

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

ITA-11-2016 (O&M)

Date of decision:- 14.12.2016

Pr. Commissioner of Income Tax, Chandigarh

...Appellant

Versus

Anil Nagpal

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Ms. Urvashi Dhugga, Advocate,  
for the appellant.

Mr. Balbir Singh, Senior Advocate,  
with Mr. Surjeet Bhadu, Advocate,  
Mr. Raj Kamal, Advocate,  
Mr. Rupender Sinhmar, Advocate,  
and Mr. Veer Singh, Advocate,  
for the respondent.

\* \* \* \*

S.J. VAZIFDAR, C.J.

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant's appeal against the order of the CIT (Appeals). The matter pertains to the assessment year 2007-2008.

2. According to the appellant, the following substantial questions of law arise in this case:-

"(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in dismissing appeal of the revenue without appreciating the facts of the case?

(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in treating the re-assessment made

u/s 143(3) r.w.s. 147, as bad in law and in holding the re-assessment as null and void when the Assessing Officer has complied with all statutory requirements for issuance of notice and had under amended provision of section reasonable belief on the escapement of income chargeable to tax as held by the Hon'ble Kerala High Court in the case of Innovative Foods Limited Vs Union of India and others (356 ITR 389)?

(c) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in annulling the re-assessment made u/s 143 r.w.s. 147 of the Income Tax Act, 1961 on ground that re-opening of the assessment amounted to change of opinion, ignoring the explanation 1 and 2(C) to section 147 of the Income Tax Act, 1961, particularly when the notice for re-assessment was issued before the expiry of four years from the end of the relevant assessment year thus fulfilling the statutory requisites for initiating action u/s 148 as held by the Hon'ble Kerala High Court in the case of CIT Vs National Tyres and Rubber Company of India Limited (202 Taxman 625)?"

3. By CM-25483-CII-2016, the appellant sought to raise the following additional questions of law:-

"(i) Whether the Hon'ble ITAT was correct in law in setting aside and annulling the reassessment proceedings by holding that the reason recorded for re-opening of assessment u/s 147 of the Act did not survive but without addressing the addition made by the A.O. u/s 147 read with explanation 3 of the section which came to his notice during re-assessment proceedings?

(ii) Whether the Hon'ble ITAT on the facts and circumstances of the case and in law was correct in setting

aside the notice u/s 147 without adjudicating on the issue covered by explanation 3 to section 147 as the A.O. had made major addition on income not recorded in the reasons?"

4. The appeal is admitted.

5. The questions of law can be dealt with together. The respondent-assessee filed his return of income on 24.10.2007 declaring an income of about ₹ 38.97 lacs alongwith an exempt income of about ₹ 10.34 lacs as his share from the firm M/s Alliance Formulations. He derives income from salary from M/s Imperial Marketing Services (India) (P) Ltd., as the proprietor of Alliance Formulations, and from the trading business of Ram Dita Mal Ganga Ram. He also receives income from house property and from long term and short term capital gains and interest.

It is important to note that the income was initially processed under Section 143(1) of the Income Tax Act, 1961 (in short the Act), but subsequently the case was selected for scrutiny and a notice under Section 143(2) of the Act was issued and served upon the assessee. The notice contained a detailed questionnaire which we will be referring to in some detail.

6. On 05.10.2011, a notice under Section 148 of the Act was issued. At the assessee's request, the reasons for the same were furnished to the assessee, which read as under:-

"Perusal of the balance-sheet of the concern M/s Alliance Formulations, of which the assessee is the Prop., shows capital work in Progress of Plant-11 at Rs. 65,88,844/-. Evidently the assets of Plant-11, which was still under construction during the year, were not put to use during the previous year. The assessee has paid

bank interest of Rs. 18,89,028/- in this concern on the borrowed funds of Rs. 2,28,26,459/-. Thus, interest needs to be 'disallowed as per proviso to section 36(1)(ii).

