IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI A BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President)
and Saktijit Dey (Judicial Member)]

ITA No. 3402/Mum/2019
Assessment year: 2007-08

M/s. Life Insurance Corporation of India ……..……Appellant
Central Office, F & A Department, 3rd Floor,
Yogakshema, Jeevan Bima Marg, Mumbai 400 021
[PAN: AAACL0582H]

Vs.

Deputy Commissioner of Income Tax
1(2)(1), Mumbai ……Respondent
(Currently ACIT 3(2)(1), Mumbai)

Appearances by
F.V Irani *for the appellant*
Rajeet Harit *for the respondent*

Date of concluding the hearing : July 28, 2021
Date of dictating and pronouncing the order in the open court : July 28, 2021

O R D E R

Per Pramod Kumar VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 27th March 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 2007-08.

2. Grievances as set out in the memorandum of appeal filed before us are as follows:-

> *(1) On the basis of facts and circumstances of the case, the Learned CIT(A) erred in confirming action of Dy. Commissioner of Income Tax of disallowing the claim of deduction under 80G of the Income Tax Act 1961, to the tune of Rs. 25,00,00,000/-.*

(2) The Learned CIT(A) erred in his interpretation of the fact, the Insurance Act 1938, the IRDA Act (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002, the IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations 2000.

3. However when the case came up for hearing, learned counsel for the assessee invited our attention to the fact that by way of letter dated 28th December 2020 the assessee has made an application for admission of the following grounds of appeal:-

1. The reassessment order dated 26.11.2014 passed by the DCIT circle 1(2)(1), Mumbai; [the DCIT"] is without jurisdiction, invalid, illegal, void and bad in law inter-alia, as it does not fulfil the jurisdictional preconditions specified in Section 147, 148 and 151 of the Income Tax Act, 1961.

2. The Commissioner of Income Tax (Appeal)-9, Mumbai ["the CIT(A)"] ought to have held that the above reassessment order was without jurisdiction, invalid, illegal, void, and bad in law.

4. It is also submitted that as these additional grounds raise is fundamental jurisdictional issue going to the very root of the legality of the reassessment order, as the adjudication of these grounds of appeal does not require any investigation of facts, and as the admissibility of the additional grounds is supported by the decision of Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd. vs Commissioner Of Income Tax**, **(1998) 229 ITR 383 (SC*),*** the additional grounds may kindly be admitted. In all fairness, learned counsel for the assessee invited our attention to the fact that when this appeal had come up for hearing on an earlier occasion, learned Departmental Representative rampantly opposed admission of the additional grounds of appeal. It was also pointed out that detailed submissions were made by the learned Departmental Representative and the assessee has also submitted the comments/rejoinder on these objections. Learned Commissioner Departmental Representative, however, submits that his earlier submission was based on certain misconception of facts and may kindly be treated as withdrawn. He very graciously did not oppose the admission of additional grounds even though he believes he has strong arguments to make on merits of these grounds. It is in this back drop and having heard the rival contentions as also having perused the material on record, we deem it fit and proper to admit the additional grounds of appeal as prayed. As the additional grounds deal with a foundational jurisdictional issue, we also deem it appropriate to take up the additional grounds of appeal first.

5. It is a case of reopened assessment. The aassessment under section 143(3) of the Act was originally completed on 22nd December 2009, assessing the income at Rs. 26,809.96 crores However, on 29th March 2014, the Assessing Officer issued a notice u/s. 148 of the Income Tax Act which was accompanied by reasons for reopening set out in annexure A to the said petition. The reasons as recorded for reopening the assessment are as follows:

> *The assesses filed a income Tax Return for A.Y. 2007-08 on 30-10-2007 declaring total income at Rs 12792,10,38,530/- The assessment was completed u/s 143(3) on 22-12-2009 the total income was determined at Rs 26809,96,56,770/. The company is engaged in the business of Life Insurance. Revenue audit raised the audit objection is as under*
>
> *Incorrect allowance of chapter VI deduction of the IT Act.*
>
> *Verification of case record revealed that the assessee had claimed deduction of 50% of donation made to Golden Jubilee Foundation Trust u/s 80G amounting to Rs 25.00 crore. The department assessed the income of the assessee at Rs 26809.96 crore in the original scrutiny completed on 22-12-2009, where in the deduction u/s 80G was not disallowed. While giving effect to CIT(A) 's order in April 2012 revising income to Rs 16914.08 crore. The deduction u/s 80G was not disallowed. In this connection it is revealed to point out that the assessee while arriving valuation surplus, which offered to tax, included all income and expenses including the donations made to trust, once it was claimed in arriving valuation surplus, again allowing u/s 80G of such donation, tantamount to allowing double deduction of amount equivalent to 50% of donation. This incorrect allowance of deduction resulted in under assessment of income by Rs 25.00 crore. It is also observed that the department further given effect to second appeal in August 2013, revising income to Rs 12802.75 crore, however, no disallowance was made of deduction u/s 80G.*
>
> *In view of the above, I have reason to belief that there is an escapement of income of Rs.25 crores. This is a fit case for reopening u/s.147 of the I.T.Act, 1961, if approved the case may be reopened u/s.147 of the I.T.Act and Notice u/s.148 of the I.T.Act will be issued accordingly. Put up for your kind perusal and necessary approval. Submitted.*

6. As is evident from the fact that the assessment year in question is assessment year 2007-08 and the notice for reopening was issued on 29th March 2014, it is a case of reopening of the assessment after the end of four years from the end of the relevant assessment year, where the original assessment was completed under section 143(3). Ggrievance of the assessee is that these reasons for reopening as reproduced above do not constitute legally sustainable reasons for reopening the assessment on the facts of this case. The assesseee had raised this point before the Assessing Officer also, but without any success. The Assessing Officer rejected the submissions of the assessee on this point by *inter alia* observing as follows:-

Thus it can be seen that the provisions clearly and unambiguously provide that proceedings u/s. 147 can be initiate inspite of the fact that full facts has already been disclosed in I.T Return. Verification of case record revealed that the assessee has claimed deduction of 50% of donation made to Golden Jubilee Foundation Trust u/s. 80G amounting to Rs. 25.00 crore. The department assessed the income of the assessee at Rs. 26809.96 crore in the original scrutiny completed on 22/12/2009, where in the deduction u/s. 80G was not disallowed. While giving effect to CIT(A)'s order in April 2012 revising income to Rs. 16914.08 crore. The deduction u/s. 80G was not disallowed. In this connection it is revealed to point out that the assessee while arriving valuation surplus, which offered to tax, included all income and expenses including the donations made to trust, once it was claimed in arriving valuation surplus, again allowing u/s. 80G of such donation, tantamount to allowing double deduction of amount equivalent to 50% of donation. This incorrect allowance of deduction resulted in under assessment of income by Rs. 25.00 crore. It is also observed that the department further given effect to second appeal in August 2013, revising income to Rs. 12808.75 crore, however, no disallowance was made of deduction u/s. 80G. There was no question of application of mind by the Assessing Officer when the information was hidden by the assessee and was not in the knowledge of the Assessing Officer. In fact there is no change of opinion in the matter as no opinion whatsoever was formed by the Assessing Officer. The Gujarat High Court in the case of Praful C Patel vs. ACIT 236 ITR 832 observed as under:-

> *The cases of underassessment or excessive relief which are deemed cases of escapement of income leave no scope for an argument that they are not cases of income having escaped assessment. If the Assessing Officer prima facie finds or discovers that the case falls in any of the clauses of Explanation 2, then those cases will be deemed cases of income that has escaped assessment and without anything more beyond such finding or discovery, he can initiate the proceedings under section 147 of the Act. On a proper interpretation of section 147 of the Act, it would appear that the power to make assessment or reassessment within four years of the end of the relevant assessment year would be attracted even in cases where there has been a complete disclosure of all relevant facts upon which a correct assessment might have been based in the first instance, and whether it is an error of fact or law that has been discovered or found out justifying the belief required to initiate the proceedings. In our view, the words "escaped assessment" where the return is filed, are apt to cover the case of discovery of a mistake in the assessment caused by either an erroneous construction of the transaction or due to its non-consideration, or, caused by a mistake of law applicable to such transfer or transaction even where there has been a complete disclosure of all relevant facts upon which a correct assessment could have been based.*

7. When the matter was in appeal before the learned Commissioner (Appeals), once again, the assessee raised a grievance on reopening of the assessment. It was pointed out by the assessee that there was no omission or failure on the part of the assessee to disclose fully and truly related facts, and it was also pointed out that in any way there is no such allegation made out in the reasons for reopening of the assessment. Learned CIT(A), however, did not accept the arguments so raised by the assessee. Rejecting the arguments, learned CIT(A) observed as follows:-

4.12 The arguments put forward by the appellant are considered. It is seen that the issue of disallowance of claim of donation u/s. 80G of the Act was not dealt in the original assessment order completed on 22/12/2009. The deduction u/s. 80G was also not disallowed while passing the order giving effect to the order of CIT(A) & ITAT.

