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

WRIT PETITION NO. 1752 OF 2022
WITH
WRIT PETITION NO. 2966 OF 2022

Bharat Petroleum Corporation Ltd.
3rd Floor, Bharat Bhavan
4/6, Currimbhoy Road, Ballard Estate,
Mumbai – 400 001 .. Petitioner

Versus

1. Assistant Commissioner of Income Tax,
Circle 2(1)(1), Mumbai,
Room No. 561, 5th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 020

2. Principal Commissioner of Income Tax,
Mumbai-2, Mumbai,
Room No. 344, 3rd Floor,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 020

3. Additional / Joint / Deputy / Assistant
Commissioner of Income-Tax, 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,
2nd Floor, Aayakar Bhavan, M.K. Marg,
New Marine Lines, Mumbai – 400 020 .. Respondents

Mr. J.D. Mistri, Senior Advocate *a/w Niraj Sheth, Ms. Gunjan Kakad i/b Atul K. Jasani, Advocates for the Petitioner.*

Mr. Akhileshwar Sharma, *Advocate for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON : 19th JUNE, 2025.
PRONOUNCED ON : 3rd JULY, 2025.

JUDGMENT :- [Per B.P. COLABAWALLA, J.]

1. In both the above Writ Petitions the issue raised is whether the 1st Respondent had the power to reopen the assessment of the Petitioner [under Section 147] for AY 2013-14 and AY 2014-15 and issue notices under Section 148 of the Income Tax Act, 1961 (for short "**IT Act**").

2. Writ Petition No. 1752 of 2022 challenges the legality and validity of the impugned Notice dated 23rd March 2021 issued under Section 148 of the IT Act for AY 2013-14. Additionally, the Petitioner also challenges the impugned Order dated 17th February 2022 rejecting the objections filed by the Petitioner to the validity of the impugned Notice dated 23rd March 2021. The reasons given in the impugned Notice for reopening the assessment of the Petitioner for the AY 2013-14 was that the Assessee (the

Petitioner) had claimed exemption under Section 10(34) of the IT Act of Rs.179.44 crores on account of dividend income. Out of this total income claimed as exempt, an amount of Rs.37.10 crores was on account of receipts from an entity called the *Bharat Petroleum Corporation Ltd. Trust for Investment in Shares* (for short the **"BPCL Trust"** or **"KRL Trust"**). It was observed that the said Trust was formed through a merger of Kochi Refineries Ltd. with the Petitioner in the year 2006-07, and the sole beneficiary of the Trust was the Petitioner. Pursuant to this merger, 3,37,28,737 equity shares of the Petitioner were allotted to the said Trust. After issue of a 1:1 bonus shares issued in July 2012, the said Trust holds 6,74,57,474 equity shares of the Petitioner and the cost of the original investment was Rs.659.10 crores. According to the Assessing Officer (1st Respondent), it is from this Trust that the Petitioner (BPCL) has received dividend income to the tune of Rs.37.10 crores. Since the said Trust is not a Company and is not required to declare dividend as mandated by the Companies Act, 2013, and nor was the said Trust covered under Section 115-O of the IT Act, the amounts distributed by the said Trust to the Petitioner did not qualify as exempt income under Section 10(34) of the IT Act. According to the Assessing Officer, the full and true facts relating to earning of such income were not disclosed by the Petitioner – Assessee during the course of assessment proceedings, and hence, he had reason to

believe that income to the extent of Rs.37.10 crores received by the Petitioner from the said Trust had escaped assessment for AY 2013-14. This, according to the Assessing Officer, was due to reasons attributable to the Petitioner for failure to disclose fully and truly all material facts necessary for AY 2013-14. It is on this basis that the Assessing Officer reopened the assessment for AY 2013-14 and issued the impugned Notice dated 23rd March 2021.

3. Writ Petition No. 2966 of 2012 challenges the legality and validity of the impugned Notice dated 26th March 2021 issued under Section 148 of the IT Act for AY 2014-15. Consequently, the Petitioner also challenges the impugned orders dated 25th November 2021 and 14th February 2022 rejecting the objections filed by the Petitioner to the validity of the impugned Notice dated 26th March 2021. So far as the impugned Notice dated 26th March 2021 (Relating to AY 2014-15) is concerned, not only was the assessment proceeding sought to be reopened on the ground that the Petitioner had incorrectly claimed exemption under Section 10(34) in relation to the monies received from the BPCL Trust, but also that the Assessee had wrongly claimed a deduction under Section 32AC. In other words, for AY 2014-15, the assessment was sought to be reopened on 2 counts. Here also the Assessing Officer was of the opinion that income of the Assessee (the Petitioner) had escaped assessment because of a failure on the

part of the Assessee to disclose fully and truly all material facts necessary for assessment of that year.

4. To put it in a nutshell, for AY 2013-14, according to the Assessing Officer (1st Respondent), income to the extent of Rs.37.10 crores [received from the BPCL Trust] had escaped assessment, and for AY 2014-15 income of Rs.201.59 crores [consisting of (a) Rs.74.20 crores received from the BPCL Trust and (b) Rs. 127.39 crores by wrongly claiming a deduction under Section 32AC] had escaped assessment.

5. Since the facts in both the Petitions are almost identical, save and except that one additional ground is taken for reopening the assessment for AY 2014-15 [the subject matter of Writ Petition No. 2966 of 2022], we shall briefly set out the facts from Writ Petition No. 1752 of 2022 (relating to AY 2013-14).

WRIT PETITION NO.1752 OF 2022

6. The Petitioner is a Company engaged in the business of refining of crude oil and marketing of petroleum and petrochemical products and lubricants and is a regular Assessee under the IT Act. Respondent No.1 is the

Assistant Commissioner of Income Tax, who has been vested with the powers under the IT Act to assess the income of the Petitioner and who has issued the impugned Notice [dated 23rd March 2021] under Section 148 and has passed the impugned order [dated 17th February 2022] rejecting the objections raised by the Petitioner challenging the legality and validity of the impugned Notice. Respondent No.2 is the Principal Commissioner of Income Tax, who has administrative jurisdiction over Respondent No.1 and who, according to the Petitioner, has illegally and without application of mind accorded his approval under Section 151 of the IT Act for issuance of the impugned Notice. Respondent No.3 is an Officer of the National Faceless Assessment Centre, Delhi and Respondent No.4 is the Union of India. Respondent Nos. 1 to 3 are the employees of Respondent No.4.

