



W.P.No.7774 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	25.10.2024
Pronounced On	25.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.7774 of 2022

and

W.M.P.Nos.7792 and 7794 of 2022

VIP Housing and Properties,
Represented by its Partner Mr.J.Kishore,
14 and 16, 4th Floor, Raman Street,
T.Nagar, Chennai – 600 017,
Tamil Nadu, India.

... Petitioner

Vs.

- 1.The Deputy Commissioner of Income Tax,
Central Circle-2, Chennai,
New Building, New No.46, Old No.108,
Mahatma Gandhi Salai,
Chennai – 600 034.
- 2.The Principal Commissioner of Income Tax (Central),
Chennai – 2,
New Building, New No.46, Old No.108,
Mahatma Gandhi Salai,
Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the respondents and quash the Impugned Order in PAN: AAIFV2000R dated 11.02.2022 in DIN & Letter No.ITBA/AST/F/17/2021-2022/1039674365(1)



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passed by the first respondent along with the Impugned Notice under Section 148 of the Income Tax Act, 1961 in PAN: AAIFV2000R dated 31.03.2021 in DIN & ITBA No.ITBA/AST/S/148/2020-2021/1032012504(1) issued by the first respondent for the Assessment Year 2014-2015.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
and Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2014-2015 and the Impugned Order dated **11.02.2022** passed by the 1st respondent over ruling the objection of the petitioner against the reopening of the assessment that was completed on **31.03.2016** under Section 143(3) of the Income Tax Act, 1961.

2. The reasons given for reopening of the assessment that was completed on **31.03.2016** is culled out from the reply of the Department in its Email dated 16.07.2021. It reads as under:-



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“During the course of search and seizure operation, the following amounts were seized: Rs.1,77,50,045/- from the office premises of VIP Housing, Rs.50,00,000/- was seized from the residence of Shri Dhanapal, Rs.50,00,000/- and gold of Rs.38,69,168/- seized from VIP City.

The case was centralized with this circle and a notice u/s 142(1) was issued to the assessee. In response to that assessee filed return of income on 22.02.2016 returning an income of Rs.2,34,86,595/-. Subsequently, the assessment was completed u/s 143(3) of IT Act, 1961 by accepting the returned income. No addition was made on the seized cash and jewellery which resulted in escapement of taxable income worth Rs.3,16,19,213.”

3. It is the specific contention of the petitioner that no tangible materials were available before the authority for reopening of the assessment that was completed on **31.03.2016** under Section 143(3) of the Income Tax Act, 1961.

4. Learned counsel for the petitioner would submit that a search was conducted under Section 132 of the Income Tax Act, 1961 on **03.09.2013** and thereafter proceedings were initiated against the petitioner under the provisions of Section 153A of the Income Tax Act, 1961 for the following Assessment Years:-



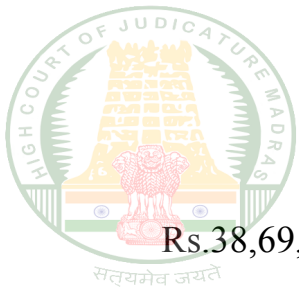
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Assessment Year (A)	Income Returned in Return of Income filed in response to 153A Notice – (B)	Income Returned in the original return of Income – (C)	Additional Income Offered to Tax – (D) = (B) – (C)
2011-2012	1,86,00,000	1,13,85,250	72,14,750
2012-2013	11,31,70,000	9,25,02,130	2,06,67,870
2013-2014	9,99,30,000	7,92,45,220	2,06,84,780
	Total :		4,85,67,400

5. It is submitted that as far as search conducted during the Financial Year 2013-2014 which is subject matter of the Assessment Year 2014-2015 is concerned, the petitioner by Letter dated 28.10.2013 admitted the tax liability on Rs.1,98,00,000/-, however, voluntarily had enhanced the same to **Rs.2,34,86,595/-** in the returns filed on **22.02.2016**.