4.13 It needs to be understood that the issue of disallowance of donation under section 80G was not examined in the original assessment and orders giving effect. The issue of disallowance of claim of deduction u/s. 80G discussed in detail in the earlier paragraphs of this order. It would be clear from the discussion that the issue is based on the crucial information that the appellant had debited the expenditure on account of the donation to its revenue account while computing the actuarial valuation as per the section 44 of the Act and schedule 2. This information is necessary to form opinion about the allowability of claim of deduction under section 80G of the Act. The assessee could have provided this information while filing of return of income in the form of qualification. In absence of such qualification the issue was not examined from the angle of possibility of double deduction. The fact that the appellant has not provided information regarding the debiting of expenditure on account of donation of Rs. 50 Crores in its return of income is evident from the records.

4.14 Thus, there was omission and failure on appellant's part to disclose fully and truly facts material to the claim of deduction u/s. 80G of the Act. Therefore, the reopening of assessment was as per provisions of section 1474 of the Act. Reliance is place in this regard on the decision of hon'ble Supreme Court in the case of Honda Siel Power Products Ltd. Dy. CIT, [2012] 20 taxamann.com 5 (SC)/[2012] 206 Taxman 33 and Hon'ble Bombay High Court in the case of Indian Hume Pipe Co. Ltd. vs Assistant Commissioner of Income-tax, Central Circle-22, 16 taxmann.com 190. Therefore, the reopening of assessment by the AO is upheld. The grounds are dismissed.

8. For the reasons set out in short while, it is not necessary at this stage to go any deeper into the facts of the case. What is to be seen on these facts is the validity of reopening of the assessment, which is to be examined by us.

9. Aggrieved by the stand so taken by the learned Commissioner (Appeals) as well, the assessee is in further appeal before us. ‘

10. Learned counsel for the assessee begins by pointing out that in the reasons recorded for reopening of the assessment, it is not even the allegation of the Assessing Officer that there has been any failure on the part of the assessee to fully and truly disclose the material facts. The learned counsel then drew our attention to Hon'ble jurisdictional High Court judgment in the case of **Hindustan Lever Ltd vs. R.B Wadekar, ACIT & Others [(2004) 268 ITR 339 (Bom)]** wherein Their Lordships have categorically pointed out that reasons recorded for reopening the assessment should be clear and unambiguous and the reasons recorded should be self-explanatory. These reasons so recorded should not keep the assessee guessing for the reasons. It is submitted that while examining the validity of reasons for

reopening the assessment it is not open to go beyond the reasons recorded by the Assessing Officer. Learned counsel also specifically invites our attention to the observation made by Their Lordships to the fact that "the reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submissions otherwise the reasons which were in the material particulars would get supplemented by the time the matter reaches courts on the strength of affidavit or oral submissions". He submits that such being the esteemed views of Hon'ble jurisdictional High Courts we have to see the reasons recorded on entirely standalone basis. It is then pointed out that since these reasons do not allege any failure on the part of the assesseee, the reopening must be held to be invalid for this reason alone. Learned counsel for the assesseee stated without prejudice to his fundamental arguments as stated above that in any way there has been no failure on the part of the assessee in as much as the fact remains that the claim that profits have been computed in terms of rule 2 of the first schedule of the Income Tax Act and set out in the computation of income which is placed at page one of the paper book. Learned counsel for assessee invited our attention to show cause notice issued by the Assessing Officer on this specific point and the reply given by the assessee pointing out the manner in which the Assessing Officer considered and how under section 80D is admissible, in the course of the original assessment proceedings. In such circumstances, according to the learned counsel for the assessee, assessee cannot be faulted for not furnishing all the necessary material information. It was contended that in any case this reopening is based on a revenue audit objection but then the revenue audit objection is on point of legal interpretation-something which is impermissible in the light of Hon'ble Supreme Court judgment in the case of **Indian and Eastern Newspaper Society vs. CIT (1979)119 ITR 996 (SC)**. He points out that the revenue audit objection can at best be on the question of fact and not on the question of legal interpretation. Learned counsel also raised some other points such as the plea that the reasons recorded is undated and that the Commissioner's approval is not on record but we see no necessity to set out these arguments or deal with the same at this stage.

