

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**TAX APPEAL NO. 964 of 2011
TO
TAX APPEAL NO. 967 of 2011**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

-
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

COMMISSIONER OF INCOME TAX-II....Appellant(s)

Versus

MOHMED JUNED DADANI....Opponent(s)

Appearance:

MR MANAV A MEHTA, ADVOCATE for the Appellant(s) No. 1

MR DHARMESH V SHAH, ADVOCATE for the Opponent(s) No. 1

MS. STUTI Y JANI, ADVOCATE for the Opponent(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 29/01/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. In this group of appeals, a short but interesting question which would be repetitive in nature has arisen. We had therefore, in our order dated 12.09.2012, issued notice for final disposal.
2. We may notice the facts in brief as arising in Tax Appeal No. 964 of 2011. For the assessment year 2003-04, assessee had filed return of income on 29.11.2003. Such assessment was framed originally after scrutiny. Thereafter, the Assessing Officer issued a notice under Section 148 of the Income Tax Act, 1961 on 09.03.2005 for reopening such assessment. The Assessing Officer had recorded following reasons for the purpose of issuing the notice:

".... In the above case, return declaring total income of Rs. 1,82,745/- was filed on 29-11-2003 after claiming the deduction of Rs. 1,82,746/- u/s. 80HHC. On verification of the said return, it is noticed that while computing the deduction u/s 80HHC, the assessee has considered DEPB License income of Rs. 29,85,543/- and excise duty refund of Rs. 22,35,799/-. If these two export incentives are excluded from the income of the assessee, there will be a loss from the export business and consequently the assessee will not be entitled to get deduction u/s. 80HHC of the I.T. Act, 1961.

2. It is imperative that deduction u/s. 80HHC of the Act has to be computed within the parameters of the provisions of section 80AB of the I.T.Act, 1961. In other words, if there is insufficient profit from the export business after setting off the export incentives, the assessee will not be eligible for deduction u/s. 80HHC of the I.T.Act, 1961. This finds support from the decision of the Hon'ble Supreme Court of India in the case of IPCA Laboratory Ltd., 266 ITR 530. The CBDT, New Delhi also

vide its letter No. D.O. No. 275/50/2004-IT (B) dated 6-7-2004 issued directions to reopen cases, wherein deduction u/s.80HHC has been claimed even if there is a loss from the export business.

3. *In view of the above, I have reason to believe that income chargeable to tax has escaped the assessment to the extent of Rs. 1,82,746/-. Accordingly, issue notice u/s.148 of the I.T.Act,1961."*

3. The Assessing Officer framed fresh assessment on 17.03.2005 assessing total income at Rs. 1,00,60,240/-. In the process he made following additions:

| | | |
|---|---|-----------------|
| 1 | On a/c of unexplained Cash Credit u/s 68 of the I T Act | Rs. 26,57,500/- |
| 2 | On account of 25% of unverifiable purchases | Rs. 47,25,387/- |
| 3 | On account of 20% out of expenses of | Rs. 24,94,608/- |

4. Significantly, in such assessment, the Assessing Officer did not disturb the deduction of Rs. 1,82,746/-, previously claimed by the assessee under Section 80HHC of the Act, and granted in the original assessment order.

5. The assessee carried such order in appeal before the Commissioner (Appeals). The assessee contended that the Assessing Officer had no jurisdiction to travel beyond the reasons for reopening the assessment. Such contention, however, was rejected by the Commissioner (Appeals) in his appellate order dated 22.10.2007. He,

ofcourse, granted substantial relief on merits and reduced the additions by a total of Rs. 82,75,495/-.

