IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1374/MUM/2024
(Assessment Year: 2015-16)

Assistant Commissioner of Tax
Circle 3 (4), Mumbai
481/2, Aayakar Bhavan, M.K. Road,
Churchgate, Mumbai – 400020. ..... **Appellant**

Glenmark Pharmaceuticals Limited Vs
Wing A Glenmark House HDO Corporate
Building, B.D. Sawant Marg, Chakala,
Andheri (E), Mumbai- 400099.
[PAN AAACG2207L] ..... **Respondent**

&

Cross Objection No. 33/MUM/2024
(Assessment Year: 2015-16)

Glenmark Pharmaceuticals Limited
Wing A Glenmark House HDO Corporate
Building, B.D. Sawant Marg, Chakala,
Andheri (E), Mumbai- 400099.
[PAN AAACG2207L] ..... **Appellant**

Assistant Commissioner of Tax Vs
Circle 3 (4), Mumbai
481/2, Aayakar Bhavan, M.K. Road,
Churchgate, Mumbai – 400020. ..... **Respondent**

Appearance

For the Appellant/Assessee	:	Shri Vijay Mehta
For the Respondent/Department	:	Shri P.D. Choughule

Date

Conclusion of hearing	:	30.08.2024
Pronouncement of order	:	06.09.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. The present appeal and cross-objection arise from order, dated 24/01/2024, passed by the National Faceless Appeal Centre

(NFAC), Delhi, [hereinafter referred to as the '**CIT(A)'**]. The Revenue has challenged the order, dated 24/01/2024, passed by the CIT(A) whereby the CIT(A) had partly allowed the appeal preferred by the Assessee for the against the Assessment Order, dated 30/03/2022, passed by the Assessing Officer under Section 147 read with Section 144B of the Act. The Assessee has filed cross objection in the aforesaid appeal preferred by the Revenue.

2. The Revenue has raised following grounds of appeal:

> *"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right holding that the assessee shall be eligible for deduction under Section 80G without appreciating the fact that Corporate Social Responsibility (CSR) under mandatory requirement of the Companies Act, 2013*"

2.1. The Cross objection raised by the Assessee is as under:

> *"1. The learned Assessing Officer erred in initiating reopening proceedings under Section 148 of the Income Tax Act, 1961 ('the Act') and in passing an order u/s 147 of the Act."*

3. We would first take up the cross objection raised by the Assessee as the Assessee had challenged the validity of the re-assessment proceeding initiated under Section 148 of the Act. The facts relevant for adjudication of the cross objection, in brief, are that the Assessee filed return of income for the Assessment Year 2015-16 on 28/11/2015. The case of the Assessee was selected for scrutiny and assessment order under Section 143(3) read with Section 144C(3) of the Act was passed on 15/01/2019. Subsequently, the case of the Assessee was reopened and proceedings under Section 147 of the Act were initiated as the Assessing Officer was of the view that income chargeable to tax had escaped assessment since during the original assessment proceedings the Assessing Officer has allowed Assessee's claim for deduction under Section 80G of the Act in respect of

Corporate Social Responsibility (CSR) expenses which were not allowable as deduction in terms of Explanation 2 to Section 37(1) of the Act. The Assessee filed objections to reopening of the assessment. However, the same were dismissed by the Assessing Officer vide Order dated 24/01/2022. The Assessing Officer proceeded to pass assessment order under Section 147 read with Section 144B of the Act on 30/03/2022 assessing the total income of the Assessee at INR 5,72,14,29,430/- after, inter alia, disallowing the deduction of INR 2,09,15,000/- claimed by the Assessee under Section 80G of the Act.

4. Being aggrieved, the Assessee preferred appeal before the CIT(A) challenging the validity of the reassessment proceedings and the disallowance of deduction of INR 2,09,15,000/- claimed under Section 80G of the Act on merits. The CIT(A), vide order dated 24/1/2024, upheld the reopening of the assessment proceedings. However, the CIT(A) granted relief to the Assessee by deleting the disallowance made under Section 80G of the Act.

5. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal. While the Assessee has filed cross objections challenging the order of CIT(A) upholding the validity of the reassessment proceedings.

