

# Reassessment – Rectifications under I.T. Act

**J B Nagar CPE Study Circle**

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# Law of Reassessment

- **S.147 – a substantive provision ?**
- **No Concession to AO for non compliance of the conditions for reopening**
  - Any remissness on the part of the AO can be only at the cost of national exchequer. [Parasuram Pottery Works Co. Ltd. (1977) 106 ITR 1(SC)]
- **Purpose of recording of reasons under S. 148(2)**
- **Can the recorded reasons be supplemented?**

# Reassessment – Material

- **Material obtained subsequent to the issue of notice**

[Hindustan lever 268 ITR 332] [N.D. Bhatt 216 ITR 811 (Bom.) ] [231 ITR 779 (Guj.)] [Sarad bhai lakhani [Agrawala brothers 189 ITR 786 (Cal.)]

- **Relevancy of Material vs. its Factual Correctness**

- Tangible material is a sin qua non to form a conclusion on escapement as per SC in Kelvinator (2010) 320 ITR 561[ Balkrishna Hiralal Wani 321 ITR 519(Bom.)]
- Extraneous or irrelevant material. Reopening void. **[Daulatram (1973) 87 ITR 349 (SC)]**
- **Selected Dalurband Coal Co. (P) Ltd. – (1996) 217 ITR 597 (SC)**
- Reference to material in recorded reasons **[S.P. Agarwala 140 ITR 1010 (Cal.) (1980)]**

## Role of AO under S. 147

- **Assent of mind of AO ? Action on Intimation by other AO [Sarthak Securities (Del.)]**
- **Approval (or permission ?) under S. 151**
- **'Satisfaction' of Superior Authority u/s 151**
  - [Gordhara Singh (1980) 125 ITR 240 (P&H)]- what was the material to arrive at 'satisfaction' by CIT.]
  - [United Electricals Co. (P) Ltd. (2002) 258 ITR 317 (Del.)]- CIT 'satisfied' – power coupled with duty.]
  - [Johri Lal (HUF) vs. CIT (1973) 88 ITR 439 (SC)] – CIT can not act mechanically].

## Reassessment – Confession of third party

- **Whether onus on AO to discharge burden?** [Pradeep Gupta (2008) 303 ITR 95(Del.)]
- **Effect of confession by third party**
  - **General or Specific** [Lakhmani Mewaldas (1975) 103 ITR 437 (SC)]
  - **A General Statement of a Third party** [S.P. Agarwalla vs. ITO (1983) 140 ITR 1010 (CAL.)]
  - **General DDI Letter** [Technocraft Industries 186 ITR 514 (1990) (Bom.)]
  - **Finding or direction against a person not connected with the Assessee** [Murlidhar Bhawandas 52 ITR 335 SC]

# Reassessment – Change of Opinion

- **Reopening on Change of Opinion?**
  - **CBDT Circular No.549 dt. 31.10.1989.**
  - **Kelvinator of India Ltd. (2002) 256 ITR 1(Del.)(FB); 320 ITR 561 (2010) (SC)]**
  - **When Return processed u/s. 143(1)- tangible material: [Vijay Kumar HUF 156 Taxman 100 (Bom.)(2006)]**
  - **Reopening when provisions of the statutes overlooked in the original assessment [ALA Firm (1991) 189 ITR 285(SC)]**
- **Reopening when Legal position changed after the assessment. Inference drawn was later proved to be erroneous.**
- **Reopening when all material placed before AO in the original assessment? [Idea cellular Ltd. 301 ITR 407 (Bom.)] [Asteroids 308 ITR 190(Bom.)] [Siemens 295 ITR 333(Bom.)]**

## Reassessment – after 4 years in scrutinised cases

- **Summons u/s 131 to Reopen ?**  
[Jamnadas Madhavji & Co. Vs. ITO (1986) 162 ITR 331 (Bom.)]
- **Reopening notice after 4 years in Scrutinised cases:**
  - **Strict compliance of conditions under proviso ?**  
[Fennar (India) Ltd. CIT (1999) 107 taxman 53(Mad.)]  
[CIT vs. Bipin Vadilal (1999) 238 ITR 1022 (GUJ.)]  
[264 ITR 566 (SC) CIT vs. Foramer France]
- **Reopening when failed to investigate earlier ?**
  - **What grants jurisdiction omission by assessee or the degree of care taken by the AO at the time of Assessment ?**  
[Indo Aden Salt manufacturing Pvt. Ltd. 159 ITR 624 (SC) (1986)]

## Reassessment - after 4 years in scrutinised cases

- **Reopening based on subsequent year assessment ?**

- To verify the correctness of the expenses, claims made etc.
- Material for escapement must relate to the year in question. Mere inference ?
- Can the finding in one year be mechanically adopted in another year?

[Narendra Mohan Bagroy 90 ITD 90 (TM) : Dass Friends Builders (P) Ltd. 280 ITR 77 (2005)(All.): Maniben Velji Shah 283 ITR 453(2006)(Bom.): [Star Ferro Alloys 90 ITD 63 (TM) (Del.)] [Gupta Abhushan 312 ITR 166(Del.)]