6. Learned counsel for the petitioner would submit that the cash and the golds that were seized during the search conducted on **03.09.2013** barring an amount of Rs.1,77,50,045/-, the other amounts of Rs.50,00,000/- of each have been offered independently to tax by Mr.Dhanapal, who is a partner of the petitioner Firm and in the hands of M/s.VIP City (petitioner's another Firm) respectively along with the value of gold seized from M/s.VIP City of



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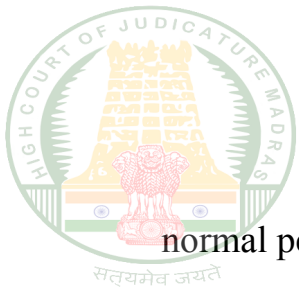
Rs.38,69,168/-.

WEB COPY 7. It is submitted that there is no scope for including the entire amount into taxable income of the petitioner particularly when the Assessment Order dated **31.03.2016** itself preceded a Notice issued under Section 142(1) of the Income Tax Act, 1961 and in view of the Letter dated 28.10.2013 of the petitioner.

8. Learned counsel for the petitioner would submit that the impugned proceedings are inspired by a change of opinion and in the absence of tangible evidence/material available for reopening of the assessment that was completed on **31.03.2016**, the Impugned Order is illegal. Hence, he prays for quashing of the Impugned Order.

9. That apart, learned counsel for the petitioner further submits that the law has been settled subsequently by the Hon'ble Supreme Court in **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited**, (2010) 320 ITR 561 / [2010] 187 Taxman 312 (SC).

10. It is submitted that in the light of the latest decision of the Hon'ble Supreme Court also, the question of reopening the assessment beyond the



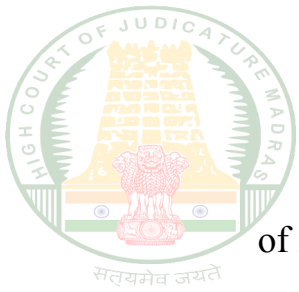
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normal period of limitation is unjustified.

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1. In support of his contention, the learned counsel for the petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court, Delhi High Court and that of this Court:-

- i. **Income Tax Officer, Ward No.16(2) Vs. TechSpan India Private Limited**, [2018] 92 taxmann.com 361 (SC).
- ii. **Assistant Commissioner of Income-tax Vs. ICICI Securities Primary Dealership Limited**, [2012] 24 taxman.com 310 (SC).
- iii. **Replika Press Private Limited Vs. Deputy Commissioner of Income-tax**, [2013] 37 taxmann.com 417 (Delhi).
- iv. **Commissioner of Income-tax Vs. Kelvinator of India Limited**, [2002] 123 Taxman 433 (Delhi).
- v. **NLC India Limited Vs. Assistant Commissioner of Income-tax**, [2022] 142 taxmann.com 26 (Madras).
- vi. **Fenner (India) Limited Vs. Deputy Commissioner of Income-tax**, [1999] 107 Taxmann 53 (Madras).
- vii. **Commissioner of Income-tax, Chennai Vs. Schwing Stetter India Private Limited**, [2015] 61 taxmann.com 19 (Madras)
- viii. **Principal Commissioner of Income-Tax-6, Chennai Vs. Santech Solutions Private Limited**, [2018] 97 taxmann.com 179 (Madras).
- ix. **Chinnathambi Rajeswari Vs. Assistant Commissioner of Income-tax**, [2024] 163 taxmann.com 439 (Madras).
- x. **M/s.Durr India Private Limited Vs. Assistant Commissioner of Income Tax (OSD), Chennai and another** in W.A.Nos.1081 and 1083



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of 2021 dated 29.08.2022.

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12. Learned Senior Standing Counsel for the respondents on the other hand would submit that the Return of Income that was filed by the petitioner on **22.02.2016** was incomplete. The said return that was filed was assessed on **31.03.2016** was under the assumption that the entire amount of **Rs.3,16,19,213/-** that was seized on **03.09.2013** had been offered to tax by the petitioner.

13. Arguing further, the learned Senior Standing Counsel for the respondents would submit that in the return that was filed by the petitioner on **22.02.2016**, the petitioner declared an income of **Rs.2,34,86,595/-** only. It was not based on any records. It is further submitted that the law on the subject is clear. It is further submitted that once an Assessment Order is passed, it can be rectified under Section 154 of the Income Tax Act, 1961 for the error apparent on the face of record or a revision pursuant to an Order under Section 263 of the Income Tax Act, 1961 by the Higher Officer on the ground that the assessment was erroneous and prejudicial to the interest of the Revenue or under Section 264 of the Income Tax Act, 1961 or under Section 147 of the Income Tax Act, 1961 in case of escaped assessment.



