

Jai Bharat Maruti Ltd. (Assessee's Appeal allowed by Delhi High Court):

1. **Scope of Reasons to Believe:** After analysing SC ruling in Rajesh Jhaveri, it is held that

"Applying the aforesaid principle, it is clear that while the Supreme Court has conferred a wide discretion on the Assessing Officer for reopening the proceedings whether to assess, re-assess or to re-compute income it is predicated on a test whether a reasonable person would form a belief that there was relevant material for initiating proceedings under Section 147 of the Act. In the instant case if the test of the reasonable person is applied, it is clear that no reasonable person could have come to a conclusion that there was relevant material available with the Assessing Officer to have reason to believe that assessee's income chargeable to tax had escaped assessment only by virtue of the fact that the assessee had charged to its profit and loss account the credit balance available in its MODVAT account.

It is rudimentary that MODVAT is nothing but credit of duty paid by a person on input used by the assessee for manufacture of its final product.

The notice under Section 148(1) could not have been based on a ground as tenuous as the one disclosed by the Revenue. If we were to accept such a ground as the one obtaining in the present case then it would virtually amount to giving power to the Assessing Officer to reopen the proceedings at his own whim and fancy.

Their Lordships in **Rajesh Jhaveri Stock Broker (supra)** have, while giving the widest width and amplitude to the Assessing Officer to initiate proceedings under Section 147 read with Section 148 of the Act incorporated a caveat;

which is as to how a reasonable man would view the articulated reasons (as prescribed under Sub-Section (2) of Section 148) which formed the basis of a notice under Section 148(1) of the Act. In our view this by itself would suffice in declaring the proceedings bad in law."

(Also refer DHC in Batra Bhatta; Gulati Fabrication (SLP dismissed by SC); Delhi ITAT in Takshila Distributors and Guj HC in Manusha Estates; Kar HC in N Thippa Reddy etc)

2. Scope of additions on unconnected issues: (Ker HC in Travancore 219 CTR 359 applied)

Applying the aforesaid principle, it is clear that the proceedings under Section 147 of the Act cannot impinge upon items which have no connection or relation with items of income and/or expenditure which form the basis of a notice under Section 148(1) of the Act. In the instant case the items referred to in the Assessing Officer's notice dated 10.03.1999 had no relation with the reasons recorded on 27.03.1997. As a matter of fact the assessee was allowed by the CIT(A) the deduction of the amount of Rs 25 lacs (approx.) charged to its profit & Loss account on the basis of the provisions of Section 43B. The other items with respect to which additions and disallowances had been made and which are discussed in the body of our judgment while discussing the orders of the authorities below had no connection with the reasons articulated on 27.03.1997 which form the basis of the notice issued under Section 148(1) of the Act. In our view the assessment order in so far as it dealt with items other than those which formed the basis of the reasons disclosed on 27.03.1997 are bad in law or stood vitiated in law.

*The Division Bench of the Kerala High Court in the case of **Travancore Cements Ltd vs ACIT; (2008) 219 CTR 359** came to the same conclusion."*