The assessee has also claimed interest expenses of Rs. 6,03,655/- against the interest income of Rs. 1,31,992/- which is apparently not allowable. At the most interest expenses of Rs. 1,31,992/- can be considered to be genuinely incurred to earn interest income of Rs. 1,31,992/-. Thus balance interest expenses of Rs. 4,71,663/- were required to be disallowed, u/s 57.

The assessee has also claimed exemption of Rs. 10,85,422/- u/s 54F against the house property purchased by him by investing the LTCG of Rs. 31,92,419/-. On verification of the record, it is found that the assessee has purchased two residential house properties within a specified period whereas he should have purchased one residential house property only to claim exemption u/s 54 F. Thus the exemption claimed u/s 54F amounting to Rs. 10,85,422/- needs to be disallowed.

The assessee has also claimed excess deduction u/s 801C, which needs to be disallowed.

In view of the above facts, I have reason to believe that income of the assessee has escaped assessment to the extent of Rs. 24,47,746/-. Notice u/s 148 of the I.T. Act, 1961 is therefore issued."

7. It will be noticed, therefore, that there were four reasons for issuing the notice under Section 148.

8. The assessee filed objections to the reasons which were rejected by the Assessing Officer who then proceeded to

pass a fresh assessment order under Section 143(3) read with Sections 147 and 148 on 25.03.2013.

9. As regards the first reason, the CIT (Appeals) observed that the record revealed that the Assessing Officer had asked for details of capital work in progress in the first questionnaire dated 26.05.2009. The assessee filed details of interest in which it was mentioned that interest of ₹ 33,904/- on loan was included in the capital work in progress. The Assessing Officer accepted the assessee's submission that the amount of interest to be capitalized was low because the related assets were bought towards the end of the year.

The Assessing Officer now intends taking a different view which the CIT (Appeals) rightly considered to be a mere change of opinion. The Tribunal, therefore, rightly upheld the order in this regard.

10. As regards the second reason, the CIT (Appeals) noted that the assessee had replied to the Assessing Officer's query by a letter dated 05.12.2009 in which he, inter alia, contended that he had raised a home loan and invested it in the firm towards his capital as the business warranted such investment. Similar interest was claimed in the previous year and was accepted as the investment was ultimately completed under Section 143(3). The Assessing Officer had then accepted the explanation. There were no change in circumstances or other material.

11. The CIT (Appeals), therefore, rightly held the same to be but a change of opinion. The Tribunal further noted that there was considerable correspondence between the Assessing Officer and the assessee in this regard and that, therefore, it cannot be said that the Assessing Officer was not aware or

conscious of the issue that required determination. The CIT (Appeals) and the Tribunal, therefore, rightly did not permit the reopening of the assessment on this ground.

12. This brings us to the case under Section 54F of the Act. The assessee owned a house and industrial property. On 11.12.2006, he sold the industrial property. On 01.05.2007, he purchased a flat. The question is whether or not he was entitled to the benefit of Section 54F. The reasons referred to the assessee having purchased two residential properties. The first question, therefore, is whether the property that was purchased by the assessee constituted one flat or two flats. The assessee contends that he had purchased only one flat, whereas the appellant contends that he had purchased two. What is important to note in this regard is the fact that the Assessing Officer had in the original assessment proceedings raised a specific query in this regard which is evidenced by an entry in the order sheet of 16.09.2009. The assessee replied to the same by his letter dated 12.10.2009, the relevant part whereof reads as under:-

“That there was no capital gain, on the sale of industrial building situated at village Saidamajra (Punjab) which was allotted by Punjab Financial Corporation on 22.11.1996 as per agreement to sell. This property was allotted for a sum of Rs. 42 lacs and after adding back the cost of stamp papers and other things, its value came to Rs. 43,91,000/-. It may be mentioned here that no depreciation whatsoever was claimed on this property. This property was sold for a sum of Rs. 1 crore and the capital gains earned thereon was invested in the Flat at Baddi. The copies of the relevant documents are attached. The assessee had purchased residential Flat No. FR-3 & FR 4, Block No. 22

(Naina Apartments, Baddi) on fourth Floor measuring 2384 sq. ft. It is a single flat comprising of two adjacent flats which were converted into one by the seller a door was opened by making two flats as a single unit and used as one Unit.