7. On 18th August 2006, a scheme of amalgamation between the Petitioner and one Kochi Refineries Ltd. (a wholly owned subsidiary of the Petitioner) was approved by the Government of India. In pursuance of this scheme, a Trust was formed vide a Trust Deed dated 9th October 2006 so that the shares to be issued by BPCL (the Petitioner) on the merger would be held by this Trust. This Trust was called the *Bharat Petroleum Corporation Ltd. Trust for investment in shares* (for short the **"BPCL Trust"** or **"KRL Trust"**) and the sole beneficiary of this Trust is the Petitioner. In accordance

with the said scheme, 3,37,28,737 equity shares of the Petitioner were allotted to the said Trust for the benefit of the Petitioner in the previous year relevant to the AY 2007-08. After a 1:1 bonus issued in July 2012, the BPCL Trust now holds 6,74,57,474 equity shares of the Petitioner. As and when the Petitioner declares a dividend, the same is received by the BPCL Trust, which is, in turn, distributed to the Petitioner (being its sole beneficiary). According to the Petitioner, the cost of the original investment was Rs.659.10 crores, which is shown under the heading "Non-current investment" and the monies distributed by the Trust to the Petitioner is consistently included in other income. According to the Petitioner, this income, for the AY 2007-08 onwards, has been consistently offered to tax and claimed as exempt under Section 10(34). This position has never been disputed by the Income Tax Department in the past assessment years.

8. For the AY 2013-14, the Petitioner filed its Return of Income on 22nd November 2013 declaring a total income of Rs.3533,35,52,040/- (Rs. 3,533.35 crores). In this Return of Income, the dividend income of Rs.179.44 crores as well as the payment of dividend distribution tax was disclosed. On 4th September 2014, a Notice under Section 143(2) of the IT Act was issued to the Petitioner. In the said Notice, Respondent No.1 sought various details from the Petitioner such as the Balance-sheet, Profit and Loss Account with

the relevant Annexures in the Schedule, Tax Audit Report, computation of income etc.

9. Pursuant to this Notice, on 23rd September 2014, the Petitioner furnished various details such as the Annual Report for the previous year 2012-13, disclosures with respect to the investment in KRL Trust as well as disclosures with reference to the income received from the said Trust. On 2nd December 2016, the Petitioner also, in connection with dis-allowance under Section 14A of the IT Act, provided details of investments, which yielded exempt income. After considering the details furnished by the Petitioner during the course of assessment proceedings, Respondent No.1 passed an Assessment Order under Section 143(3) dated 30th January 2017 assessing the total income of the Petitioner at Rs. 3,652.83 crores. In paragraph 5.1 of the Assessment Order, the Petitioner's submission regarding the investment capable of yielding exempt income was set out, which included the investment held in the BPCL Trust. In paragraph 5.2, in working out the dis-allowance under Section 14A r/w Rule 8D, the investment of Rs.659.10 crores in the BPCL Trust was also taken into account. According to the Petitioner, therefore, not only was there a full and final disclosure of the fact that investment in the BPCL Trust was capable of yielding exempt income, but the

said fact was accepted by Respondent No.1 and on that basis a dis-allowance under Section 14A was made thereon.

10. The Petitioner, thereafter, received the impugned Notice dated 23rd March 2021 issued under Section 148 of the IT Act. In response to the impugned Notice, the Petitioner furnished a Return of Income [under Section 139] on 12th April 2021, under protest. On 13th May 2021 a copy of the approval granted by Respondent No.2, along with a copy of the reasons for reopening the assessment (for AY 2013-14) were provided by Respondent No.1 to the Petitioner. As mentioned earlier, the reason recorded in support of the impugned Notice was that the exemption under Section 10(34) in respect of the income of Rs.37.10 crores received by the Petitioner from the BPCL Trust was sought to be withdrawn allegedly on the ground that the Petitioner had failed to fully and truly disclose all material facts with reference to the said income.

11. In response to the reasons furnished, the Petitioner furnished detailed objections vide its letter dated 18th June 2021. In the said objections, it was submitted by the Petitioner that:-

(a) The reasons were recorded by the preceding Assessing Officer whereas the impugned notice was issued by the subsequent Assessing Officer. It

was contended that the same Assessing Officer who records the reasons must issue the notice.

(b) Approval under Section 151 of the Act was granted by Respondent No.2 without application of mind and was mechanical and perfunctory.

(c) Reopening was not based on any fresh material.

(d) Reopening was based on a change of opinion.

(e) There was no failure to disclose fully and truly any material fact.

(f) Income received from the KRL Trust was rightly claimed as being exempt under Section 10(34) of the Act since the Petitioner was the sole beneficiary of the KRL Trust.

(g) As per provisions of Section 115-O(4) of the Act, after having discharged the liability to pay dividend distribution tax, the same dividend cannot again be subjected to tax.

(h) Respondent No.1 was requested to pass a speaking order in accordance with the decision in GKN Driveshafts (India) Ltd. [259 ITR 19 (SC)] and, thereafter, to wait for a period of four weeks

as per the decision of this Hon'ble Court in Asian Paints vs. Dy. CIT [296 ITR 90].

12. The Petitioner, thereafter, filed a letter dated 29th June 2021 requesting Respondent No.1 to provide the original copy of the reasons recorded since the same had not been provided along with the letter dated 13th May 2021. According to the Petitioner, the said request has not yet been complied with by Respondent No.1 till date.