6. The Department as well as the assessee both preferred separate appeals before the Tribunal. The Tribunal, by its impugned judgement dated 23.12.2010, allowed the assessee's appeal and dismissed the revenue's. In such appellate order, the Tribunal, noticing that in the order passed by the Assessing Officer pursuant to notice for reassessment no disallowance had been made towards assessee's claim for deduction under Section 80HHC of the Act which was the reason on the basis of which notice for reopening of the assessment was issued, held that his order of assessment was without jurisdiction and bad in law. The Tribunal observed as under:

"We find that in the order passed in pursuance to the above notice, no discussion in the assessment order has been made in respect of allowability of deduction under section 80HHC of the Act. We also find that the Learned Assessing Officer has allowed the exactly the same amount of Rs. 1,82,746/- as deduction under section 8-HHC without any discussion in the assessment order for which he initiated reassessment proceedings. In view of the above fact we find that the issue is squarely covered by the recent decision of the Hon'ble Bombay High Court in the case of CIT. vs. Jet Airways (I) Ltd., (2010) 195 Taxman 117 (Bom.) wherein the Hon'ble Bombay High Court after considering the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 and the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Shri Ram Singh (2008) 306 ITR 343 (Raj) held as under:-

"If upon the issuance of a notice under section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income

which was the basis of the notice, it would not be open to him to assess income under some other issue independently.”

4. We thus find that in the instance case no assessment was made in respect of income for which the Learned Assessing officer recorded reasons to belief to issue notice under section 148(2) of the Act. Moreover, we find that no discussion also was made in the impugned order about that income. Thus we find that the income in respect of which reassessment notice was issued by the Learned Assessing officer was not found by him as income escaped from assessment. Therefore, in view of the above settled position of law the order under appeal is without jurisdiction and bad in law. We therefore, cancel the re-assessment order under appeal and allow this ground of appeal of the assessee.”

7. In view of the above admitted facts, the following substantial question of law arises which we frame for the purpose of deciding these appeals:

“Whether the Income-tax Appellate Tribunal was right in law in coming to the conclusion that when on the ground on which the reopening of assessment is based, no additions are made by the Assessing Officer in the order of assessment, he cannot make additions on some other grounds which did not form part of the reasons recorded by him.”

8. This being a question of considerable importance and one which is likely to arise in number of cases, we had requested learned counsel, Mr. Bandish Soparkar to assist us in addition to learned counsel, already appearing for the parties. He had been kind enough to

accept our request and accordingly, made his submissions at the time of hearing of these appeals. We would be failing in our duty, if we do not thank him for his assistance made after careful study of the issue.

9. Learned counsel, Mr. Manav Mehta, appearing for the revenue submitted that the Tribunal committed a grave error in interpreting the provisions contained in Section 147 of the Act. He submitted that Section 147 of the Act, as amended w.e.f. 01.04.1989, gives ample authority to an Assessing Officer to assess or reassess any income chargeable to tax which has escaped assessment, of course, as long as the requirements of a valid reopening of the assessment are satisfied. In other words, according to the learned counsel, once an assessment is reopened, by virtue of valid exercise of powers under Section 147 of the Act, thereafter, there would be no further limitation on the Assessing Officer framing assessment on all or any of the grounds mentioned in the reasons recorded or even on the grounds not so mentioned.

10. Counsel submitted that this position was clear even before Explanation 3 to Section 147 of the Act was added w.e.f. 01.04.2009 with retrospective effect from 01.04.1989. In any case, by virtue of such explanation being introduced in Section 147, the issue has been put beyond any pale of controversy.

11. Counsel relied on a decision of Punjab and Haryana High Court in case of **Majinder Singh Kang**

Vs. Commissioner of Income-Tax and anr reported in **[2012] 344 ITR 358 (P &H)** in which the Division Bench of the High Court held and observed as under:

“ A plain reading of Explanation 3 to section 147 clearly depicts that the Assessing Officer has power to make additions even on the ground on which reassessment notice might not have been issued in case during the reassessment proceedings, he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment under section 148 of the Act. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other ground on the basis of which income may have escaped assessment. The reassessment proceedings, thus, in the present case cannot be held to be vitiated.”

12. On the other hand, learned counsel, Mr. Soparkar drew our attention to the statutory provisions contained in Section 147 of the Act, as amended w.e.f. 01.04.1989, and the explanatory memorandum clarifying the background in which Explanation 3 to Section 147 of the Act was enacted. He submitted that Section 147 of the Act, prior to introduction of Explanation 3, permitted the Assessing Officer to assess or reassess any income chargeable to tax which had escaped assessment and also any other income which had escaped assessment and which came to the notice of the Assessing Officer subsequently in the course of the proceedings for reassessment. He submitted that the words “and also any other income” must be understood as to be referring to such income which has escaped assessment but the ground which has

not been mentioned in the reasons recorded, in addition to income which has escaped assessment and for which mention has been made in the reasons recorded. He submitted that Explanation 3 to Section 147 of the Act did not change this basic proposition, nor it was meant to do so as would be clear from the explanatory memorandum explaining the reasons for introduction of the said explanation.