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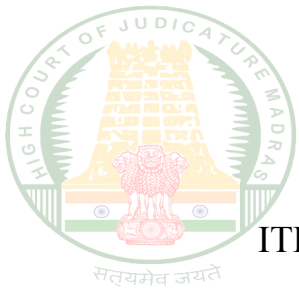
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14. It is submitted that in this case, the income had escaped assessment as the Assessing Officer had no occasion to form an opinion regarding the amount recovered during the course of search operation on **03.09.2013** wherein, a sum of **Rs.3,16,19,213/-** was recovered from the common premises of the petitioner Firm and M/s.VIP City and rest of the amount recovered from the premises of Mr.Dhanapal, the common partner of the petitioner and the said M/s.VIP City and the cash recovered from M/s.VIP City and the gold was seized from M/s.VIP City.

15. In this connection, the learned Senior Standing Counsel for the respondents would submit that the issue has been clarified by the Hon'ble Supreme Court in **A.L.A. Firm Vs. Commissioner of Income-Tax**, (1991) 189 ITR 285 (SC) and therefore, submits that the present Writ Petition is liable to be dismissed.

16. In support of his contention, the learned Senior Standing Counsel for the respondents also drew attention to the following cases:-

i. **Kalyanji Mavji and Co. Vs. Commissioner of Income Tax**, (1976) 102



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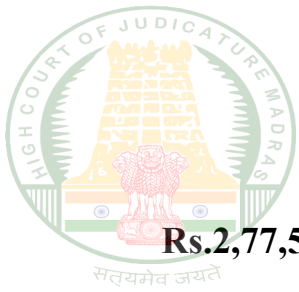
ITR 287 / (1976) 1 SCC 985.

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- ii. **Indian and Eastern Newspaper Society Vs. CIT**, [1979] 119 ITR 996.
- iii. **Commissioner of Income Tax Vs. Gulam Rasool**, (1997) 225 ITR 904 / [1997] 91 TAXMAN 167 (MP).
- iv. **Commissioner of Income Tax Vs. Sun Engineering Works Private Limited**, [1992] 198 ITR 297,
- v. **Ester Industries Limited Vs. Union of India and others** rendered in W.P.(C) No.7482 of 2011 on 28.01.2013.
- vi. **M.K.Venkatachalam Vs. Bombay Dyeing and Manufacturing Company Limited**, (1958) 34 ITR 143 (SC).
- vii. **Maharaj Kumar Kamal Singh Vs. Commissioner of Income Tax**, (1959) 35 ITR 1 (SC).
- viii. **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited**, (2010) 320 ITR 561 / [2010] 187 Taxman 312 (SC).

17. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

18. During the search that was conducted on **03.09.2013**, cash of



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Rs.2,77,50,045/- and gold weighing 1378.400 grams were seized. The details

of cash and gold seized from the petitioner and his associates are as follows:-

Sl.No.	Place of Seizure	Value at Rs.
1	Premises of the Petitioner and M/s.VIP City	1,77,50,045
2	Premises of Mr.Dhanapal	50,00,000
3	Premises of M/s.VIP City	50,00,000
4	Gold seized from the premises of Mr.Dhanapal	38,69,168
	Total :	3,16,19,213

19. It has to be assumed that the Assesment officer would have examined all the issues before passing the Assessment order on **31.03.2016** in response to the Return of Income dated **22.02.2016**.

20. No Income Tax Officer can be presumed to have completed the assesment without looking at all this material. This is the view of this Court in **Ramachari Case**, (1961) 41 ITR 142 (Mad). Thus, the notice issued on 31.03.2021 under Section 148 of the Income Tax Act, 1961, was on the account of “change of opinion”, the assesment was in the background of the above search in respect of which notices were issued under Section 153A of the Income Tax Act, 1961 as mentioned above which have culminated in the



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Assessment Orders for the Assessment Years 2011-2012, 2012-2013 and 2013-

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21. The Hon'ble Supreme Court in **Kalyanji Mavji and Co. Vs. Commissioner of Income Tax**, (1976) 102 ITR 287 / (1976) 1 SCC 985, in the context of Section 34(1)(b) of the Income Tax Act, 1922 which is *pari materia* with Section 147 of the Income Tax Act, 1961 and as it stood prior to 01.04.2021.