13. By the impugned order dated 17th February 2022, Respondent No.1 rejected the objections raised by the Petitioner, and a Notice dated 18th February 2022 was issued by Respondent No.1 under Section 143(2) r/w Section 147 of the IT Act. Being aggrieved by the unlawful reopening of the assessment by the 1st Respondent in issuing the impugned Notice dated 23rd March 2021 under Section 148 of the IT Act [for AY 2013-14], and the passing of the impugned Order dated 17th February 2022 rejecting the objections of the Petitioner, it has approached this Court under Article 226 of the Constitution of India challenging the impugned Notice as well as the impugned Order.

14. As mentioned earlier, for the AY 2014-15 (the subject matter of Writ Petition No. 2966 of 2021), the assessment was sought to be reopened

not only on the ground that in the said assessment year, the Petitioner had wrongly claimed exemption under Section 10(34) in relation to the monies received from the BPCL Trust, but also the fact that the Petitioner had wrongly claimed certain benefits/deductions under Section 32AC of the IT Act.

SUBMISSION OF THE PARTIES:

15. In this factual backdrop, Mr. Mistri, the learned Senior Counsel appearing on behalf of the Petitioner, submitted that in the facts of the present case, the impugned Notices issued under Section 148 for both the assessment years were beyond the period of 4 years from the end of the concerned assessment year. Further, in the facts of the present case, for both assessment years, an Assessment Order was passed under Section 143(3). Mr. Mistri submitted that in such a scenario, under the first proviso to Section 147 (as it stood at the relevant time), where an assessment under Section 143(3) had been made for the relevant assessment year, no action could be taken after the expiry of 4 years from the end of the relevant assessment year, unless any income chargeable to tax had escaped assessment by reason of the failure on the part of the Assessee to *inter alia* disclose fully and truly all material facts necessary for the assessment for that

assessment year. Mr. Mistri submitted that for the 1st Respondent to be invested with jurisdiction, it was, therefore, incumbent that there was a failure to disclose fully and truly all material facts necessary for the purpose of assessment. If all facts were fully and truly disclosed, the 1st Respondent would have no jurisdiction to issue the Notice under Section 148 of the IT Act. According to Mr. Mistri, all details in relation to the exempt income received from the BPCL Trust were disclosed during the assessment proceedings initiated earlier and which culminated in an Assessment Order dated 30th January 2017 passed under Section 143(3). Mr. Mistri submitted that this apart, it is clear from the Assessment Order dated 30th January 2017 that the Assessing Officer applied his mind to the fact that Rs.37.10 crores was received by the Petitioner from the BPCL Trust, and which was claimed by the Petitioner as exempt income. It is on this basis that the Assessing Officer thereafter invoked the provisions of Section 14A r/w Rule 8D and deducted the expenditure incurred in relation to income which was exempted. Once this is the case, it is abundantly clear that all material facts in relation to the income received from the BPCL Trust by the Petitioner were fully and truly disclosed at the time of the earlier assessment proceedings, and which culminated in the Assessment Order dated 30th January 2017 passed under Section 143(3) of the IT Act. Once this was the factual scenario,

the 1st Respondent lacked jurisdiction to reopen the assessment for AY 2013-14 and issue a Notice under Section 148, was the submission.

16. In support of the aforesaid submission, Mr. Mistri relied upon the following decisions:-

(a) Ananta Landmark (P) Ltd. Vs. DCIT [2021] 439 ITR 168 (Bombay)

(b) Hindustan Lever Ltd. Vs. R.B. Wadkar [2004] 268 ITR 332 (Bombay)

(c) Lupin Ltd. Vs. ACIT [2014] 46 taxmann.com 396 (Bombay)

(d) Idea Cellular Ltd. Vs. DCIT [2008] 301 ITR 407 (Bombay)

(e) First Source Solutions Ltd. Vs. ACIT [2021] 438 ITR 139 (Bombay)

(f) Saraswat Co-operative Bank Ltd. Vs. ACIT [2024] 166 taxmann.com 360 (Bombay)

(g) Bombay Stock Exchange Ltd. Vs. Deputy Director of Income tax (Exemption) and Ors. [2014] 365 ITR 181.

17. Mr. Mistri then submitted that the present reopening is based on nothing except a "change of opinion" of the 1st Respondent and which is impermissible in law. According to Mr. Mistri, the details of the claim of the income claimed as 'exempt' were disclosed in the original Return of Income as well as disclosed in the earlier assessment proceedings. The basic

document for completing an assessment under Section 143(3) is the Return of Income and the computation of income. Mr. Mistri submitted that it is undisputed that during the original assessment proceedings, Respondent No.1 had perused the Return of Income and made a dis-allowance under Section 14A with respect to the income received from the BPCL Trust. The Assessing Officer, therefore, applied his mind to the claim of dividend received from the said Trust under Section 10(34) and thereafter passed an assessment order dated 30th January 2017 under Section 143(3). In these facts, the reassessment proceedings initiated by Respondent No.1 to disallow the exemption under Section 10(34) was nothing but a "change of opinion". This is more so when one takes into consideration that there was absolutely no new tangible material for reopening the assessment. Once this is the case, reopening the assessment merely on a "change of opinion" was wholly impermissible, was the submission. In this regard, Mr. Mistri relied upon the following judgments:-

(a) Aroni Commercials Ltd. Vs. DCIT [2014] 362 ITR 403 (Bombay)

(b) CIT Vs. Kelvinator of India Ltd. [2010] ITR 561 (SC)

(c) Ananta Landmark (P) Ltd. Vs. DCIT [2021] 439 ITR 168 (Bombay)

(d) Saraswat Co-operative Bank Ltd. Vs. ACIT [2014] 166 taxmann.com 360 (Bombay)