13. Counsel further submitted that power to reopen the assessment which has been previously closed is peculiar in nature and is available to the Assessing Officer under the Income Tax Act which is not normally available to an officer exercising judicial or quasi judicial powers. Such powers, therefore, must be strictly construed, authorizing an Assessing Officer to assess income under any head even if the same was not part of the reasons recorded for reopening of the assessment, would give wide powers which are possible of arbitrary exercise.

14. Counsel lastly submitted that for an Assessing Officer to assess income on any ground not mentioned in the reasons recorded, it is essential that there is a valid reopening of assessment. If the grounds, on which the reopening of the assessment fails, there would thereafter be no longer a valid reopening of an assessment in which the Assessing Officer can make any additions on some other grounds.

15. In support of his contentions, counsel relied on

following decisions:

1. In case of **Commissioner of Income Tax Vs. Jet Airways (I) Ltd.** reported in **331 ITR 236** in which the Bombay High Court considering an identical situation interpreting the provisions contained in Section 147 of the Act held that the situation would not be different by virtue of introduction of Explanation 3 to the said section. The High Court placed heavy reliance on the explanatory memorandum and held that if upon issuance of a notice under Section 148 of the Act the Assessing Officer does not assess the income which he has reason to believe had escaped assessment and which forms the basis of a notice under Section 148, it is not open to the Assessing Officer to assess independently any other income which does not form the subject matter of the notice. In the process, the High Court observed as under:

"23. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147 and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147 as it stands prostates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words 'and also' are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion to Explanation 3 to section 147. Parliament must be regarded as being aware of the

interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh [2008] 306 ITR 343. Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147 as they stood after the amendment of April 1, 1989, continue to hold the field."

16. In case of **Ranbaxy Laboratories Ltd. Vs. Commissioner of Income Tax** reported in **336 ITR 136** wherein Delhi High Court had taken a similar view. It was observed as under:

"18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (I) Limited (2011) 331 ITR 236 (Bom). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new

issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.”

17. In case of **Assistant Commissioner of Income Tax Vs. Major Deepak Mehta** reported in **[2012] 344 ITR 641** wherein Division Bench of Chhattisgarh High Court also adopted the view taken by the Bombay High Court in case of CIT v. Jet Airways (I) Ltd. (supra). It was observed as under:

“35. In the case on hand, the main object and purpose of section 147 read with section 148 is that if there is any escaped assessment and the Assessing Officer has reason to form the opinion a notice must be given to the assessee to file returns or to show that there was no escaped income and under section 152(2) the proceedings may be dropped. In that context, the Explanation provides that along with the proceedings for the escaped income which had formed reason to believe and the assessee has been properly intimated to show his case, proceedings of the other incomes may also be examined along with the said income.

36. We are in respectful agreement with the view taken by the Bombay High Court in CIT v. Jet Airways (I) Ltd. (2011), 331 ITR 236 (Bom) ITR 136 (Delhi)”

18. All the decisions noted by us so far were rendered by different High Courts after introduction of Explanation 3 to Section 147 of the Act. Following decisions were brought to our notice where different High Courts prior to introduction of Explanation 3 to Section 147 of the Act had considered such a question:

1. In case of **Commissioner of Income-Tax v. Shri Ram Singh** reported in **306 ITR 343** wherein Division Bench of Rajasthan High Court held and observed as under:

“The result of the aforesaid discussion is, that the question framed, in the order dated May 23, 2006, is required to be, and is, answered in the manner, that the Tribunal was justified in holding, that the proceedings for reassessment under section 148/147 were initiated by the Assessing Officer, on non-existing facts, because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held that the Assessing Officer was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to while he had entertained “reason to believe” to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.”