11. Learned Departmental Representative on the other hand invites our attention to a judgment of Hon'ble Delhi High Court in the case of ***CIT vs Deepak Knit Texturise Pvt. Ltd (2012) 81 CCH 48 (Del)*** which according to him is the authority proposition that it has to be examined whether the Assessing Officer had drawn an inference or given a finding, with respect to failure or omission on the part of the assessee, not only on the basis of what is

recorded but on the basis of the material before the Assessing Officer. He takes us through the said order and submits that his contention therefore is that even if these facts are not specifically set out in the reasons recorded but the material before the Assessing Officer indicates so, the reassessment cannot be held to be vitiated in law. He thus submits that the legality of the reassessment is to be upheld and the matter is to be examined on merits.

12. In brief rejoinder, learned counsel for the assessee pointed out that this judgement is in the context of satisfaction of the Assessing Officer and not the reasons recorded. He also points out that the reasons recorded are not discernible from the judgement. In any case, according to him, the issue stands concluded by the decision of the Hon'ble jurisdictional High Court.

13. We have given our careful consideration to the rival contentions, we have perused the material on record and we have duly considered the facts of the issue involved in the light of the applicable legal position.

14. A plain look at the reasons for reopening of the assessment as reproduced above would show that at no stage any allegation has been made out in these reasons of any failure on the part of the assessee as referred to in proviso to section 147. It is important to bear in mind the fact that in terms of proviso to under section 147, as it then stood, where the assessment is completed under section 143(3), no action can be taken under section 147 after the expiry of four years from the end of the relevant previous year unless any income chargeable to tax has escaped assessment for such assessment year by reason of, *inter alia*, failure on the part of the assessee "to disclose fully and truly all material facts necessary for reassessment. It is well settled in law that the reasons as recorded for reopening the assessment are to be examined on a standalone basis. Nothing can be added to the reasons recorded nor anything can be deleted from the reasons recorded. Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd vs. R.B Wadkar, ACIT & Others (2004) 268 ITR 339 (Bom),** has *inter alia* has observed as follows:-

> *20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on*

> *reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.*

15. Therefore, the reasons are to be examined only on the basis of reasons recorded alone, and these reasons cannot be supplemented by anything. In the light of the above position, when we see the reasons recorded by the Assessing Officer for reopening this assessment, we find that there is no allegation to the effect that there has been any failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment. Unless an allegation to this effect is made in the reasons recorded by the Assessing Officer, in a situation where the assessment is being sought to be reopened after four years from end of the relevant assessment year and when the original assessment was completed u/s. 143(3), the jurisdiction to carry out the reassessment cannot be lawfully assumed. For this short reason alone, the impugned reassessment proceedings must be held to be vitiated in law.

16. As we have come to a conclusion based on this reason itself that the reassessment proceeding are vitiated in law, we don't find it necessary to deal with other arguments raised by the learned counsel for the assessee, and to deal with the other grounds of appeal. All other grounds of appeal must therefore be held to be academic and infructuous at this stage.

17. We may make it clear that once Hon'ble jurisdictional High Court has the words of guidance on a particular issue, it cannot be open to us to rely upon non-jurisdictional High Court, and, for this reason it is not even necessary to deal with the judgment of Hon'ble Delhi High Court even if it is in favour of the revenue on this issue. Hon'ble Supreme Court in **East**

India Commercial Co, Ltd. v. Collector of Customs, AIR 1962 SC 1893 (at page 1905) has observed that "We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it. ..." We further make it clear that we are not entering into controversy as to whether the words of guidance of Hon'ble Delhi High Court in the aforesaid judgment in the case of **CIT vs Deepak Knit Texturiser Pvt. Ltd (2012) 81 CCH 48 (Del)**, would be of any relevance to the issue before us.

18. In view of the above discussion and keeping in mind the entirety of the case, we uphold the plea of the assessee and reopening of the reassessment proceeding is quashed. We also see no need to address the other grounds of appeal, on merits, which have been, given our findings on the validity of reassessment proceedings, rendered academic and infructuous.

19. In the result, the appeal is allowed in the terms indicated above. Dictated and pronounced in the open court today on the 28th day of July 2021.

Sd/-
Saktijit Dey
Judicial Member

Sd/-
Pramod Kumar
Vice President

Mumbai, dated the 28th day of July, 2021

Copies to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*CIT*	*(4)*	*CIT(A)*
(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai