



WA No.220 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Writ Appeal No.220 of 2021

The Assistant Commissioner of Income Tax,
Company Circle-II(3)
5th Floor, New Block,
121, Mahatma Gandhi Road,
Chennai 600 034

: Appellant

versus

Indian Syntans Investments Pvt Ltd.,
rep. By N.Narayanan, Managing Director,
New No.12, Old No.71, Third Main Road,
Kasturba Nagar, Adyar,
Chennai 600 020.

: Respondent

Prayer: Appeal filed against the order passed by learned Single Judge
dated 07.09.2020 in WP No.12300 of 2007.

For Appellant : Mr.B.Ramana Kumar,
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT



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(Judgment of the Court was
delivered by the Hon'ble Chief Justice)

This writ appeal impugns an order and judgment dated 07.09.2020 passed by the learned Single Judge quashing a notice under Section 148 of the Income Tax Act, 1961 (for short, 'the Act') and the consequential proceedings.

2. Respondent is the assessee. Respondent had filed a return of income on 27.10.2000 for assessment year 2000-01, and an intimation under Section 143(1) of the Act was issued. No proceedings for assessment had taken place thereafter.

3. A notice dated 22.11.2006 under Section 148 of the Act came to be issued, informing the assessee that there was reason to believe that income chargeable to tax for AY 2000-01 has escaped assessment, within the meaning of Section 147 of the Act. By a letter dated 04.12.2016, assessee replied that there was no reason to believe, and requested reasons for reopening. The assessee was provided the reasons for reopening vide a communication dated 02.02.2007 and it reads as under:



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“Please refer to the above.

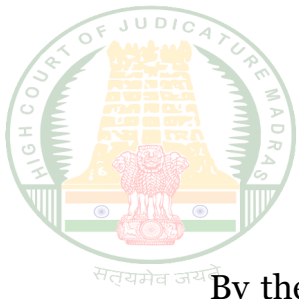
The reasons for reopening the assessment are as follows:

“The assessee company has taken legal proceedings against M/s.REPL Engg. Ltd and M/s.REPL Syndergy Power System Ltd., Mumbai for misappropriation of company's assets while in possession as a lease treating it as tantamounting to criminal breach of trust. In the above circumstances, the lease rental on Turbine Generator amounting to Rs.48.00 Lakhs was not recognised as income and the interest on HP Loan of Rs.13,67 lakhs was also not claimed as expenditure. The income had to be brought to tax on accrual basis, pending finalisation of legal proceedings.

Under the head 'Administrative Expenses', the assessee had claimed an amount of Rs.26,41,631/- as debit balance no longer required as expenditure. As this not an allowable expenditure, the claim has to be verified.”

Therefore, there were reasons to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961 and accordingly the assessment for the asst.year 2000-01 in this case has been reopened.”

4. The assessee filed objections by letter dated 16.02.2007 and called upon the Revenue to drop the proceedings. The objections were rejected by order dated 07.03.2007, following which, the writ petition came to be filed.



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By the impugned order and judgment dated 07.09.2020, the writ petition came to be allowed.

5. The assessee had purchased two wind turbines, one each during AY 1996-97 and 1997-98, under hire purchase agreement, from one REPL Group Companies. These turbines were leased back to REPL Group Companies. Subsequently, the assessee realised that the wind turbines were fraudulently removed by the lessee REPL. Assessee voluntarily withdrew the entire transaction claim, i.e. depreciation on the wind turbine, interest paid and lease rental income for tax purposes and paid the resultant tax thereon with revised return for both assessment years 1996-97 and 1997-98. The Department accepted the revised returns, and assessment orders under Section 143(3) of the Act have been passed.

6. Mr.Ramana Kumar for Revenue submitted as under:

- (a) that proceedings under Section 143(1) of the Act were only intimations and therefore, a proviso to Section 147 of the Act would not apply;
- b) the reasons recorded mentioned that



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there was tangible material to reopen, and therefore, it cannot be stated that there was change of opinion;

c) ***Kelvinator India Ltd. vs. ITR¹*** does not apply to the facts and circumstances of the case because in that judgment, the Apex Court has held that there is not much of a difference in the intent and operation of Section 147 of the Act before amendment and after amendment, and that the power to reopen would not mean a power to review on a mere change of opinion. In *Kelvinator India Ltd* (supra), the original assessment was a scrutiny assessment under Section 143(3) of the Act and the reopening of assessment was made within a period of four years; but on the basis of the very same documents that were available at the time of original assessment under Section 143(3) of the Act.

1(320 ITR 561)



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7. Mr.Sivaraman for the assessee submitted as under:

a) Though it cannot be disputed that the proviso to Section 147 of the Act will not apply, the fact is, for reopening, there has to be a tangible material and in the case at hand, reopening is on the basis of the very same documents that were available even when the returns were filed;

b) Therefore, there is nothing new, and the attempt is to go on a fishing inquiry, which is not permissible;

c) The reason to believe itself indicates that it is a fishing inquiry because it says "... claim has to be verified";

d) If verification is required to be made, then there cannot be a reason to believe escapement of income.



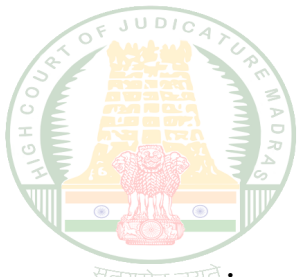
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8. In any case, the reasons recorded are ambiguous and vague, and as held in ***Hindustan Lever Ltd vs. R.B.Wadkar***², the reasons recorded must disclose the officer's mind because the reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons, and it has to provide link between the conclusion and evidence.

9. Admittedly, the notice issued is beyond the period of four years. The return of income filed by assessee was accompanied by financials that contained a note explaining the lease transaction and a perusal of the reasons for re-assessment make it clear that the reasons are based entirely upon the documentation accompanying the return. No material extraneous to that already on record or new has been discovered by the Assessing Officer indicating income that had escaped taxation. It applies equally to lease income as well as the claim of administrative expenses. A full and true disclosure has been made insofar as all materials germane to the computation of income and it forms part of return of income. In such

² 2004(268) ITR 332 (Bom)



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circumstances, escapement of income, if any, cannot be attributed to the assessee.

10. More over, the Apex Court in *Kelvinator India Ltd.*, (supra) considered the case of reassessment that has been initiated within four years. Reasons for reopening merely reiterated materials that was already on record, as a result that the Bench came to the conclusion that the proceedings were not one of reassessment but one of review, impermissible under the Act.

Relevant portion reads as under:

“On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and fulfillment 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 1st 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 1st 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 fulfillment



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 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. 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 re~introduced 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 31st October, 1989, 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 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.”



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For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs.

(emphasis supplied)

11. The settled proposition therefore is that change of opinion is an in-built test to check abuse of power by the Assessing Officer. In the garb of reopening the assessment, review would take place.

12. Therefore, it is clear, a reassessment made within four years or beyond four years has to be based on tangible material *de hors* that is available on record that has come to the notice of the Assessing Officer. Recourse to proceedings for reassessment is available only if the Department comes into possession of materials, apart from that already available as part of its records or if primary particulars reveal discrepancies that are not explained or resolved by the accompanying documentation. This is subject, therefore, to the assessee having placed on record all materials necessary for the appreciation of issues arising for assessment including financials and annexures along with its return of income at the first instance.



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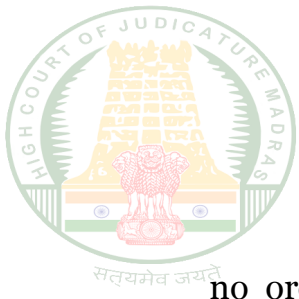
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13. Even the Hon'ble Delhi High Court in ***Commissioner of Income Tax-V vs. Orient Craft Ltd***³ has held that reopening of assessment made under Section 143(1) of the Act is without jurisdiction, in the absence of any tangible material available with the Assessing Officer to form the requisite belief regarding escapement of income. The Court held that in the absence of any tangible material, there will be a review in the guise of reopening.

14. In the present case, the reasons disclose that the Assessing Officer reached the belief that there was escapement of income, on going through the return of income filed by assessee after it was accepted under Section 143(1) of the Act, without scrutiny and nothing more. Therefore, this is nothing but a review of the earlier proceedings. There is no whisper in the reasons recorded, of any tangible material which came to the possession of Assessing Officer subsequent to the issue of the intimation. It reflects arbitrary exercise of the power conferred under Section 147 of the Act.

15. In the circumstances, the appeal stands dismissed. There will be

³ [2013] 29 taxmann.com392 (Delhi)



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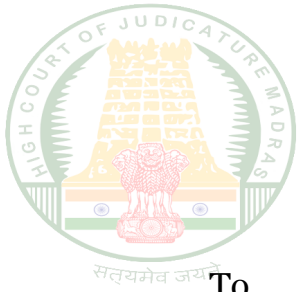
no order as to costs. Consequently, the interim application also stands disposed of.

(K.R.SHRIRAM, C.J.)

(SUNDER MOHAN, J.)

19.06.2025

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