6. We have heard both the sides and perused the material on record.

7. We note that the Assessee had filed return of income for the Assessment Year 2015-16 on 28/11/2015. In the computation of income the Appellant had disclosed deduction claimed under Chapter VIA of the Act which included deduction of INR 2,14,15,000/- claimed by the Assessee under Section 80G of the Act. The aforesaid computation of income also made reference to

the Annexure-14 of the Tax Audit Report which listed 'Details of Donation' in respect of deduction claimed under Section 80G of the Act and the same included name of Donee, Permanent Account Number of Donee, amount donated, amount eligible, rate at which claim was made under Section 80G of the Act as well as the amount of deduction. The notes to the aforesaid 'Details of Donation' contained in Exhibit I to Annexure -14 to the Tax Audit Report in Form No. 3CD, also made reference to Note No. 26 to the Financial Statements and expenses of INR 5,75,38,929/- incurred on donation and the expenditure of INR 5,89,82,022/- on CSR initiative included under the head 'Other Operating Expenses'. When the case was selected for regular scrutiny, notice under Section 142(1) of the Act was issued on 24/09/2018 requiring the Assessee to file information/details alongwith supporting evidence in respect of the issues identified therein which included details of deduction claimed by the Assessee under Chapter VIA of the Act (at serial number 45). Vide letter, dated 22/10/2018, the Assessee filed part reply to the aforesaid notice giving details of deduction claimed under Chapter VIA of the Act. In paragraph 20 of the aforesaid letter, the Assessee clearly stated that deduction of INR 2,14,15,000/- was claimed under Section 80G of the Act and placed before the Assessing Officer partywise details of donation given by the Assessee alongwith donation receipts. Subsequently, vide Assessment Order, dated 15/01/2019, the Assessing Officer completed the assessment under section 143(3) read with Section 144C(3) of the Act, without making any addition/disallowance under Section 80G of the Act and thereby, accepted the claim for deduction of INR 2,14,15,000/- as made by the Assessee in the return of income for the relevant assessment year.

8. Subsequently, notice dated 27/03/2021 under Section 148 of the Act was issued to the Assessee initiating reassessment proceedings under Section 147 of the Act after recording following reasons for reopening assessment.

> *"1. The assessee has filed the return of income on 28.11.2015 declared income of Rs. 579.06.14 40 computed under normal provision of The Act and book profit of Rs 1261,54,80,329/- u/s 115JB of this Act. This case was selected for scrutiny and the assessment for the AY 2015-16 was finalized u/s 143(3) r.w.s. 144C(3) on 15.01.2019 with assessed income at Rs. 715,03,76,410/- under normal provision of the Act and that at Rs. 1266,35,45,089/- u/s 115JB of the Act.*
>
> *2. Subsequently it was observed from the records esp, computation of income that the Assessee had added back in the computation of income the amount of Rs. 5,89,82,022 pertaining to CSR Expenses. However, an amount of Rs.2,14,15,000 was claimed as deduction under section 80G of the Act.*
>
> *Thus, the total CSR expenditure of Rs. 5,89,82,022, which was originally disallowed as CSR expenses was again claimed at Rs. 2,14,15,000 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.2,14,15,000/-, as explained above, has escaped assessment."*

9. The contention advanced on behalf of the Assessee is that the reassessment proceedings have been initiated after expiry of four years from the end of relevant assessment year. Since regular assessment under Section 143(3) of the Act was framed on the Assessee, reassessment proceedings can be initiated against the

Assessee only on the basis of fresh tangible material and on account of failure of the Assessee to disclose fully and truly all material facts necessary for assessment. It was vehemently contended by the Learned Authorised Representative for the Assessee that in the present case, the Assessing Officer had no tangible material available to initiate reassessment proceedings. Further, in the return of income as well as during the assessment proceedings, the Assessee had made full and true disclosure of all material facts. The reassessment proceedings had been initiated merely on account of change of opinion. Therefore, the same should be quashed as being in contravention of the provisions contained in Section 147(1) of the Act.

