Mr. Joshi submitted that as per Section 151 of the Act, as four years have elapsed at the time of reopening, the sanction is required to be obtained from the

Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income Tax and since the sanction has not been obtained from any of these four Commissioners of Income Tax, the notice issued is bad in law.

20] Sub-Section 1 of Section 151 of the Act provides that no notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

21] Admittedly in this case, four years from the end of the relevant assessment year A.Y. 2015-16 has expired before the issuance of notice and the approval also has been obtained from the Additional Commissioner of Income Tax and not Principal Commissioner of Income Tax. In the affidavit-in-reply filed through Yashraj Nain, affirmed on 25.03.2022, these

facts have not been disputed but according to respondents, the approval granted by the Additional Commissioner of Income Tax was a valid approval.

22] Respondents have relied upon Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020 (Relaxation Act), limitation to submit, *inter alia*, under provisions of Section 151(1) and Section 151(2), which were originally expiring on 31<sup>st</sup> March 2020 stand extended to 31<sup>st</sup> March 2021. According to the Income Tax Officer, the statutory approval for issuance of notice under Section 148 of the Act for the Assessment Year 2015-2016 may be given by the Range Head as per the said provisions.

23] Even for a moment, we agree with the view expressed by respondents, still it applies to only cases where the limitation was expiring on 31<sup>st</sup> March 2020. In the case at hand, the assessment year is 2015-16 and, therefore, the six years limitation will expire only on 31<sup>st</sup> March 2022. Certainly, therefore, the Relaxation Act provisions will not be applicable. In any event, the time to issue notice may have been extended but that would not amount to amending the

provisions of Section 151 of the Act.

24] In our view, since four years had expired from the end of the relevant assessment year, as provided under Section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, we will have to set aside the notice dated 31.03.2021 issued under Section 148 of the Act, which is impugned in this petition.

25] In the facts and circumstances, we allow the petition in terms of prayer clause (A).

*"A. that 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 of the impugned notice dated 31.03.2021 issued under section 148 of the Act ( being **EXHIBIT 'G'** hereto) and the impugned order dated 21.01.2022 (being **EXHIBIT 'L'** hereto) quash and set aside the same;"*

26] Petition accordingly, disposed.

**(N.R. BORKAR, J.)**

**(K.R. SHRIRAM, J.)**