Recent Landmark Supreme Court Decisions

Presentation before
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CIT vs. Kelvinator of India Ltd. [320 1ITR 561 (SC)]

- **Facts:**

  A notice under s. 148 of the Act was issued on 20th April, 1990, for reopening of the assessment in terms of s. 147 thereof. The reasons recorded for reopening the assessment are :

  "M/s. Kelvinator of India Ltd. asst. yr. 1987-88.

  Assessment was completed under s. 143(3) on 12th November, 1989, on income of Rs. 6,34,225. The perusal of the record shows that the assessee maintains the books on mercantile basis. In the year under consideration, the assessee claimed interest of Rs. 41.28 lacs which in fact pertains to the earlier assessment years [s. 140b p. (c-3)] p. 21 of printed balance sheet). This was not allowable expenditure in this year.

The issue for consideration:

whether the concept of "change of opinion" stands obliterated with effect from 1st April, 1989, i.e., after substitution of Section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1987 ?

Original Judgment of the HC

- **CIT v. Kelvinator of India Ltd. 256 ITR 1 (Del)**, held that the Assessing Officer does not have power to review his own order u/s. 147. Restricted right to review his own order is given only u/s. 154 to rectify mistakes apparent from the record. Change of opinion tantamount to review of order and reassessment for change of opinion u/s. 147 cannot be made.

- **Findings:**

  W.e.f. 01/04/1989 for assuming jurisdiction under section 147 of the Act, only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment.

- Therefore, post - 1st April, 1989, power to re-open is much wider.
- However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open.

- We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess.

- But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. 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 1st April, 1989, Assessing Officer has power to re-open, 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.

- **Circular No. 549 dated 31st October, 1989** :

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in Section 147.

A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer.

It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion.

To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

Issues

- **Section 147 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 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.**

- Reason to believe and not ‘change of opinion’
- Issues, even if not specifically covered in the body of the assessment order are also considered as items on which there is an opinion
- Reason to believe must have a nexus with some “tangible material”
- Reassessment only if some material development after assessment is framed.

Some interesting Issues

- Can Reassessment be used for the benefit of the A ?
- Can reassessment be framed without adding/disallowing items giving rise to reopening ?
- If AO forgets to issue notice u/s 143(2) in time, can he issue notice u/s 148 ?
- Can Block assessment be reopened ?

Can Reassessment be used for the benefit of the A ?

- See Sun Engineering Works (P) Ltd. 198 ITR 297(SC), the Supreme Court held that proceedings u/s. 147 are for the benefit of the revenue and not an assessee and aimed at gathering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable. See. CIT v. Caixa Economica De God 119 CTR 250 (Bom), wherein it was held that the assessee can make claims only in respect of escaped income.

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Can reassessment be framed without adding/disallowing items giving rise to reopening ?

- 2008 TIOL 340 (Raj)
  = 306 ITR 343 (Raj)
- 305 ITR 170 (Ker)
- 180 ITR 319 (Har)
- 82 ITR 831 (SC)

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If AO forgets to issue notice u/s 143(2) in time, can he issue notice u/s 148 ?

- **METRO AUTO CORPORATION v. ITO & Oths. (2006) 286 ITR 618 (Bom)**
- **CIT v. VED & CO. (2007) 209 CTR 455 (Del)**
- **Trustees of H.E.H. the Nizam's Supplemental Family Trust vs. CIT (2000) 242 ITR 381 (SC)**

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Can the Block Assessment be reopened ?

- CARGO CLEARING AGENCY (GUJARAT) v. JCIT (2008) 218 CTR 541 (GUJ) = 307 ITR 1 (Guj)

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ITO vs. Arihant Tiles & Marbles Pvt. Ltd. [320 ITR 79 (SC)]

- **Facts:**

  The assessee, during the relevant Assessment Year 2001-2002, was engaged in the business of manufacture/production of polished slabs and tiles which the assessee exported (partly). The prime condition for allowing deduction under Section 80IA, as it stood at the material time, was that industrial undertakings should manufacture or produce any article or thing, not being any article or thing specified in the list in Eleventh Schedule of the Income Tax Act, 1961.

- The question before us is : whether on facts and circumstances of the cases the activities undertaken by the respondents herein would fall within the meaning of the words "manufacture or production" in Section 80IA of the 1961 Act ?

- To answer the above issue, it is necessary to reproduce the details of stepwise activities undertaken by the assessees which read as follows :-

  "(i) Marble blocks excavated/extracted by the mine owners being in raw uneven shapes have to be properly sorted out and marked;

  (ii) Such blocks are then processed on single blade/wire saw machines using advanced technology to square them by separating waster material;

(iii) Squared up blocks are sawed for making slabs by using the gang saw machine or single/multi block cutter machine;

(iv) The sawn slabs are further reinforced by way of filling cracks by epoxy resins and fibre netting;

(v) The slabs are polished on polishing machine; the slabs are further edge cut into required dimensions/tiles as per market requirement in prefect angles by edge cutting machine and multi disc cutter machines;

(vi) Polished slabs and tiles are buffed by shiner."

- In addition to the above activities, it may also be noted that the assessees has been consistently regarded as a manufacturer/producer by various Government Departments and Agencies. The above processes undertaken by the respondents have been treated as manufacture under the Excise Act and allied tax laws.

- **Findings:**

  In the present case, we have extracted in detail the process undertaken by each of the respondents before us. In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles.

What we find from the process indicated herein-above is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80IA of the Income Tax Act.

- As stated hereinabove, the judgment of this Court in Aman Marble Industries Pvt. Ltd. was not required to construe the word "production" in addition to the word "manufacture". One has to examine the scheme of the Act also while deciding the question as to whether the activity constitutes manufacture or production. Therefore, looking to the nature of the activity stepwise, we are of the view that the subject activity certainly constitutes "manufacture or production" in terms of Section 80IA.

- we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile.

- In the circumstances, not only there is manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and, therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondents - assessees did constitute manufacture or production in terms of Section 80IA of the Income Tax Act, 1961.

- Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely that the activity undertaken by the respondents herein is not a manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job workers and the activity undertaken by them has been recognised by various Government Authorities as manufacture.

- To say that the activity will not amount to manufacture or production under Section 80IA will have disastrous consequences, particularly in view of the fact that the assessees in all the cases would plead that they were not liable to pay excise duty, sales tax etc. because the activity did not constitute manufacture. Keeping in mind the above factors, we are of the view that in the present cases, the activity undertaken by each of the respondents constitutes manufacture or production and, therefore, they would be entitled to the benefit of Section 80IA of the Income Tax Act, 1961.

Issues

- Concepts of Manufacture and produce have been clarified.
- “emergence of a new and distinct commodity”
- If under other statutes, an activity is manufacturing, the same meaning should be assigned even under the income tax Act.

ACIT vs. Hotel Blue Moon [321 ITR 362 (SC)]

- **Facts:**
- whether issue of notice under Section 143(2) of the Act within the prescribed time for the purpose of block assessment under Chapter XIV-B of the Act is mandatory for assessing undisclosed income detected during search conducted under Section 132 of the Act.

- **Findings:**
- A reading of the provision would clearly indicate, in our opinion, if the assessing officer, if for any reason, repudiates the return filed by the assessee in response to notice under Section 158BC(a), the assessing officer must necessarily issue notice under Section 143(2) of the Act within the time prescribed in the proviso to Section 143(2) of the Act.

- Where the legislature intended to exclude certain provisions from the ambit of Section 158BC(b) it has done so specifically. Thus, when Section 158BC(b) specifically refers to applicability of the proviso thereto cannot be exclude.

- The case of the revenue is that the expression 'so far as may be apply' indicates that it is not expected to follow the provisions of Section 142, sub-sections 2 and 3 of Section 143 strictly for the purpose of Block assessments. We do not agree with the submissions of the learned counsel for the revenue, since we do not see any reason to restrict the scope and meaning of the expression 'so far as may be apply'.

- In our view, where the assessing officer in repudiation of the return filed under Section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub-sections (2) and (3) of Section 143. Section 158BH provides for application of the other provisions of the Act.

Issues

- Jurisdiction notices vs. procedural notices
- 143(2) notices under other proceedings
- Effects of S. 292BB

ONGC vs. CIT [322 ITR 180 (SC)]

- **Facts:**
- The Assessee revalued in Indian currency all its foreign exchange loans in revenue account, capital account as also in its general purposes account, outstanding as on 31st March, 1991 and claimed the difference between their respective amounts in Indian currency as on 31st March, 1990 and on 31st March, 1991 as revenue loss under Section 37(1) of the Act in respect of loans used in revenue account.

- AO, however, did not allow to the Assessee its claim for foreign exchange loss claimed on such foreign currency loans both in revenue account and in capital account which were outstanding on the last day of the accounting year under consideration and were as per terms of borrowings repayable after the end of the relevant accounting year.
- Assessee follows mercantile system of accounting

- can the "loss" suffered by the assessee on account of fluctuation in the rate of foreign exchange as on the date of balance-sheet be allowed as expenditure under Section 37(1) of the Act notwithstanding the fact that the liability had not been actually discharged in the year in which the fluctuation in the rate of foreign exchange had occurred?

Findings:

Hon'ble the Supreme Court laid down the following tests:

- mercantile System of accounting
- system of accounting is from the very beginning and if changes, whether bona fide;
- same treatment to gains as well as losses;

- consistent and definite in making entries in the books for losses and gains;
- whether nationally accepted accounting standards are followed;
- system adopted by the assessee is fair and reasonable or is adopted only with a view to reducing the incidence of taxation.

- The "loss" suffered by the Assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance-sheet was an item of expenditure under Section 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred.

Issues:

- Loss vs. Expenditure [CIT vs. Woodward Governor India P. Ltd. (312 ITR 254) (SC)] & Dr. T. A. Quereshi vs. CIT [287 ITR 547 (SC)].
- Actual vs. Contingent liability

CIT vs. Reliance Petroproducts Pvt. Ltd. [322 ITR 158 (SC)]

Facts:

- The assessee claimed expenditure for paying the interest on the loans incurred by it by which amount the assessee purchased some IPL shares by way of its business policies for A.Y. 2001-02. However, admittedly, the assessee did not earn any income by way of dividend from those shares. The company in its return claimed disallowance of the amount of expenditure for Rs. 28,77,242 under s. 14A of the Act.

- It was submitted specifically that it was an investment company and in its own case for asst. yr. 2000-01 the CIT(A) had deleted the disallowance of interest made by the AO and the Tribunal has also confirmed the stand of the CIT(A) for that year and, therefore, it was on the basis of this that the expenditure was claimed.

Findings:

- This is not the case of concealment of the income. However, by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income.
- As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account.

- It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate.
- Submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income? No.
- There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income.

- In Webster's Dictionary, the word "inaccurate" has been defined as : "not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

- Inaccurate particulars must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false.

- Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not in our opinion, attract the penalty under s. 271(1)(c).

Issues:

- Penalty is not automatic
- The levy of penalty should be restricted only to the cases where there is a systematic and deliberate concealment or furnishing of inaccurate particulars of income.
- Mere rejection of claim of expenditure or addition of income should not attract penalty.

T.R.F. Ltd. Vs. CIT [323 ITR 397 (SC)]

- In these appeals, we are concerned with Assessment Year 1990-1991 and Assessment Year 1993-1994. Prior to 1st April, 1989, every assessee had to establish, as a matter of fact, that the debt advanced by the assessee had, in fact, become irrecoverable. That position got altered by deletion of the word "established", which earlier existed in Section 36(1)(vii) of the Income Tax Act, 1961.

- This position in law is well-settled. After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

- Now what has to be seen is whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of Companies, the provision is deducted from Sundry Debtors.

Vijaya Bank vs. CIT [323 ITR 166 (SC)]

Facts:

- For the Assessment Year 1994-1995, the Assessing Officer disallowed a sum of Rs. 7,10,47,161/- which the assessee - Bank had reduced from Loans and Advances or Debtors on the ground that the impugned bad debt had not been written off in an appropriate manner as required under the Accounting principles.

- According to him, the impugned bad debt supposedly written off by the assessee - Bank was a mere provision and the same could not be equated with the actual write off of the bad debt, as per the requirement of Section 36(1)(vii) of the Income Tax Act, 1961 ['1961 Act', for short] read with Explanation thereto which Explanation stood inserted in 1961 Act by Finance Act, 2001 with effect from 1st April, 1989.

Findings:

- The assessee is now required not only to debit the Profit and Loss Account but simultaneously also reduce loans and advances or the debtors from the asset side of the Balance Sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt.

- If individual accounts are to be closed, then the Debtor/Defendant in each of those suits would rely upon the Bank statement and contend that no amount is due and payable in which event the suit would be dismissed.

Issues:

- Write off in the books is sufficient
- Mere provision is not sufficient
- Even individual debtors accounts are not required to be closed and squared up.
- In case of subsequent recovery, the same has to be taxed as income of that year

Thank You