18. Mr. Mistri next submitted that in any event, as regards the claim of exemption under Section 10(34), Respondent No.1 could not have any reason to believe that income chargeable to tax had escaped assessment. In this regard, he submitted that the BPCL Trust is entitled to claim exemption under Section 10(34) of the Act, since the dividend received by the BPCL Trust satisfies the criteria (of income by way of dividend referred to in Section 115-O) as provided under the IT Act. The Petitioner, being the sole beneficiary of the BPCL Trust, must be assessed in the like manner and to the same extent as the BPCL Trust, as per the provisions of Section 161(1) of the IT Act. Once this is the case, and it cannot be disputed that the dividend income in the hands of the Trust (for the relevant assessment years) was exempt under Section 10(34), then, by virtue of the provisions of Section 161(1), the same could not be brought to tax in the hands of the Petitioner. In any event, the dividend received by the Trust was exempt under Section 10(34), and the same being passed on by the Trust to its beneficiary (the Petitioner), is simply post tax income of the Trust being transferred to its beneficiary in accordance with the terms of the Trust. This being the case, it can, in any event, never be treated as income in the hands of the Petitioner (the beneficiary). According to Mr. Mistri, this proposition has in fact been accepted by a bench of the ITAT in the case of the Petitioner itself in ITA No.

1602 and 1600/M/2020 for AYs 2015-16 and 2017-18. It was Mr. Mistri's submission that therefore, in any event, the 1st Respondent could not have had any reason to believe that income chargeable to tax (insofar as it related to receipt of Rs.37.10 crores from the Trust) had escaped assessment. Mr. Mistri submitted that before the reassessment proceedings can be initiated, it is a *sine qua non* (under Section 147) that the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year. It is only once this belief is formed that the Assessing Officer can thereafter proceed to issue a Notice under Section 148, and which would ultimately culminate into the reassessment order.

19. Mr. Mistri thereafter submitted that reassessment proceedings have been initiated purely based on the audit objection and which would be invalid. Mr. Mistri submitted that the impugned Notice has been issued at the behest of the audit party, and which is evident from the reply filed by the Respondent in Writ Petition No. 2966 of 2022 for AY 2014-15. According to Mr. Mistri, reassessment pursuant to an audit objection is invalid and in any event the 1st Respondent ought to be directed to furnish a copy of the audit objection and the reply furnished by Respondent No.1 as well as his superiors to the said audit objection to enable the determination of validity of the so-called reasons to believe based on which the impugned Notice was issued. To

put it in a nutshell, Mr. Mistri submitted that if the reply to the audit objection by the 1st Respondent was in fact that the exemption under Section 10(34) was correctly allowed, then, clearly, there could be no reason to believe that any income had escaped assessment. According to Mr. Mistri, even though this information was specifically sought for, the same has not been furnished till date. In such a situation, Mr. Mistri submitted that an adverse inference be drawn against the 1st Respondent.

20. Mr. Mistri lastly submitted that the sanction accorded by Respondent No.2 for reopening the assessment is invalid because the same is not signed. Mr. Mistri submitted that the sanction under Section 151 of the IT Act has been issued by Respondent No.2 without signing the same and thus the impugned Notice issued under Section 148 is also invalid on that count. For all the aforesaid reasons Mr. Mistri submitted that the impugned Notice as well as the impugned Order [for AY 2013-14] are invalid and ought to be quashed and set aside.

21. On the other hand, Mr. Sharma, the learned Counsel appearing on behalf of the Respondent Nos. 1 to 3, supported the issuance of the impugned Notice and the passing of the impugned Order rejecting the objections to the validity of the said Notice. He submitted that the main issue

for reopening the assessment in the Petitioner's case was the allowance of inadmissible exemption of dividend income received from the BPCL Trust. The allowance of such inadmissible exemption was pointed out by the Revenue Audit party vide its LAR No. 1644-1647 dated 13th December 2017. In the Revenue Audit, it was pointed out that as per Section 10(34) of the IT Act, in computing the total income of any person, any income by way of dividend referred to in Section 115-O of the IT Act was not required to be included. However, Section 115-O was applicable to domestic companies only. Since the BPCL Trust was not a company, Section 115-O was not applicable and hence, the income from the BPCL Trust, being income from a Trust, could not qualify for exemption under Section 10(34) of the IT Act. Mr. Sharma submitted that as per the guidelines issued in handling Revenue Audit matters, the issue flagged by the Audit was therefore, examined by referring to the accounts and the applicable provisions under the IT Act. As income chargeable to tax had escaped assessment, proposal was put to the higher authorities for reopening the assessment. After getting the approval under Section 151 of the IT Act, the Petitioner's case was reopened by issuing Notice under Section 148. Mr. Sharma submitted that the Revenue Audit was entitled to point out factual errors and based on the same, reopening of the assessment was valid.

22. Mr. Sharma then submitted that Mr. Mistri was incorrect in his submission when he sought to contend that there has been no failure to disclose fully and truly all material facts. The fact that dividend income from the BPCL Trust was claimed as exempt under Section 10(34) without even disclosing that the Trust would not fall within the meaning of a domestic company under Section 115-O would itself be a non-disclosure of all material facts. Once this is the case, and which was then flagged by the Audit, the 1st Respondent was certainly invested with the jurisdiction to reopen the assessment proceedings and issue a Section 148 Notice. In these facts, Mr. Sharma also submitted that therefore, there is no "change of opinion". The assessment proceedings have been reopened under Sections 147 and 148 because clearly there was a failure on the part of the Petitioner to fully and truly disclose all material facts in relation to the concerned assessment year. Consequently, he submitted that there was no merit in the above Writ Petition and the same be dismissed.

23. We must mention here that Mr. Sharma pointed out that though it is true that for the AYs 2015-16 and 2017-18, the ITAT has held in favour of the Petitioner on the issue of claiming exemption under Section 10(34) and the monies received from the said Trust, those decisions are pending in Appeal before this Court and hence, have not attained finality. Hence, no

reliance can be placed on those decisions to contend that as regards the claim for exemption under Section 10(34) of the Act, the 1st Respondent could not have had any reason to believe that income chargeable to tax has escaped assessment.