22. This view was also upheld in **CIT, Excess Profits Tax, Hyderabad, Andhra Pradesh v. V. Jagan Mohan Rao** (1969) 2 SCC 389, while following the decision of the Hon'ble Supreme Court in **Maharaj Kumar Kamal Singh v. CIT**, (1959) 35 ITR 1, observed as follows :

“In these circumstances it was held by this Court firstly that the word information in Section 34(1)(b) included information as to the true and correct state of the law, and so would cover information as to relevant judicial decisions, secondly that ‘escape’ in Section 34(1) was not confined to cases where no return had been submitted by the assessee or where income had not been assessed owing to inadvertence or oversight or other lacuna attributable to the assessing authorities. But even in a case where a return had been submitted, if the Income Tax Officer had erroneously failed to tax a part of the assessable income, it was a case where that part of the income had escaped assessment. The decision of



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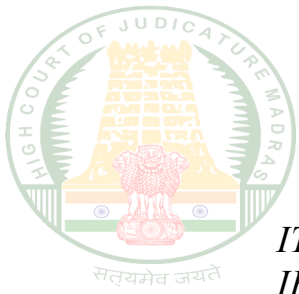
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the Privy Council, therefore, was held to be information within the meaning of Section 34(1)(b) and the proceedings for reassessment were validly initiated.”

23. In *Indian and Eastern Newspaper Society Vs. CIT*, [1979] 119

ITR 996, wherein it has been concluded as under:-

“20. What then, is the difference between the situations envisaged in propositions (2) and (4) of Kalyanji Mavji [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287] The difference, if one keeps in mind the trend of the judicial decisions, is this. Proposition (4) refers to a case where the ITO initiates reassessment proceedings in the light of “information” obtained by him by an investigation into material already on record or by research into the law applicable thereto which has brought out an angle or aspect that had been missed earlier, for e.g., as in the two Madras decisions referred to earlier. Proposition (2) no doubt covers this situation also but it is so widely expressed as to include also cases in which the ITO, having considered all the facts and law, arrives at a particular conclusion, but reinitiates proceedings because, on a reappraisal of the same material which had been considered earlier and in the light of the same legal aspects to which his attention had been drawn earlier, he comes to a conclusion that an item of income which he had earlier consciously left out from the earlier assessment should have been brought to tax. In other words, as pointed out in IENS case [(1979) 4 SCC 248 : 1979 SCC (Tax) 336 : (1979) 119 ITR 996] , it also ropes in cases of a “bare or mere change of opinion” where the ITO (very often a successor officer) attempts to reopen the assessment because the opinion formed earlier by himself (or, more often, by a predecessor ITO) was, in his opinion, incorrect. Judicial decisions had consistently held that this could not be done and the IENS case [(1979) 4 SCC 248 : 1979 SCC (Tax) 336 : (1979) 119 ITR 996] has warned that this line of cases cannot be taken to have been overruled by Kalyanji Mavji [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102

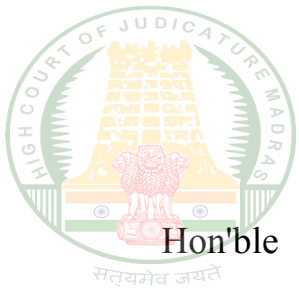


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ITR 287] . The second paragraph from the judgment in the IENS case [(1979) 4 SCC 248 : 1979 SCC (Tax) 336 : (1979) 119 ITR 996] earlier extracted has also reference only to this situation and insists upon the necessity of some information which make the ITO realise that he has committed an error in the earlier assessment. This paragraph does not in any way affect the principle enumerated in the two Madras cases cited with approval in Anandji Haridas [(1968) 21 STC 326 : AIR 1968 SC 565 : (1968) 1 SCR 661] . Even making allowances for this limitation placed on the observations in Kalyanji Mavji [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287], the position as summarised by the High Court in the following words represents, in our view, the correct position in law: (ITR p. 629)

“The result of these decisions is that the statute does not require that the information must be extraneous to the record. It is enough if the material, on the basis of which the reassessment proceedings are sought to be initiated, came to the notice of the Income Tax Officer subsequent to the original assessment. If the Income Tax Officer had considered and formed an opinion on the said material in the original assessment itself, then he would be powerless to start the proceedings for the reassessment. Where, however, the Income Tax Officer had not considered the material and subsequently come by the material from the record itself, then such a case would fall within the scope of Section 147(b) of the Act.””