2. In case of **Commissioner of Income Tax Vs. Atlas Cycle Industries** reported in **180 ITR 319** Punjab and Haryana High Court had observed as under:

“ Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income-tax Officer does not get the jurisdiction to make a reassessment.”

19. In light of the above decisions, we need to

answer the question framed. In order to do so, we may notice the statutory provisions applicable. Section 147 of the Act underwent significant changes w.e.f. 01.04.1989. In the present form as it stands the section reads as under:

“[Income escaping assessment.]

147. Income escaping assessment.- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.”

20. We may notice that Explanation 3 to Section 147 of the Act was inserted by Finance Act 2 of 2009 w.e.f. 01.04.1989. To this aspect of the matter and the effect of the explanation itself we would advert to at a later stage.

21. Section 148 of the Act pertains to “issuance of notice where income had escaped assessment”. Sub-section (1) of Section 148 pertains to the requirement of issuance of notice by the Assessing Officer before making the assessment, reassessment or recomputation of income under Section 147 of the Act. Sub-section (2) of Section 148 provides that the Assessing Officer shall before issuing any notice under the said section record his reasons for doing so.

22. Section 147 of the Act thus, gives power to the Assessing Officer for reopening an assessment. Such powers, however, are hedged with several conditions. First the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment. Further if the reopening is resorted beyond the period of four years from the end of the relevant assessment year, additional requirement that income chargeable to tax has escaped assessment by the reason of failure on the part of the assessee to make a return under Section 139 or in response to a notice under Section 142(1) or 148 of the Act or to disclose fully and truly all material facts necessary for the assessment must also be satisfied. If the requirements of giving jurisdiction

to the Assessing Officer to reopen assessment are satisfied, he may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the said section.

23. Section 147 of the Act, even without the aid of Explanation 3 thus enabled the Assessing Officer while framing an assessment under Section 147 of the Act, to assess or reassess such income for which he had recorded his reasons to believe had escaped assessment and also any other income which escaped assessment which came to his notice subsequently in the course of the assessment proceedings.

24. Sans explanation (3), Section 147 of the Act, however, by no stretch of imagination, can be construed as to provide that if the reason on which the assessment is reopened fails, the Assessing Officer still can proceed to assess some other income which according to him had escaped assessment and which came to his light during the course of the assessment. For assuming jurisdiction to frame an assessment under Section 147 of the Act what is essential is a valid reopening of a previously closed assessment. If the very foundation of the reopening is knocked out, any further proceeding in respect to such assessment naturally would not survive.

25. A question may therefore, arise whether introduction of Explanation (3) would change this position and for that purpose we need to ascertain what is true

purport of Explanation 3 and the purpose for which the same was introduced. Let us have a closer look to such Explanation which provides that for the purpose of assessment or reassessment under the said section, the Assessing Officer may assess or reassess the income in respect of any issue which escaped assessment and which comes to his notice subsequently in the course of reassessment proceedings. The explanation further provides that this would be so notwithstanding that the reasons for such issue have not been included in the reasons recorded under Section 148(2).

26. If the contention of the assessee that even after introduction of Explanation 3 to Section 147 of the Act, the situation has not undergone any material change is accepted, the question that immediately would come to one's mind is, what then was the purpose of introducing such an explanation. An argument may arise that if before and after introduction of Explanation 3, the nature of jurisdiction exercised by the Assessing Officer was not to undergo any change, would Explanation 3 not be rendered redundant. Would such a situation not run counter to a well known legal principle that the Legislature cannot be seen to have enacted a redundant legislation and that every effort should be made to give such interpretation which ensures that a provision in a statute is not rendering otiose. Such question may have led to some interesting discussion. However, the entire issue has been put beyond any pale of controversy by virtue of the explanatory memorandum for introducing such explanation. Such explanatory memorandum reads

as under:

“Clarificatory amendment in respect of reassessment
Proceeding under section 147

1.

The existing provisions of section 147 provides, inter alia, that if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for reopening the assessment. Further, he may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.

Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to assessment year 1989-1990 and subsequent years.”