FINDINGS AND CONCLUSIONS:

24. We have heard learned Counsel for the parties at length. We have also perused the papers and proceedings in both the above Writ Petitions. Section 147 of the IT Act *inter alia* provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment, and which comes to his notice subsequently in the course of the proceedings. In such a situation, the said section further empowers the Assessing Officer to recompute the loss or the depreciation allowances or any other allowances, as the case may be. The first proviso to Section 147, and which is important for our purposes, reads as under :-

> *"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years 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 the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."*
>
> *(emphasis supplied)*

25. The said proviso clearly stipulates that where an assessment under Sections 143(3) or 147 has been carried out for the relevant assessment year, no action can be taken under Section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on the part of the Assessee to make a Return under Section 139, or in response to a Notice issued under Section 142(1) or Section 148, or to disclose fully and truly all material facts necessary for his assessment for that assessment year. In the present case, admittedly the scrutiny assessment [under Section 143(3)] was done and an Assessment Order was passed under Section 143(3) of the IT Act for the AY 2013-14 as well as AY 2015-16. Further, the proposed reassessment for both these years is sought to be done after the expiry of four years from the end of the relevant assessment year. In such a situation, the first proviso to Section 147 of the Act is clearly attracted. Thus, no action for initiation of reassessment proceedings for both the aforesaid assessment years could be initiated unless the income chargeable to tax had escaped

assessment by reason of failure on the part of the Petitioner to disclose fully and truly all material facts.

26. Having said this, we will now examine the reasons given by the 1st Respondent to reopen the assessment for AY 2013-14. The reasons furnished to the Petitioner can be found at page 219 of the paper book. For the sake of convenience, the same read thus :-

> "*In this case, the assessee company filed its return of income for A.Y. 2013-14 on 22/11/2013 declaring total income at Rs.3533,35,52,040/- under normal provisions of the Act and Book Profit u/s 115JB of the Act of Rs.3444,91,28,460/-. The case was selected for scrutiny and assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 30.01.2017 assessing total income at Rs.3652,83,30,770/- under normal provisions of the Act after making following additions / disallowances.*

S.N.	*Particulars*	*Amount (in Rs.)*
1	*Transfer Pricing Addition*	*2,53,20,865*
2	*Additional disallowance u/s 14A*	*104,65,91,381*
3	*Capital expenditure charged to revenue A/c*	*2,59,74,118*
4	*Adjustment for scientific research expenditure as per DSIR*	*40,56,615*
5	*Disallowance of depreciation on right of way*	*8,98,15,282*

> *2. On perusal of the records of the relevant assessment year, it is observed that the assessee has claimed exemption u/s 10(34) of the Act of Rs.179,44,45,078/- on account dividend income. It is seen that out of total income claimed as exempt dividend income by the assessee, an amount of Rs.37.10 crore is on account of receipt from BPCL Trust. This is treated as exempt dividend income by the assessee. According to the notes to accounts, the said trust is formed through merger of Kochi Refineries Ltd., Kochi (KRL)*

with BPCL (approved by the Government of India) for the benefit of the corporation in the year 2006-07. It was also stated that on merger, 33728737 equity shares of the BPCL were allotted to the trust in lieu of shares held by the Corporation in the erstwhile KRL. After issue of 1:1 bonus shares in July 2012, the trust holds 67457474 equity shares of the corporation and accordingly, the cost of the original investment of Rs. 659.10 crores is included in Non-Current Investments.

3. The BPCL Trust is not a company and is not required to declare dividends as mandated by Companies Act, 2013 nor is covered u/s 115O of the Act. Therefore, the amounts distributed by it do not qualify as exempt dividend income u/s 10(34) of the Act. The full and true facts related to earning of such an income were not disclosed by the assessee during the course of assessment proceedings. Hence, I have reason to believe that income of Rs.37.10 crore from BPCL Trust has escaped assessment for A.Y. 2013-14 due to reasons attributable to the assessee for failure to disclose fully and truly all material facts necessary for assessment for that year. Accordingly, the assessment deserves to be reopened u/s. 147 of the Act for A.Y. 2013-14.

4. In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s. 148 is obtained separately from Pr. Commissioner of Income tax-2, Mumbai as per the provisions of section 151 of the Act."

27. As can be seen from the above reproduction, paragraphs 1 and 2 of the aforesaid reasons only set out the factual situation, and which factual situation was also disclosed during the original assessment proceedings. The reason for reopening the assessment is found in paragraph 3. Paragraph 3 *inter alia* states that the BPCL Trust is not a company and is not required to declare dividend as mandated by the Companies Act, 2013 nor covered under Section 115-O of the IT Act. Therefore, the amounts distributed by it do not

qualify as exempt dividend income under Section 10(34) of the Act. It is thereafter stated that full and true facts related to earning of such income were not disclosed by the Assessee during the course of the assessment proceedings. Hence, the Assessing Officer had reason to believe that income of Rs.37.10 crores from the BPCL Trust had escaped assessment for the AY 2013-14 due to the Assessee failing to disclose fully and truly all material facts necessary for assessment for that year.

28. It is true that the reasons for initiating reassessment proceedings, in fact, state that there is a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment. However, we find that merely making this bald assertion is not enough. It is now well settled that reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible, and no addition can be made to those reasons. Further, no inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to reach the conclusion as to whether there was a failure on the part of the Assessee to disclose fully and truly all material facts necessary for assessment for the concerned assessment year. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on the material on record. What is important is that 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 the vital link between the reasons and the evidence. That vital link is a safeguard against the arbitrary reopening of a concluded assessment. The aforesaid proposition has been laid down by a Division Bench of this Court [to which one of us (B.P. Colabawalla, J.) was a party] in the case of ***Bombay Stock Exchange Ltd. (supra)***. The Division Bench, after relying upon a decision of another Division Bench in the case of ***Hindustan Lever Ltd. Vs. R.B. Wadkar, reported in [2004] 268 ITR 332 (Bombay)*** culled out the aforesaid proposition. The relevant portion of this decision reads thus :-

> *"9. It is true that the reasons for initiating reassessment proceedings do in fact state that there was a failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment. However, as correctly submitted by Mr. Dastoor, merely making this bald assertion was not enough. In this regard, the reliance placed by Mr. Dastoor on a Division Bench judgment of this court in the case of Hindustan Lever Ltd. Vs. R.B. Wadkar, Assistant CIT reported in [2004] 268 ITR 332 (Bom) is well founded. The relevant portion of the said judgment reads as under (page 337) :*
>
> > *"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 record 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."