24. A Division Bench of the Madhya Pradesh High Court, Jabalpur Bench in **Commissioner of Income Tax Vs. Gulam Rasool**, (1997) 225 ITR 904 / [1997] 91 TAXMAN 167 (MP), referred to the law laid down by the



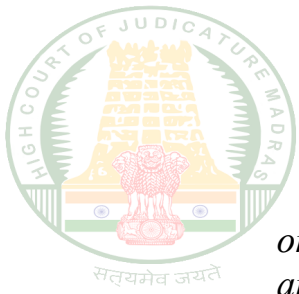
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Hon'ble Supreme Court in **Commissioner of Income Tax Vs. Sun**

Engineering Works Private Limited, [1992] 198 ITR 297 and had

summarized the position as follows:-

“39. The principle laid down by this Court in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] therefore, is only to the extent that once an assessment is validly reopened by issuance of notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under-assessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous under-assessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not effect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in cases of “under-assessment” based on clauses (a) to (d) of Explanation I to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] therefore, cannot be read to imply as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] as if laying down that reassessment wipes out the original assessment and that reassessment is not only confined to “escaped assessment”



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or “under assessment” but to the entire assessment for the year and start the assessment proceedings de novo giving right to an assessee to reagitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete ‘law’ declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In *Madhav Rao Scindia v. Union of India* [(1971) 1 SCC 85 : (1971) 3 SCR 9] this Court cautioned:

“It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.”

25. The Delhi High Court in **Ester Industries Limited Vs. Union of India and others** in W.P.(C) No.7482 of 2011 dated 28.01.2013, taking note of the decision of the Hon'ble Supreme Court in **M.K.Venkatachalam Vs. Bombay Dyeing and Manufacturing Company Limited**, (1958) 34 ITR 143



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(SC) and that of the decision of the Hon'ble Supreme Court in **Maharaj**

Kumar Kamal Singh Vs. Commissioner of Income Tax, (1959) 35 ITR 1

(SC), observed as under:-

“9. The original assessment was made on 30-11-2006 under section 143(3). The Finance Act, 2008 inserted clause (h) of Explanation 1 to section 115JB retrospectively from 1-4-2001. The effect of this clause was to increase the book profit by “the amount of deferred tax and the provision therefor”. It is not in dispute that one of the reasons to believe as recorded by the respondent is that in view of the retrospective amendment, the deferred tax liability, for which a provision had been made in the accounts, was to be added back to the book profit. The assessment was reopened within four years from the end of the relevant assessment year. The assessing officer has to show some “tangible material” which could form the basis for his belief that income chargeable to tax has escaped assessment. That material is the retrospective legislative amendment. Under the pre-1989 law of reassessment, information as to the true state of law could form a valid basis for reopening the assessment : *Maharaj Kumar Kamal Singh v. CIT* (1959) 35 ITR 1 (SC). A retrospective amendment of the law can even permit action for rectification of the assessment on the ground of mistake apparent from the record : *M.K. Venkatachalam v. Bombay Dyeing & Manufacturing Co. Ltd.* (1958) 34 ITR 143 (SC). But just because action for rectification is permissible, it does not follow that no action can be taken for reopening, for, the powers under sections 147 and 154 are not mutually exclusive; there could be some overlapping, and so long as the conditions for the applicability of the sections are satisfied, the action taken thereunder has to be validated and it is no answer to say that action should be taken under another section. Under this principle, it is held that one of the reasons for reopening in the present case being the retrospective amendment, the notice is valid.”

26. However, this Court dealt with the case where the assessment was



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completed on **30.11.2006** under Section 143(3) of the Income Tax Act, 1961 and thereafter the Finance Act, 2008 was inserted Clause (h) of Explanation 1 to Section 115JB of the Income Tax Act, 1961 retrospectively from 01.04.2001. The effect of this Clause was to increase the book profit by “the amount of deferred tax and the provision therefor”.

27. It is, in this context, the notice was issued which was subject matter of challenge before this Court and thus, the Court brought out the above distinction.

28. The Hon'ble Supreme Court in **A.L.A.Firm's case** (cited supra), has answered the position as follows:-

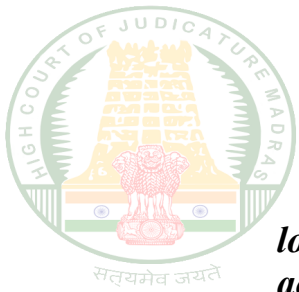
*“21. Let us now examine the position in the present case keeping in mind the narrow but real distinction pointed out above. On behalf of the assessee, it is emphasised (a) that the amount of surplus is a very substantial amount, (b) that full details of the manner in which it had resulted had been disclosed, (c) that the profit and loss account, the profit and loss adjustment account and statement made before the ITO had brought into focus the question of taxability of the surplus and (d) that the decision in Ramachari case [(1961) 41 ITR 142 (Mad)] had been reported by April 10, 1962. **No Income Tax Officer can be presumed to have completed the assessment without looking at all this material and the said decision.** No doubt, some doubt had been thrown as to whether a statement had been given at the time of original assessment that the amount of surplus was not taxable as an income or a capital*



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gain but the case has proceeded on the footing that such a statement was there before the officer. **This, therefore, is nothing but a case of “change of opinion”.** On the other hand, the authorities and the Tribunal have drawn attention to the fact that the return, the Section 143(2) notice and assessment were all on the same day and counsel for the revenue urged that, obviously, in his haste, the ITO had not looked into the facts at all. It is urged that no Income Tax Officer who had looked into the facts and the law could have failed to bring the surplus to tax in view of the then recent pronouncement in Ramachari case [(1961) 41 ITR 142 (Mad)]. Dr Gaurishankar submitted that the Tribunal has found that the ITO “had acted mechanically in accepting the return without bringing his mind to play upon the entry in the statement with reference to the distribution of the assets”. He pointed out that there is no evidence of any enquiry with reference to this aspect and that, the amount involved being sufficiently large, the ITO, if he had been aware of the existence of the entry would certainly have discussed it. He urged that the question whether the ITO had considered this matter at the time of the original assessment or not is purely a question of fact and the Tribunal's conclusion thereon having been endorsed by the High Court, there is no justification to interfere with it at this stage.

22. We think there is force in the argument on behalf of the assessee that, in the face of all the details and statement placed before the ITO at the time of the original assessment, it is difficult to take the view that the Income Tax Officer had not at all applied his mind to the question whether the surplus is taxable or not. It is true that the return was filed and the assessment was completed on the same date. Nevertheless, it is opposed to normal human conduct that an officer would complete the assessment without looking at the material placed before him. It is not as if the assessment record contained a large number of documents or the case raised complicated issues rendering it probable that the ITO had missed these facts. It is a case where there is only one contention raised before the ITO and it is, we think, impossible to hold that the Income Tax Officer did not at all



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look at the return filed by the assessee or the statements accompanying it. The more reasonable view to take would, in our opinion, be that the Income Tax Officer looked at the facts and accepted the assessee's contention that the surplus was not taxable. But, in doing so, he obviously missed to take note of the law laid down in G.R.Ramachari & Co.'s case (supra) which there is nothing to show, had been brought to his notice. When he subsequently became aware of the decision, he initiated proceedings under Section 147(b). The material which constituted information and on the basis of which the assessment was reopened was the decision in G.R.Ramachari & Co.'s case (supra). This material was not considered at the time of the original assessment. Though it was a decision of 1961 and the ITO could have known of it had he been diligent, the obvious fact is that he was not aware of the existence of that decision then and, when he came to know about it, he rightly initiated proceedings for assessment."

(emphasis added)

29. In the facts of the case, it is evident that the search was completed on **03.09.2013**. The Return of Income was filed by the petitioner was on **22.02.2016**. Assessment was completed on **31.03.2016** under Section 143(3) of the Income Tax Act, 1961, based on the returns filed on **22.02.2016**.