- **Subsequent Valuation report- a cause for reopening?**

[Amala Das vs. CIT (1984) 146 ITR 216 (P&H)]  
[Abdul Majid v. ITO 178 ITR 616(MP)]  
[Kamalam Rajendran (1999) 237 ITR 299 (Mad.)]  
[Dharia Constructions 328 ITR 515 (2010) (SC)]



## Reassessment- after 4 years in scrutinised cases

- **Disclosure of primary facts- what is a primary fact?**
  - **Nature of primary facts not disclosed**
    - [Calcutta Discount Co. Ltd. 41ITR 191(SC)]
    - [Associated Stone Industries (Kotah ) Ltd. (1997) 224 ITR 560(SC)]
    - [Ranchi Handloom Emporium vs. CIT 235 ITR 604 (Patna)]
    - [Atma Ram properties (Del.) ]
- **‘DISCLOSE’:**
  - **Meaning of ‘disclose’:** [Canara Sales Corporation Ltd. vs. CIT (1989)176 ITR 340(Kar.)]
  - **Non disclosure of true ratio of SC / HC decision at the time of original assessment**

## Reassessment - after 4 years in scrutinised cases

- **'TRULY AND FULLY'**
  - What is the charge on the Assessee ? failure to disclose 'fully' or 'truly' or both. [Lakhmani Mewaldas 103 ITR 437]
  - Assessee expected to make confession ? [Madhnani Engg. Works 118 ITR 1(SC)]
- **Failure to apply mind in the original assessment; Can AO take advantage of his own wrong and reopen the assessment ? [ Asian Paints 308 ITR 195 (Bom.)]**
- **Is further 'proof' also needed together with disclosure of facts ? [Shirish C. Parikh vs. ITO (2011) 55 DTR (Guj.) 386 order dt. 1st April 2011]**
- **Wrong claim withholding material facts? [ Titanor components Ltd. (Goa Bench order 9/6/2011)]**

## Reassessment –after 4 years in scrutinised cases

- **Mere production of documents sufficient: Nature of obligation ?** [ Zohar Siraj Lokhandwala ( 210 ITR 956(Bom.))]
- **Allegation of failure to disclose material facts fully & truly !**  
  
[Hindustan Lever Ltd. (2004) 268 ITR 332 (Bom.): Tanna Builders 283 ITR 448(Bom.)  
Krishna Metal Industries 225 ITR 853 (Guj.)(1997);Ayojan Developers 335 ITR 234(Guj.)(2011) ; Bhavesh Developers (Bom.)]
- **Obligation of revenue to establish failure on the part of Assessee to disclose material facts to attract proviso to S. 147 ?**  
  
[ Jashan Textile Mills P. Limited. vs DCIT 284 ITR 542(2006) (Bom.)]

## Reassessment- 'other income'

- **When 'other income' can also be covered for assessment under s. 147?**  
[Jet airways 331 ITR 236(Bom.) ; Ranbaxy Laboratory (2011) (Del.)]
- **Whether Entire Assessment is reopened under S. 147?**
  - Sun Engg. (1992) 198 ITR 297 (SC)
  - Explanation 3 to S. 147

## Reassessment – Copy of reasons recorded

- **Obligation of AO to provide copy of reasons recorded under S. 148(2) !**
- **Obligation to provide underlying material ?**
- **Obligation of AO to dispose the objection taken!**  
**GKN driveshafts (India) Ltd. (2002) 125 Taxman 963 (SC): The AO is bound to furnish reasons recorded u/s 148(2) to the assessee and the objections of the assessee have to be disposed of by speaking order.**  
  
[Hanuman Sahai Chaudhri vs. Union of India (2004) 136 Taxman 93 (Raj.)]  
[Asian Paints Ltd. vs. The Dy. Comm. Of I.T. 296 ITR 90(Bom.)]
- **Can AO proceed under S. 147 when merits of objections raised not disposed off ?**  
[SKOL Breweries Ltd. 236 CTR 555(Bom.) (2010)]

- **Can Assessee grant concession on the legality of jurisdiction under S. 147 ?**  
[Investor Industries Corpn. (1992) 194 ITR 548(Bom.)]
- **Application of Rule 27 - ITAT Rules-  
Question of Law:**
  - *Rule 27: The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.*

## Reassessment – Misc.

- **Can CIT exercise powers under S. 263 in respect of original assessment reopened subsequently ?**  
[ CIT vs. Alagendram Finance Ltd. (2007) 293 ITR 1(SC)]
- **Can plea of wrongful reopening be taken to stall penalty u/s 271(1)(c) ?**  
  
Tide Water Marine International Inc. vs. DCIT (2005) 96 ITD 406 (Delhi)
- **Effect of Rajesh Javeri Stock Brokers Case 291 ITR 500(2007)(SC)**

## Rectification proceedings under S. 154 and S. 254(2)

- Facets of ‘apparent mistake’.
- Power to invoke 147 *vis a vis* remedy under S. 154 [Hindustan Unilever Ltd. (Bom.) (2010)]





*Thank You*