10. Per contra, the learned Departmental Representative had contended that the reassessment proceedings could be initiated even on the basis of information obtained from the record of the original assessment on the investigation of the material already on record. The Learned Departmental Representative supported the oral submissions by way of the written submissions, dated 19/06/2024, the relevant extract of which reads as under:

> *"12. Thus, according to the law ……..*
>
> *xx xx*
>
> *In response to the cross objection raised by the appellant with regards to validity of reopening proceedings, it may be appreciated that the issue involved in this case is squarely covered by the decision of Hon'ble Delhi Tribunal in the case of Rural Electrification Corporation Ltd. Vs Addl. CIT, Rg. 15, New Delhi (2009) 34 SOT 159 Delhi. Also, the reliance is placed on the decision of Hon'ble Supreme Court in the case of A.L.A. Firm vs CIT (55 Taxmann 497) wherein it is held that information for re-opening the case can be obtained even from the record of original assessment from an investigation of material on record or the facts disclosed thereby or from the enquiry of research into facts or law.*
>
> *13. Reliance is also placed on the decision of Hon'ble Delhi High Court in the case of Consolidated Photo and Finvest Ltd. Vs ACIT*

(151 Taxmann 41) wherein it is held that action u/s 147 is permissible even if the Assessing Officer gathered his reasons to believe from very same record as has been subject matter of completed assessment proceedings and the principle of mere change of opinion cannot be a basis for re-opening completed assessment would have no application where order of assessee does not address itself to the aspect which is basis for re-opening of assessment is affirmed.

14. Further, the Apex Court has vividly stated in the case of Kalyanji Mavji & Co vs C.I.T., West Bengal 1976 AIR 203 that the word "information" which has not been defined in the Act is of the widest amplitude and comprehends a variety of factors.

15. Therefore, considering the facts and circumstances of the case, Explanation 2 to section 148 (relevant for A.Y. 2015-16) clearly applies in the case of the assessee. For the sake of ready reference the same is reproduced as under……..

16. When there is no discussion on the issue in the Assessment Order and no details were called for by the AO or filed by the assessee on the issue, no finding either positive or negative, can be said to have been arrived at during the course of original assessment proceedings.

17. Hence, there is no question of change of opinion as held in the judgments (i) Kalyanji Mavji and Co Vs. CIT 102 ITR 287 (SC); (ii) Esskat Engineering Pvt. Ltd Vs. CIT 247 ITR 818 and (iii) ITO Vs. Purushottom Das Bangur and Anr. 224 ITR 362 (SC).

The details of such case laws are submitted herewith for your kind perusal and your favourable consideration." (Emphasis Supplied)

11. We have given thoughtful consideration to the rival submissions. On perusal of reasons recorded for reopening assessment, we find that the sole basis on which the reassessment proceedings have been initiated is that the Assessing Officer had, on examining the assessment records (specially computation of income), got to know that the Assessee had claim deduction under Section 80G of the Act in respect of CSR expenses. According to the Assessing Officer, deduction under Section 80G could not have been allowed in respect of CSR expenses. Excessive deduction was allowed to the Assessee and therefore, income chargeable to tax had escaped assessment. We note that in the reasons recorded for reopening assessment, there is no

averment/ allegation that the Assessee had failed to disclose fully and truly all material facts during the assessment proceedings. During the course of hearing, the Learned Authorized Representative for the Assessee had placed reliance upon Judgment of the Hon'ble High Court in the case of **Castro India Limited Vs. Deputy Commissioner of Income Tax, Circle (1)(2), Mumbai & Ors**: **Writ Petition No. 3079 of 2022: Dated 05/03/2024.** In that case, the Assessee had challenged initiation of reassessment proceedings on the ground that the Assessee had made similar disclosures regarding CSR expenses and deduction claimed under Section 80G of the Act is made in annual accounts, tax audit report, computation of income. The Hon'ble Bombay High Court quashed the reassessment proceedings holding as under:

> *"13. From the perusal of the documents, two glaring facts emerge. One is that all material/documents necessary for computing the income were disclosed and submitted by Petitioner during the course of assessment proceedings leading to an irrefutable conclusion that there was no failure on the part of Petitioner to disclose fully and truly all material facts. Secondly, there is a notable absence of any fresh tangible material coming to the knowledge of the AO and the reopening of assessment is purely on a re-examination of the very same material on the basis of which the original assessment order was passed.*
>
> *14. It is a well settled principle of law that an AO has no power to review and this power is not to be confused with the power to reassess. The Apex Court in **Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd.,** has reiterated that mere change of opinion cannot be a ground for reopening concluded assessment. The observations made in paragraphs 6 and 7 read as below:*
>
> > *"6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of*

certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief……."