30. At best, the assessment order that was passed on **31.03.2016** under Section 143(3) of Income Tax Act, 1961, may have given rise to an option either to invoke the machinery of revision under Section 263 of the Income Tax Act, on the ground that the assessment order dated **31.03.2016**, passed under Section 143(3) of the Income Tax Act, was both erroneous and prejudicial to



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the interests of the revenue, or that there was income that had escaped

assessment. Although there was no suppression of fact in the return that was filed on **22.02.2016**, merely because amounts were recovered from the petitioner, the associate firms, and related party, itself would not justify the conclusion that there was failure on the part of the petitioner to fully disclose all materials that were required for passing the assessment order dated **31.03.2016**, and there should have been a live link between the information that was surfaced for issuance of notice under Section 148 of the Income Tax Act, 1961, to reopen the assessment and to pass fresh re-assessment order under Section 147 of the Income Tax Act, 1961.

31. Pursuant to the search conducted under Section 132 of the Income Tax Act, 1961 (for brevity, "IT Act") on **03.09.2013** in the above mentioned premises and at the place of the petitioner, notices dated 12.01.2016 were issued to the petitioner under Section 153A(1) of the IT Act for the preceding Assessment years and Assessment Orders were passed on **31.03.2016** as detailed below:-



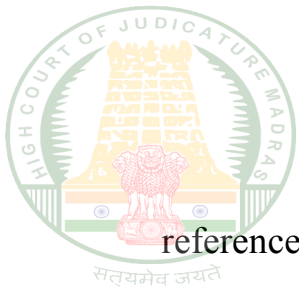
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Year of Assessment	Income Returned in the original return of Income	Income Returned in Return of Income filed in response to 153A Notice	Additional Income Offered to Tax	Total Income determined, finalized and accepted
2011-2012	1,13,85,250	1,86,00,000	72,14,750	1,86,00,000
2012-2013	9,25,02,130	11,31,70,000	2,06,67,870	11,31,70,000
2013-2014	7,92,45,220	9,99,30,000	2,06,84,780	9,99,30,000

32. These proceedings have also culminated in the Assessment Orders for the above mentioned Assessment Years in terms of Section 153A(2) of the IT Act.

33. As far as Assessment Year 2014-2015 (previous Assessment Year 2013-2014) is concerned, an earlier Assessment Order was passed on **31.03.2016** pursuant to a Returns filed on **22.02.2016** Admitted Taxable Income of Rs.2,34,86,595/- against the total income Rs.3,16,19,213/- during the search in the above mentioned premises.

34. To invoke the machinery under Section 148 of the IT Act as it stood till 31.03.2021, the Courts have repeatedly held that the term “reason to believe” means that Assessing Officer must have some tangible material passing before assuming jurisdiction under Section 147 of the IT Act. A



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reference is made to **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd.**, (2010) 320 ITR 561.

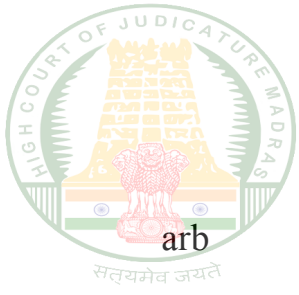
35. The dispute in the present case pertains to the Assessment Year 2014-2015. It can therefore hardly be said that the Assessing Officer was unaware of the search proceedings and the seizure made pursuant to the search conducted on **03.09.2013** resulting in seizure of a sum of Rs.1,77,50,045/- from the petitioner Firm, and a sum of Rs.50,00,000/- from the petitioner's partner, and gold worth of Rs.38,69,168/-, which was recovered from M/s.VIP City.

36. Therefore, the Impugned Order dated **11.02.2022** along with the Impugned Notice dated **31.03.2021** are liable to be quashed and the same are accordingly quashed as they are inspired from the change of opinion.

37. In the result, this Writ Petition is allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

25.02.2025

Neutral Citation: Yes / No



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To:

- 1.The Deputy Commissioner of Income Tax,
Central Circle-2, Chennai,
New Building, New No.46, Old No.108,
Mahatma Gandhi Salai,
Chennai – 600 034.
- 2.The Principal Commissioner of Income Tax (Central),
Chennai – 2,
New Building, New No.46, Old No.108,
Mahatma Gandhi Salai,
Chennai – 600 034.



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C.SARAVANAN, J.

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