In this connection your kind attention to letter dated 06.09.2007 issued by Mountview Group Housing Co. Baddi in which it has been pointed out that "This has reference to your request for allotment of flat measuring about 2384 sq. ft. & booking of payment of Rs. 34,00,000/- (thirty Four Lac) received by us on 1st May 2007. We confirm that this is towards Full and Final Payment of the said flat, the allotment of which shall be made in due course.

Since it is a Single Unit and accordingly deduction under section 54/54F has rightly been claimed as the entire amount has been spent on the residential house which is one unit."

There can be no doubt, therefore, that the Assessing Officer was fully conscious of the issue and had in fact taken into consideration the assessee's reply to a query which was directly in point. Having done so, he accepted the assessee's contention that what was purchased was but one flat, although it may originally have been two flats. A query in respect thereof was raised and answered and the Assessing Officer accepted the assessee's contention. The contention now raised by the department that it ought to have been held to be two flats and not one flat is nothing but a change of opinion. The CIT (Appeals) and the Tribunal rightly held that the same constituted a change of opinion.

13. This brings us to the last of the reasons for re-opening the assessment. It relates to the claim under

Section 80IC of the Act. In the reasons furnished to the assessee, what is stated is that the assessee had claimed excess deduction under Section 80IC which needs to be disallowed.

14. This aspect is also considered by the Assessing Officer at the time of the original assessment. A query in this regard had been raised on 16.09.2009 and 25.11.2009. It was answered by the assessee's letter dated 05.12.2009. The relevant part of the assessee's letter reads as under:-

"As explained to your goodself that all the conditions contained in Section 80IA that deduction has been claimed only on eligible business and this is only source of income from which the deduction has been claimed. No goods or services held for the purposes of eligible business were transferred to any other business carried on by the assessee and the accounts of the assessee have been audited by the C.A. within the meaning of Section 288(2) which were furnished before you alongwith Form No. 10 CCB. The assessee has not claimed such expenses in any other provisions of the Act."

(emphasis supplied)

The reference to Section 80IA of the Act is a typographical error. Both the learned counsel agree that it ought to be read as Section 80IC. It is important to note that the letter expressly refers to Form No. 10CCB. Thus, Form No. 10CCB was not one of the many documents merely furnished alongwith the return to which the Assessing Officer's attention may not have turned. It was a document which was specifically brought to the notice of the Assessing Officer during the original proceedings under Section 143(3) of the Act. It is not even the appellant's case and indeed it cannot

be that the Assessing Officer despite the letter dated 05.12.2009 did not peruse the same.

15. The relevance of Form No. 10CCB is this. Sub rule (2) of Rule 18BBB of the Income Tax Rules, 1962 requires a separate report to be furnished by each undertaking or enterprise of the assessee claiming a deduction, inter alia, under Section 80IC. The report is to be accompanied by the Profit and Loss Account and Balance Sheet of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity. Form No. 10CCB is issued under Rule 18BBB. In other words, the audit report under Section 80IC read with Rule 18BBB is required to be in Form No. 10CCB. At the foot of the Form are mentioned "ACTION POINTS".

Action Point No. 4 reads as follows:-

"4. A separate report is to be obtained for each undertaking or enterprise of the assessee in respect of which deduction is claimed. The report is required to be accompanied by the profit and loss account and balance sheet of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity."

This is in consonance with Rule 18BBB. The Assessing Officer, therefore, knew that the particulars furnished in answer to his queries were in respect of a unit.

16. Further, from a letter dated 26.05.2009 (date is not very legible) bearing No. Addl.CIT/R-V/Chd/08-09/1117 handed over by Ms. Dhugga in Court, it is evident that the Assessing Officer knew that there were other units as well. The opening part of the letter states that the information/documents sought therein were to be furnished to

enable the department to finalize the assessment proceedings.

Item (j) of the letter reads as under:-

“(j) Complete details of staff welfare, stipend, J&J, traveling exp., repair and maintenance, worker welfare, paint, pollution control exp.”

The Assessing Officer was, therefore, aware that there was at least one other unit, namely, J&J and sought the particulars of the expenses in regard to the items mentioned therein. Presumably, the same were furnished. The contention, therefore, that the Assessing Officer in the original proceedings was unaware that the expenses were not bifurcated between the three units proportionately is unfounded. The Assessing Officer knew that the expenses were adjusted against the Jhonson & Jhonson unit. The present endeavour is, therefore, clearly on account of a change of opinion.

17. Mr. Balbir Singh's reliance upon the judgement of the Supreme Court in Commissioner of Income Tax Vs Kelvinator of India Ltd., (2010) 320 ITR 561 (SC) on behalf of the assessee is well founded. The Supreme Court in paragraph 6 held as under:-

“6. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act (with effect from 1<sup>st</sup> April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped

assessment, confers jurisdiction to reopen the assessment. Therefore, post-1<sup>st</sup> April, 1989, power to reopen 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 reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. 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 fulfilment 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. 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<sup>st</sup> April, 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. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549 dated October 31,

1989 ([1990] 182 ITR (St.) 1, 29), which reads as follows:

"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 the 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."

(emphasis supplied)

18. The Full Bench of the Delhi High Court in Commissioner of Income Tax Vs Usha International Ltd., (2012) 348 ITR 485 (Del) held as under:-

"13. It is, therefore, clear from the aforesaid position that:

(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion.

(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in

the said cases will be hit by principle of "change of opinion".

(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.

15. Thus, where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion.

46. I have searched in vain the provisions of the Act to find out if there is any provision therein laying guidelines as to how an assessment order shall be drafted. However, considering the onerous duty placed on the assessee as outlined above, one would expect the assessment order to be drafted in sufficient detail, where at least the basic features of the assessment are brought out. But due to several constraints - it is beyond the scope of this opinion to discuss them - it has been observed, and it has also been the general experience, that assessment orders are so drafted that they contain a discussion, briefly or in detail, only on points on which there is a difference of opinion

between the assessee and the assessing authority. Where the contention or claim of the assessee is accepted, seldom do we find any discussion in the assessment order as to why it is being accepted. This has prompted the Commissioner of Income Tax in several cases to invoke the provisions of section 263 on the footing that the assessment so completed is erroneous and prejudicial to the interest of the Revenue. It is significant to note that the Commissioner of Income Tax under section 263 is empowered to call for the record of the proceedings before making up his mind as to the justification for the revision. The reason is not far to seek: the question whether the Assessing Officer had applied his mind to a particular claim made by the assessee and had accepted it rightly can be judged only on the basis of what material or evidence was led before him, and not on the basis of what was written in the assessment order. This is an implicit recognition in the Act that the emphasis is on the furnishing of full and true particulars and primary facts by the assessee, rather than on the manner in which the Assessing Officer deals with them in the assessment order. Moreover, the assessee, as it was urged, has no say or control over the manner in which the assessment order is drafted."

We are in respectful agreement with the judgement. Indeed, if a query is raised by the Assessing Officer and is answered by the assessee in the original assessment proceedings, it is reasonable to presume that his attention was drawn to the same and that he in fact considered the same. If the return is accepted as filed in that regard, it would follow that he accepted the same. It is but natural that an Assessing Officer who raises a query would focus his attention on the

answer furnished by the assessee. A view to the contrary would be doing the Assessing Officer little credit.

19. In Turner Broadcasting Systems Asia Pacific Inc. Vs Deputy Director of Income Tax, (2016) 380 ITR 412 (Del), a Division Bench of the Delhi High Court held as under:-

"20. On applying the above principles to the facts of the present case and on perusal of the reasons, we find that no fresh information or material has been referred to in the reasons recorded for seeking to reopen the assessment. The material that is referred to is the very same material that was already before the Assessing Officer at the time of framing of the assessment under Section 143(3) of the Act and even the reasons recorded that "from the perusal of the assessment record, it is observed that". This clearly shows that the Assessing Officer has sought to reappraise the material that was already there at the time when the assessment was framed under Section 143(3). Thus, as seen from the above, it is clearly a case of change of opinion, which is clearly not permissible."

The case before us is similar. The Assessing Officer raised a query and sought information/document(s) which was admittedly supplied. It is now on the basis of the same material that the case is sought to be reopened which is not permissible.

20. Ms. Dhugga, however, submitted that even assuming that the notice is invalid, the Assessing Officer would be entitled to re-open the assessment under sections 147 and 148 in view of Explanations 2 and 3 to Section 147. She relied upon a judgement of the Division Bench of the Karnataka High Court dated 01.07.2015 in Sri N Govindaraju Vs Income Tax

Officer, Bangalore and another. The judgement in fact is to the contrary. The Division Bench held as under:-

"The question which first arises is with regard to the validity of the reopening proceedings, which is by issuance of notice under section 148, reasons for which are to be recorded under sub-section (2). The assessee has an opportunity to challenge the reasons given for issuance of notice and if the same are found to be vague or illegal or without any basis, the notice would become invalid.

In the case of Raymond Woollen Mills Ltd. Vs ITO(1999) 236 ITR 34, where such notice had been challenged, the Supreme Court held that what is to be seen is "whether there was prima facie some material on the basis of which the Department can reopen the case. The sufficiency of correctness of the material is not to be considered at this stage". Relying on this decision, the Apex Court, in the case of ACIT Vs Rajesh Jhaveri Stock Brokers(P) Ltd.(2007) 291 ITR 500, while considering the issuance of notice under section 147 of the Act prior to the amendment of 2009, has held that the final outcome of the proceedings is not relevant and at the initial stage, what is required is 'reason to believe' but not established fact of escapement of income. It further held that "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 the escapement is not the concern at this stage".

This would clearly mean that the issuance of notice is justiciable. If the assessee chooses not to challenge the notice or if it is challenged and found to be valid, then in either case, such notice is to be treated as

valid and final. Since the validity of the notice issued under section 148(2) can be challenged or is subject to judicial scrutiny, in our view, the assessment or reassessment of 'any other income' in the case of a validly issued notice cannot be said to be a case of fishing and roving enquiry. The assessee has the opportunity to challenge the notice, and if it is held to be invalid for not giving adequate reasons for reopening the assessment, the entire reopening proceedings would lapse. In such a case there would be no question of assessment of either 'such income' of the first part of section 147 or 'any other income' of its second part. But if the notice is either not challenged or if challenged and found to be justified, it would be a case of reopening the assessment on the basis of a valid notice.

Once the notice for reopening of a previously closed assessment is held to be valid, the assessment proceedings as well as the assessment order already passed would be deemed to have been set aside. The Assessing Officer would then have the power to pass fresh assessment order with regard to the entire income which has escaped assessment. As long as the proceedings have been initiated on the basis of a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income which may have escaped assessment during the assessment year.

It is true that if the foundation goes, then the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. But the same can be checked at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then in either case

it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can go on. We may only reiterate here that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including 'any other income') which may have escaped assessment and comes to his notice during the course of the proceedings initiated under section 147 of the Act.

In view of the aforesaid, we answer the first two substantial questions of law in favour of the Revenue and against the assessee."

(emphasis supplied)

It was held, therefore, that the issuance of a valid notice under Section 148 is a pre-requisite to the exercise of the power to reopen the assessment. The words emphasized by us clearly state that if the notice is invalid the Assessing Officer cannot reopen the assessment. The judgement, therefore, supports the assessee's case.

21. Faced with this, Ms. Dhugga submitted that it is not open to the assessee to challenge the proceedings for re-opening the assessment as the respondent had never challenged the same.

22. The submission is factually incorrect. The assessee had challenged the validity of the proceedings under Sections 147 and 148 from the beginning. The assessment order passed under Section 143(3) pursuant to the proceedings under Sections 147 and 148 expressly refers to the assessee having challenged the validity of the reasons for initiation of the proceedings under Sections 147 and 148. The assessment order

quotes a part of these reasons. For instance, the assessee contended that all the primary facts were disclosed in the return and were deliberated upon during the course of the original assessment proceedings and that the present exercise was merely a reappraisal of the assessment records and on a change of opinion which is not permissible in law. It is further specifically stated that the proceedings under Sections 147 and 148 are not permissible on a change of opinion especially when it is based on information and details already available on record.

23. Ms. Dhugga lastly submitted that even assuming that the notice is invalid and issued without jurisdiction, Explanations 2 and 3 to Section 147 entitle the Assessing Officer to reopen the assessment in respect of items other than those mentioned in the notice.

24. The contention, if accepted, would be contrary to the entire law on the subject. A valid notice under Section 148 is a pre-requisite to proceedings under Sections 147 and 148. A valid notice is what gives the Assessing Officer jurisdiction to reopen the assessment and to pass a fresh assessment order. Clause (c) of Explanation 2 to Section 147 reads as under:-

“Explanation 2 - For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(c) where an assessment has been made, but-

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

25. Clause (c) of Explanation 2 to Section 147 only defines what are also to be deemed to be cases where income chargeable to tax has escaped assessment. Explanation 2, therefore, is only indicative of the ambit of the words "income chargeable to tax has escaped assessment" in the opening part of Section 147.

26. Ms. Dhugga then relied upon Explanation 3 in support of her contention that even if the notice under Section 148 is invalid and illegal, the Assessing Officer would be entitled to initiate proceedings under Sections 147 and 148. The submission is not well founded. Explanation 3 was introduced by Finance (No. 2) Act, 2009 with retrospective effect from 01.04.1989. Explanation 3 only provides that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and which comes to his notice subsequently in the course of the proceedings, notwithstanding that the reasons had not been included in the reasons recorded under Section 148(2). In other words, even if the reasons recorded do not refer to a particular issue, the Assessing Officer would be entitled to assess the income or reassess the computation of the income with regard thereto if the same comes to his notice during the course of the proceedings for reassessment. That, however, posits a valid notice in the first place for it is a valid notice under Section 148 that gives the Assessing Officer the jurisdiction to adopt proceedings under Sections 147 and 148.

27. In these circumstances, it is held that the notice under Section 148 was illegal and issued without jurisdiction. The reassessment proceedings, therefore, are invalid. The questions of law are, therefore, answered against the appellant.

28. The appeal is accordingly dismissed.

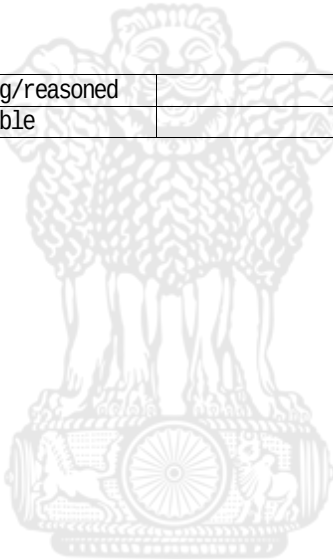
(S.J. VAZIFDAR)  
CHIEF JUSTICE

(DEEPAK SIBAL)  
JUDGE

14.12.2016

Amodh

|                           |         |
|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable        | √Yes/No |



सत्यमेव जयते