27. From the above, it can be seen that the explanation was meant to be clarificatory in nature and to put the issue beyond any legal controversy. When the Legislature found that in face of the provisions contained

in Section 147 of the Act post 01.04.1989 some of the courts had taken a view that the Assessing Officer is restricted to the reassessment proceedings only on issues in respect of which the reasons were recorded for reopening the assessment, such explanation was introduced in the statute. Thus, the explanation was meant to be merely clarificatory in nature and was introduced with the purpose of putting at rest the legal controversy regarding the true interpretation of Section 147 of the Act which had arisen on account of certain judicial pronouncements. We have noticed that prior to enactment of Explanation 3 to Section 147, Punjab and Haryana High Court in case of *Commissioner of Income Tax Vs. Atlas Cycle Industries* reported in 180 ITR 319 (*supra*) had taken a restricted view of the power of the Assessing Officer to make any addition on the grounds not mentioned in the reasons recorded for reopening the assessment. We may also notice that Kerala High Court in case of ***Travencore Cements Ltd. Vs. Assistant Commissioner of Income-Tax and anr*** reported in **305 ITR 170** had taken somewhat similar stand.

28. Explanation 3 to Section 147 of the Act thus does not in any manner, even purport to expand the powers of the Assessing Officer under Section 147 of the Act. In any case, an explanation cannot expand the scope and sweep of the main body of the statutory provision. In case of ***S.Sundaram Pillai Vs. V.R.Pattabiraman*** reported in **AIR 1985 Supreme Court 582** the Supreme Court observed that, an explanation added to a statutory provision is not a substantive provision but as the plain

meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. It was observed as under:

“52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself,*
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve.*
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.*
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
- (e) It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”*

29. Above decision has been referred to and relied upon in several subsequent decisions. Above proposition being well settled, it is not necessary to refer to all such decisions.

30. We may also approach the question from a slightly different angle. It is not in dispute that once an

assessment is reopened by a valid exercise of jurisdiction under Section 147 of the Act, it is open for the Assessing Officer to assess or reassess any income which had escaped assessment which comes to his light during the course of his assessment proceedings which was not mentioned in the reason for issuing notice under Section 148 of the Act. In a notice for reassessment which has been issued beyond a period of four years from the end of relevant assessment year, the condition that income chargeable to tax has escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts for the purpose of assessment must also be established unless ofcourse some other ground viz. non-filing of the return at all etc. is available to the Assessing Officer. If such non-disclosure of material facts is established with respect to the reason recorded for issuing notice for reopening the assessment, it would be open for the Assessing Officer to thereafter even assess other income which might have escaped assessment but which may not necessarily satisfy the requirement of non-disclosure of true and full material facts. If in such a situation, the stand of the revenue is accepted, a very incongruent situation would come about if ultimately the Assessing Officer were to drop the ground on which notice for reopening had been issued but to chase some other grounds not so mentioned for issuance of the notice. In such a situation, even if a case where notice for reopening has been issued beyond a period of four years, the assessment would continue even though on all the grounds on which the additions are being made, there was no failure on the part of the

assessee to disclose true and full material facts. In such a situation an important requirement of failure on part of the assessee to disclose truly and fully all material facts would be totally circumvented.

31. As already noted, except for the Punjab and Haryana High Court in case of *Majinder Singh Kang Vs. Commissioner of Income-Tax and anr* (supra) all courts have uniformly taken a view that Explanation 3 to Section 147 of the Act does not change the situation insofar as the present controversy is concerned. Leading decision of Bombay High Court in case of *CIT. vs. Jet Airways (I) Ltd.* has been followed by different High Courts. In case of *CIT. vs. Jet Airways (I) Ltd.*, the High Court, in its elaborate decision considering the statutory provisions, different judicial pronouncements and the explanatory memorandum for introduction of Explanation 3 to Section 147 of the Act, ruled in favour of the assessee.

32. Punjab and Haryana High Court in case of *Majinder Singh Kang Vs. Commissioner of Income-Tax and anr* (supra) of course has sounded a different note. We may, however, notice that the explanatory memorandum to Explanation 3 to Section 147 of the Act was not brought to the notice of the High Court in the said decision. The High Court gave considerable importance on such Explanation 3 to Section 147 of the Act and the language used therein.

33. In the result, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue. All tax appeals are dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

Jyoti