(emphasis supplied)

29. In the present case, admittedly there are no details given by the Assessing Officer (the 1st Respondent) as to which fact or material was not disclosed by the Petitioner that led to its income escaping assessment. There

is merely a bald assertion in the reasons that there was a failure on the part of the Petitioner to disclose fully and truly all material facts, without giving any details thereto. This being the case, the impugned Notice is bad in law on this ground alone and the Petitioner would be entitled to succeed in this Writ Petition.

30. Despite this, we examined the facts of the present case and on doing so, we find that in fact, there was no failure on the part of the Petitioner in disclosing fully and truly all material facts for the AY 2013-14. In response to the Notice issued by Respondent No.1, in the original assessment proceedings, the Petitioner furnished details with respect to the claim of exempted income from the BPCL Trust. Firstly, the claim of dividend income was very much in the Return of income as well as the details of the dividend distribution tax paid. Pursuant to this, the Annual Report was filed which also at Note No.35 (in the report referred to as the KRL Trust) disclosed investment in the KRL Trust under the heading 'Non-current Investment' as Rs. 659.10 crores. Even in the response furnished by the Petitioner in respect of the disallowance under Section 14A of the Act, the Petitioner disclosed the details of the exemption claimed under Section 10(34) of the Act, which included the income received from the BPCL Trust (Page Nos. 182 and 183 of the paper book). In fact, at page 183, it is specifically mentioned that "*the*

above pattern of investment makes it amply clear that Corporation has over the period of time made investments in equity shares of subsidiaries, joint ventures and associates, the dividend income declared by them is exempt from tax." The pattern of investment referred to in this paragraph also refers to the pattern of investment in the BPCL Trust (on the Kochi Refineries Merger). Further, the details furnished by the Petitioner were considered by Respondent No.1 in the original assessment proceedings [under Section 143(3)] and also specifically noted that income from the BPCL Trust had been claimed as exempted. Respondent No.1 thereafter proceeded to disallow expenses under Section 14A of the Act. The scrutiny assessment order passed under Section 143(3) can be found at page 193 of the paper book. In paragraph 5.1 of this order, the Assessing Officer categorically states that for the AY 2013-14 the Assessee has received a sum of Rs.185.75 crores as income exempted from tax by way of dividend from Indian Companies, Income from the KRL Trust, shares of income from AOP (PII) and interest on tax free securities. It is, therefore, clear that the Assessing Officer in the scrutiny proceedings was very much aware that income from KRL Trust was received by the Petitioner and which was claimed as exempt. The Assessing Officer, therefore, proceeded to apply Section 14A r/w Rule 8D and dis-allowed an amount of Rs.104.65 crores under Section 14A r/w Rule 8D of the Income Tax Act and Rules respectively. What is important to note is that

while doing the calculation under Section 14A, the Assessing Officer specifically takes a note of the investment in the BPCL Trust at page 201. Once we look at all these facts, we are clearly of the view that there was no failure to disclose fully and truly all material facts in relation to AY 2013-14, which would invest the 1st Respondent with the jurisdiction to initiate reassessment proceedings under Sections 147 and 148 of the IT Act. Considering this, we do not feel the necessity to burden this judgment with the decisions relied upon by Mr. Mistri on this aspect. It is suffice to state that these decisions clearly lay down that where scrutiny assessments are done [under section 143(3)] and more than 4 years have elapsed from the end of the relevant assessment year, then no reassessment proceedings can be initiated unless there is a failure on the part of the Assessee to fully and truly disclose all material facts for that assessment year.

31. We also find considerable force in the argument of Mr. Mistri that the reopening in the present case is merely based on a "change of opinion", which is impermissible. As can be seen from the reasons for reopening, the only real reason given is that the BPCL Trust is not a company and hence not covered under Section 115-O of the Act. Therefore, the amount distributed by it to the Petitioner would not qualify as exempt dividend income under Section 10(34) of the Act. This to our mind would be merely a

"change of opinion". We say this for the simple reason that even if we assume for the sake of argument that this exemption was wrongly allowed by the Assessing Officer in the scrutiny assessment proceedings, the same cannot be the sole ground for reopening the assessment and invoking the provisions of Section 147 r/w Section 148 of the IT Act. Merely because the Assessing Officer is now of the opinion that the deduction is wrongly granted, cannot invest him with the jurisdiction to reopen the assessment, especially in a case where reassessment proceedings are initiated when there is already a scrutiny assessment under Section 143(3) and which is after a period of 4 years from the date of the relevant assessment year and there has been no failure to disclose fully and truly all material facts in relation to the concerned assessment year. This has been so held by the Hon'ble Supreme Court in the case of ***Gemini Leather Stores Vs. Income Tax Officer, (1975) 4 SCC 375.*** The relevant portion of this decision reads thus :-

> *"**3.** ……..*
> *It is not disputed that the case falls under Clause (a) of section 147. The question is whether the Income-tax Officer had reason to believe that income chargeable to tax had escaped assessment for the assessment year in question by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The law on the point has been settled by this Court in Calcutta Discount Co. Ltd. v. Income-tax Officer [1961] 41 ITR 191 (SC). The decision in Calcutta Discount Company case (supra) is based on Section 34 of the Income Tax Act, 1922, the provisions of which correspond to those Sections 147 and 148 of the Income Tax Act, 1961, the points of departure from the old law are not*

material for the purpose of this case. The position is stated in Calcutta Discount Company case (supra) as follows:

> *"In every assessment proceeding the assessing authority will for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inference as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences.*
>
> *…… Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee - to tell the assessing authority what inferences, whether of facts or law, should be drawn."*

The law laid down in Calcutta Discount Company case (supra) has been restated in several subsequent decisions of this Court: Commissioner of Income Tax v. Hemchandra Kar [1970] 77 ITR 1 (SC), Commissioner of Income-tax v. Bhanji Lavji [1971] 79 ITR 582 (SC) and Commissioner of Income-tax v. Burlop Dealers Ltd. [1971] 79 ITR 609 (SC), to name only a few. In the case before us the assessee did not disclose the transactions evidenced by the drafts which the Income-Tax Officer discovered. After this discovery the Income-tax Officer had in his possession all the primary facts, and it was for him to make necessary enquiries and draw proper inferences as to whether the amounts invested in the purchase of the drafts could be treated as part of the total income of the assessee during the relevant year. This the Income-tax officer did not do. It was plainly a case of oversight, and it cannot be said that the income chargeable to tax for the relevant assessment year had escaped assessment by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts. The Income-tax Officer had all the material facts before him when he made the original assessment. He cannot now take recourse to section 147(a) to remedy the error resulting from his own oversight.

> ***4.*** *For these reasons we allow the appeal and quash the impugned notice dated March 31, 1965 and the proceedings in consequence thereof. Considering all the circumstances of the case we make no order as to costs."*
>
> *(emphasis supplied)*

32. For all the aforesaid reasons, we find that the impugned Notice dated 23rd March 2021 and the impugned order dated 17th February 2022 are unsustainable and hence, deserve to be quashed and set aside.

WRIT PETITION NO. 2966 OF 2022

33. As mentioned earlier, so far as this Writ Petition is concerned, the reasons for reopening the assessment for AY 2014-15 were not only with relation to the exemption claimed for the income received from the BPCL Trust but also that the Assessee had claimed a deduction of Rs.316,42,70,532/- under Section 32AC of the IT Act, out of which Rs.127,39,45,494/- was incorrectly availed. This is an additional ground, on which the assessment proceedings for AY 2014-15 were sought to be reopened by the impugned Notice dated 26th March 2021. So far as the reasons for reopening the assessment for AY 2015-16 in relation to the income received from the BPCL Trust are concerned, it is common ground before us that the facts are almost identical as in relation to AY 2013-14 and which has been dealt with by us earlier. Hence, in this Writ Petition all we

have to consider is whether the Assessing Officer was justified in reopening the assessment on the ground that the Petitioner had wrongly claimed a deduction under Section 32AC of the IT Act in the sum of Rs. 127,39,45,494/-. If the answer to this question is in the affirmative, then, naturally the impugned Notice and the impugned order would be sustainable notwithstanding the fact that the reasons for reopening the assessment on the ground of wrongly claiming the exemption for income received from the BPCL Trust is unsustainable. This is because a reopening Notice can be sustained on any ground mentioned in the reasons for issuance of the Notice. We must mention here that for this assessment year also the first proviso to Section 147 of the IT Act would be attracted, namely, that the reassessment proceedings have to be initiated because there has been an escapement of income on account of the failure on the part of the Petitioner to fully and truly disclose all material facts in relation to this assessment year.

34. We will now, therefore, examine the reasons given for reopening the assessment of the Petitioner for wrongly claiming a deduction under Section 32AC, and whether in fact there has been any failure to disclose fully and truly all material facts in relation to the aforesaid so-called wrongful deduction. The reason for reopening the assessment for AY 2014-15 can be

found from paragraph 3.1 to paragraph 5 of the reasons furnished to the Assessee on 13th May 2021. They read thus :-

> *"3.1 From the accounts of the assessee it is seen that the assessee has claimed deduction u/s 35AC of the Act of Rs.316,42,70,532/-. In this regard it is to state that the Investment Allowance was introduced for manufacturing sector by the Finance Act, 2013 by inserting section 32AC of the Act which allowed investment allowance of 15% for investment of more than 100 crores in plant and machinery during the period from 01-04-2013 to 31-03-2015. Conditions to be fulfilled for availing the benefit are specified in sub-section (1) of section 32AC of the Act. The tax benefits under this scheme can be availed by an assessee, being a company, engaged in the business of manufacture or production of any article or thing. Deduction under section 32AC (1) of the Act, available under this scheme, if actual cost of new assets acquired and installed during financial year 2014-15 exceeds Rs.25 crores and actual cost of new assets acquired and installed during the period 01-04-2013 to 31-03-2015 exceeds Rs. 100 crores.*
>
> *3.2 To avail benefit of the investment allowance deduction under 32AC (1) of the Act, following conditions needs to be satisfied by the assessee :*
>
> - *Assessee is a company.*
> - *Assessee - company is engaged in the business of manufacture or production of any article or thing.*
> - *Assessee acquires and installs a new plant and machinery after 31-03-2013 but before 01-04-2015.*
> - *Aggregate amount of cost of such new assets acquired and installed after 31-03-2013 but before 01-04-2015 should exceed Rs.100 crores.*
>
> *3.3 The phrase 'new asset' has been defined as new plant or machinery but does not include-*
>
> - *any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;*
> - *any plant and machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;*

- *any office appliances including computers or computer software;*
- *any vehicle;*
- *ship or aircraft; or*
- *any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession' of any previous year.*

3.4 The section 32AC of the Act uses the phrase 'plant and machinery' together. The words 'plant' and 'machinery' are joined together by 'and'. Thus requirement of both these words cannot be seen fulfilled even if either of the two is only fulfilled. The Hon'ble Apex Court had the occasion to lay down the meaning of plant and machinery or more specifically 'plant' in State of Bihar v. Steel City Beverages Ltd. The Hon'ble Court held that,

> *It also appears that the rule-making authority did not intend 'plant' to mean what is not a fixed asset. For all these reasons, we are of the view that by 'plant' what is intended by the rule-making authority is that apparatus which is used by the industry for carrying on its industrial process of manufacture. In respect of an industry manufacturing soft-drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft-drinks or beverages and not articles like crates and bottles used for storing the manufactured product.*

3.5 <u>On perusal of the details of assets acquired suggests (page No. 18 of submission dated 07-12-2016)</u> that the investment made of Rs. 849,29,69,963/- in assets under the head 'LPG cylinders – 14.2 KGS, 19 KG and LPG pressure regulator against which investment allowance u/s. 35AC of the Act being 15% of such investment amounting to Rs. 127,39,45,494/- has been claimed. In this regard it is worth to mention here that the investments made in the aforesaid assets i.e., LPG cylinders – 14.2 Kgs, 19 KG and LPG Pressure regulator does not qualify as plant and machinery eligible to claim deduction u/s. 32AC of the Act. Therefore, the deduction claimed u/s. 35AC of Rs. 127,39,45,494/- on the investment made in aforesaid assets of Rs. 849,29,69,963/- is not

correct, which has resulted into excess claim of deduction and escapement of income to that extent.

4. Taking into consideration of the above and the data in the Return of Income, the data from the assessment records and having duly applied my mind to it, I am of the considered view that total income of Rs.201.59 crores consisting income from BPCL Trust of Rs.74.20 crore and Rs.127.39 crore has escaped assessment for A.Y. .2014-15 due to reasons attributable to the assessee for failure to disclose fully and truly all material facts necessary for assessment for that year.

5. On the basis of material available on record and on perusal and careful consideration of the same, I have prima facie reason to believe that income chargeable to tax to the tune of Rs.201.59 crores or any other income chargeable to tax, which comes to my notice subsequently in the course of proceedings for re-assessment, has escaped assessment within the meaning of section 147 of the income tax Act, 1961. The assessee has therefore, failed to disclose true and complete particulars of income for the year under consideration. Accordingly, the case is proposed to be reopened u/s. 147 of the Act for A.Y. 2014-15."

(emphasis supplied)

35. As can be seen from the aforesaid reproduction, the Assessing Officer, in fact, refers to the Submission dated 7th December 2016 which was given by the Petitioner – Assessee to the Assessing Officer in the original proceedings under Section 143(3) of the IT Act. This submission, in fact, categorically draws the attention of the Assessing Officer to investment allowance under Section 32AC of the Act. It is specifically stated by the Assessee that Investment allowance has been claimed on assets acquired and installed during the Finance Year 2013-14 relevant to AY 2014-15. The total

value of the eligible assets is mentioned as Rs. 2109.51 crores on which investment allowance @ 15% is claimed of Rs.316.42 crores. The details of the assets acquired and installed [more than Rs. 10 lakhs] was also enclosed with the aforesaid submission as Annexure-4. Annexure 4 can be found starting at page 221 of the paper book, and so far as the LPG Cylinders are concerned, the relevant portion is at page 234. In fact, this is the very Annexure [in the submission], that the 1st Respondent, in the reasons for reopening the assessment, has referred to for denying the claim under Section 32AC to the extent of Rs.127.39 crores, on the basis that LPG Cylinders and LPG Pressure Regulators did not qualify as 'plant and machinery' eligible to claim a deduction under Section 32AC of the Act. In fact, in paragraph 4 of the reasons, the Assessing Officer states that taking into consideration "..... *the data in the Return of Income, the data from the assessment records.....*" and having applied his mind to it, he was of the view that total income of Rs.201.59 crores consisting of the income from the BPCL Trust of Rs.74.20 crores and 127.39 crores (originally claimed as deduction under Section 32AC) had escaped assessment for the AY 2014-15 due to the Assessee failing to disclose fully and truly all material facts necessary for the assessment for that year. Apart from this bald assertion, nothing else is mentioned in the reasons. What fact has not been disclosed is also not mentioned. In fact, from seeing the reasons, we find that the Assessing Officer, after relying upon

the data already furnished by the Assessee during the original scrutiny proceedings under Section 143(3), comes to the conclusion that income has escaped assessment. Once this is the case, we are clearly of the view that even so far as the reasons for reopening the assessment for AY 2014-15 on the ground of the Assessee allegedly claiming a wrong deduction under Section 32AC, is without jurisdiction as there is no failure on the part of the Assessee to disclose fully and truly all material facts in relation to the deduction claimed under Section 32AC for AY 2014-15. In fact, on perusing the reasons, it is clear that this is nothing but a "change of opinion" of a subsequent Assessing Officer, who now seeks to reopen the assessment for AY 2014-15. This is wholly impermissible in law. In these circumstances, we find that even so far as Writ Petition No. 2966 of 2022 is concerned, the same deserves to be allowed.

36. In light of what we have held above we are not burdening this judgment with the other arguments canvassed by Mr. Mistri, namely, that the notice is bad because (i) reassessment proceedings have been initiated purely based on the audit objection and which is impermissible; (ii) the sanction accorded by Respondent No.2 for reopening the assessment is invalid because the same is not signed; and (iii) Respondent No.1 could never have any reason to believe that income chargeable to tax [by claiming a wrong

exemption under section 10(34)] had escaped assessment because for subsequent Assessment Years the ITAT has allowed the said exemption on merits. These contentions are kept open to be decided in an appropriate case.

37. In view of the forgoing discussion, we pass the following order :-

ORDER

(a) For the reasons stated hereinabove, Writ Petition No. 1752 of 2022 is allowed and the Notice dated 23rd March 2021 issued under Section 148 for the AY 2013-14 and the impugned Order dated 17th February 2022 rejecting the Objections to the validity of the said impugned Notice are hereby quashed and set aside.

(b) For the reasons stated hereinabove, Writ Petition No.2966 of 2022 is allowed and the Notice dated 26th March 2021 issued under Section 148 for the AY 2014-15 and the impugned Orders dated 25th November 2021 and 14th February 2022 rejecting the Objections to the validity of the said impugned Notice are hereby quashed and set aside.

38. Rule is made absolute in the both the above Writ Petitions in the aforesaid terms and both the Writ Petitions are disposed of in terms thereof. However, in the facts and circumstances of the case, there shall be no order as to costs.

39. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**