

Issues in Re-assessment under I. T. Act, 1961

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- Scope of discussion.
- Process of reassessment.
- Obtain copy of order sheet entries, maybe after completion of reassessment as also of the approval given u/s 151.

Issue vs service of notice

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- Sec. 147 does not speak of issue of notice.
- Sec. 148 speaks of “service” of notice.
- Sec. 149(1)(a) to (c) speak of time limit within which notice u/s 147 can be “issued”.

Relevance of “service” of notice

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- For making assessment, reassessment.
- For deciding time barring date as per sec. 153(2).

Notice by jurisdictional AO

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- Reasons to be recorded by AO having jurisdiction. Notice issued by non-jurisdictional AO *ab initio* void.
 - Effect of decision in Pr. CIT vs I-Ven Interactive Ltd. (2019) 418 ITR 662 (SC) - relating to address only.
 - Change in jurisdiction due to - change of address & notification issued u/s 120(1).

Recording of reasons

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- Reasons should speak as to how material on record leads to formation of belief of escapement.
- AO must put in writing as to “why” in his opinion or “why” he holds the belief that income has escaped assessment.
- Reasons should depict by what process of reasoning AO formed belief of escapement.
- If “why” & “how” missing from reasons, reassessment would be without jurisdiction, being without application of mind.

- Direct nexus or live link between the material coming to the notice of AO and the formation of his belief of escapement is essential.
- Belief of the AO must be that of an honest and reasonable person based upon reasonable ground and not on mere suspicion, gossip rumours.

Material/information from Wing etc.

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- Merely obtaining material does not give reason to believe - Pr. CIT vs Shodiman Investments P. Ltd. in Income Tax Appeal no. 1297 of 2015, dt. 16.04.2018 of Mumbai High Court.
- What AO did with the information is most important - to show application of mind.
- AO having information on record but not the material. Reassessment fails. Varshaben Sanatbhai Patel vs ITO in Special Civil Application no. 12873 & 12875 of 2014, judgement dt. 13.10.2015.

Material/information from Wing etc. contd.

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- Mere reproduction of information available with AO with no finding of AO. For example:
 - Accommodation entry in the form of share capital/loan received.
 - Bogus purchase cases, penny stock cases.
 - Large cash deposits in bank account.
- Not sufficient, it will depict non-application of mind.
- Before recording reasons, AO should himself go through the material on record including any adverse statement, evidence or the like.

Material/information from Wing etc. contd.

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- Adverse observation about credit worthiness of some investors, lenders, allegation about shell company etc. - necessary for AO to go through material leading to such observation.
- It is the analysis & examination of AO which will form basis for formation of belief of escapement & which should be reflected in reasons.
- The information & material before AO should impeach transaction of assessee - Eveready Industries India Ltd vs JCIT (2000) 243 ITR 540, 556 (Gau.)

Application of mind by AO

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- Balaji Health Care P. Ltd. vs ITO in ITA no. 566 & 567/Jp./2018 dt. 30.01.2019

“It is true that the Assessing officer can rely on the report of DIT, Investigation Wing but at the same time, where he is assuming jurisdiction u/s 147, he is required to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment and in absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside.”

Providing copy of reasons

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- Full reasons, facts and all material need to be provided to assessee at the time of providing copy of reasons.
- Mandatory - GKN Driveshafts Ltd. 259 ITR 19 (SC), Judge made law.
 - Consequence of not providing reasons, reassessment invalid - (2019) 411 ITR (St.) 5 in Pr. CIT vs V. Ramaiah.
- Raising of objection, mandatory disposal of objection - GKN Driveshafts. Asian Paints 296 ITR 90 (Bom.)

Failure to disclose truly & fully all material facts

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- Cases covered by 1st proviso to sec. 147 - reasons must mention failure on the part of assessee - CIT vs State Bank of Patiala (2016) 389 ITR (St.) 8 (SC) & CIT vs Dhirendra Hansraj Singh in S. L. P. (C) no. 32237 of 2018 as reported in (2018) 409 ITR (St.) 15.
- General statement in reasons that there was failure on the part of assessee - not sufficient.
 - Himson Textile Engineering Industries Ltd. Vs N. K. Krishnan (2013) 83 DTR 132 (Guj.)
 - Bombay Stock Exchange Ltd. Vs. Deputy Director of Income Tax (Exemption) and Ors., (2014) 361 ITR 160 (Bom.)

Failure to disclose

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- New Delhi Television Ltd. Vs DCIT in Civil Appeal no. 1008 of 2020, dt. 03.04.2020 - only primary facts need to be disclosed in assessment and not secondary facts.

Some miscellaneous issues

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Reassessment for making enquiry

- Sec. 147 cannot be resorted to make fishing or roving enquiry - Pr. CIT vs Manzil Dinesh Kumar Shah (2018) 406 ITR 326 (Guj.), SLP dismissed in (2019) 411 ITR (St.) 5 (SC), ACIT vs Nupower Renewables Private Limited (2019) 417 ITR (St.) 61, ITO vs Electro Steel Castings Ltd (2003) 264 ITR 410, 427 (Cal.)

Some miscellaneous issues contd.

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- In *Sabh Infrastructure Ltd. vs ACIT* in W.P. (C) 1357/2016 Judgment dt. 25.09.2017 of Delhi High Court by Justice S. Murlidhar, High Court laid down following guidelines: -
 - Copy of standard form used by AO for obtaining approval from superior authority to be provided which would contain comment or endorsement of superior authority.
 - Reasons to believe should spell out all the reasons and ground available with the AO, especially in the cases covered by first proviso to sec. 147.
 - Where the reasons make reference to another document, whether a letter or a Report, such document and/or relevant portion of such report should be enclosed with the reasons.

Some miscellaneous issues contd.

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- Manner of granting approval by CIT/JCIT

Approval to be given after application of mind by the approving authority. Approval cannot be mechanical - M/s S. Goyanka Lime and Chemicals Ltd., M. P. High Court, Pioneer Town Planners P. Ltd. vs DCIT in ITA no. 132/Del/2018 order dt. 06.08.2018 of “F” Bench, Blue Chip Developers P. Ltd. Vs ITO in ITA no. 1061/Del/2019 dt. 02.12.2019 - “Yes I am satisfied” not enough.

- Incorrect facts in reasons - consequence thereof.
 - Mumtaz Haji Mohmad Memon vs ITO, Ward 6(1)(1), in Civil Application no. 21030 of 2017 order dt. 21.03.2018 of Gujarat High Court.
 - Sagar Enterprises 257 ITR 335 , 37-38 (Guj.)
- Time gap between receipt of information & issue of notice u/s 148 would be relevant in most cases, which can be known through order sheet.

Some miscellaneous issues contd.

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- Notice u/s 143(2), within prescribed time, is essential for completing reassessment - Gravity Systems Private Limited SLP dismissed in (2018) 407 ITR (St.) 15.
- No return filed in response to notice u/s 147 or if letter to treat original return as return in response to notice u/s 147 is signed by say counsel and not assessee - whether AO is duty bound to issue notice u/s 143(2) ?

Some miscellaneous issues contd.

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- Change of opinion Kelvinator 320 ITR 516 (SC) - there should be some “tangible material” on record of AO.
- Original assessment u/s 143(1), whether new tangible material necessary for invoking sec. 147 ?
Two controversial views: -
 - Olwin Tiles India Pvt. Ltd vs DCIT (2016) 382 ITR 291 (Guj.)
 - Pr. CIT vs Shodiman Investments P. Ltd. in Income Tax Appeal no. 1297 of 2015, order dt. 16.04.2018 of Mumbai High Court

Some miscellaneous issues contd.

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- Assessing any other escaped income, other than the one mentioned in reasons

AO can assessee it only if original income, which formed basis of belief of escapement and which is included in reasons, continues to form part of reassessed income - Martech Peripherales P. Ltd. vs DCIT (2017) 394 ITR 733, 744 (Mad.), Vijay Harishchandra Patel vs ITO (2018) 400 ITR 167 (Guj.)

Thank you