15. *As held by this Court in **Aroni Commercials Limited v. Deputy Commissioner of Income Tax–2(1) 2** once a query is raised during the assessment proceedings and Assessee has replied to it, it follows that the query raised was a subject of consideration of the AO while completing the assessment. It is also not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. Therefore, the reopening of the assessment, in our view, is merely on the basis of change of opinion of the AO from that held earlier during the course of assessment proceedings and this change of opinion does not constitute justification and/or reason to believe that income chargeable to tax has escaped assessment. Paragraph 14 of Aroni Commercials Limited (supra) reads as under:*

"14. We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that

the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008- 09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a 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. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow

that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."

16. *We have also noted the contents of the impugned order rejecting the objections of Petitioner. An identical and common place assertion is seen in various such orders rejecting the objections of Assessees. The Department routinely relies upon an observation of the Supreme Court in the case of Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd., 3 which reads as follows:*

> *"At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove 01the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction."*

17. *However, Assessing Officers without appreciating the true import of the aforesaid decision of the Supreme Court, continue to reopen assessments on the ground of income having escaped assessment despite the fact that all the material and information was already available with him while passing the original assessment order. Furthermore, while conclusive proof of escapement of income may not be necessary to reopen an assessment, the least that is required is a requisite belief based on fresh and tangible material which was not accessible to the AO or that which was deliberately withheld by Assessee, which then would amount to non-disclosure of relevant information. The finding of the Apex Court in Rajesh Jhaveri (supra) must not be used by AO to reopen assessments to review the original assessment order on the basis of a change of opinion of the AO, as done in the present case. Further, the reasons to believe notice itself indicates that the AO was already seized with information prior to passing of the original assessment order and as such, there is no tangible information on the basis of which he has allegedly formed the requisite belief.*

> *18. In these circumstances, we have no hesitation in holding that the notice dated 27th March 2021 under Section 148 of the Act in respect of income having escaped assessment and the order dated 21st December 2021 passed by the AO rejecting the objections of Petitioner impugned herein, are untenable and cannot be sustained in law. The Petition is allowed." (Emphasis Supplied)*

12. We are of the view that in the present case also the Assessee has discharge the duty to place before the Assessing Officer fully and truly all primary facts necessary for assessment. The Assessing Officer has failed to make any allegation or averment in the reasons recorded for reopening assessment that there was failure on the part of the Assessee to disclose fully and truly facts necessary for framing assessment. We have noted hereinabove that specific query was raised by the Assessing Officer during the assessment proceedings and that the Assessee had, during the original scrutiny assessment proceedings, disclosed relevant facts and furnished the relevant material. The fact that the assessment order passed during the regular assessment proceedings does not contain any discussion cannot lead to adverse inference against the Assessee since the Assessee has made relevant disclosure and furnished supporting documents in support of claim of deduction under Section 80G of the Act. There was no new tangible material with the Assessing Officer. In facts of the present case, it cannot be said that the Assessing Officer had failed to consider the material on record during the regular scrutiny assessment proceedings. Therefore, the judicial precedents relied upon by the Learned Departmental Representative are not applicable to the facts of the present case. Thus, we accept the contention of the Assessee that the reassessment proceedings initiated in the present case on account of mere change of opinion and in violation of provisions contain in Proviso to Section 147 of the Act. Accordingly, the reassessment notice, dated 27/03/2021, issued under Section

148 of the Act and the Assessment Order, dated 30/03/2022, passed by the Assessing Officer under Section 147 read with Section 144B of the Act are quashed. The submissions made by the parties relating to merits of deduction claimed by the Assessee under Section 80G of the Act do not require adjudication having been rendered academic.

13. In result, in terms of paragraph 13 above, the Cross Objections raised by the Assessee are allowed while the appeal preferred by the Revenue is dismissed.

Order pronounced on 06.09.2024.

Sd/-	***Sd/-***
(Prashant Maharishi)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 06.09.2024
Y.S.Patil,Sr.P.S.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai