



ITA Nos.5452/Mum/2016 & 5975/Mum/2016
Juliet Industries Limited
Assessment Year 2009-10

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

श्री सी. नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 5452/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Juliet Industries Limited A-313 Shah & Nayar Industrial Estate Lower Parel Mumbai-400 020	बनाम/ Vs.	Income Tax Officer 6(3)(3) Room No. 524, 5 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACJ-6924-H		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 5975/Mum/2016
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(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Vijay Mehta, Ld.AR
Revenue by	:	V.Vidhyadhar, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	12/03/2018
घोषणा की तारीख / Date of Pronouncement	:	04/04/2018



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross appeals for Assessment Year [AY] 2009-10 assailing the order of Ld. Commissioner of Income-Tax (Appeals)- 12 [CIT(A)], Mumbai *Appeal No.CIT(A)-12/IT)-6(3)(3)/88/15-16 dated 20/07/2016*. The assessment for impugned AY was framed by *Income Tax Officer-6(3)(3), Mumbai* on 31/03/2015 u/s 143(3) read with Section 147 of the Income Tax Act, 1961. First we take up assessee's appeal ITA No. 5452/Mum/2016 wherein effective grounds as pressed before us reads as under:-

3. *The CIT(A) has erred in law and on facts in not holding that the reopening of the assessment by issuing of notice u/s 148 of the Act was illegal and bad in law.*
4. *The CIT(A) ought to have held that the Assessing Officer has erred in law and on facts in making fishing and roving enquiries and in passing the order impugned, which is not permitted in reassessment proceedings.*
5. *The CIT(A) has erred in law and on facts in sustaining addition of a sum of Rs.5,90,00,000/- out of Rs.7,65,00,000/- made by the Assessing Officer u/s 68 of the Act.*

2.1 Facts leading to the same are that the assessee being *resident corporate assessee* was subjected to re-assessment proceedings u/s 143(3) read with section 147 of the Income Tax Act on 31/03/2015 wherein the income was determined at Rs.6,35,79,180/- under normal provisions after certain additions as against '*Nil*' returned income filed by the assessee on 22/09/2009 which was processed u/s 143(1). Subsequently, the case of the assessee was subjected to reassessment proceedings vide issuance of notice u/s 148 dated 14/03/2014 purportedly upon receipt of certain information from *DGIT (Investigation)*



that the assessee obtained accommodation entries of *bogus purchase* bills during impugned AY from an entity namely *Symphony Metalam Private Limited* for Rs.9,990/- which is evident from reasons for reopening as extracted by Ld. AO in the quantum assessment order. The assessee, while submitting necessary documents to support the same, agreed for addition thereof apparently to avoid litigation and to have peace of mind as noted by Ld. AO on *paragraph no. 5.2* of the assessment order.

2.2 The Ld. AO, during the course of assessment proceedings and upon perusal of details filed by the assessee, noted that the assessee introduced an amount of Rs.765 Lacs as *Share Application Money / Share Capital and Share premium* from 26 parties, the face value of the share being Rs.100/- with a premium of Rs.150/- per share. The details of the same have been extracted by Ld. AO at *paragraph 6.2* of the assessment order. Notices issued u/s 133(6) did not elicit satisfactory response and after considering factual matrix and documentary evidences including returned income of few share applicants, Ld. AO came to a conclusion that the said amount represented *unexplained cash credit* within the meaning of Section 68 since assessee could not substantiate the same. Resultantly, an amount of Rs.765 Lacs was added to the income of the assessee by placing reliance on several judicial pronouncements.

3. Aggrieved, the assessee contested the reassessment proceedings on legal grounds as well as on merits with partial success before Ld. CIT(A) vide impugned order dated 20/07/2016 where Ld. CIT(A) while upholding the reassessment proceedings, confirmed additions u/s 68 to



the extent of Rs.590 Lacs and deleted the balance additions. Aggrieved, the assessee as well as revenue is in further appeal before us. The assessee is aggrieved by the additions as sustained by Ld. CIT(A) whereas the revenue is aggrieved by relief of Rs.175 Lacs as provided by the first appellate authority to the assessee. The assessee, by way of Ground Numbers 3 & 4 has also contested the legality of assessment proceedings and additions made in consequent thereto.

4. The Ld. Authorized Counsel for Assessee [AR], drawing our attention to the statutory provisions *qua reassessment* contended that Ld. AO could not make fishing and roving inquiries in the reassessment proceedings so as to undo the already completed issues since the basis for reopening was bogus purchases for Rs.9,990/- and therefore, the reassessment proceedings were required to be confined to that extent only. The Ld. AR also contested the quantum additions on merits by drawing our attention to the documentary evidences submitted by the assessee to substantiate the receipt of *Share Application /Share Capital / Share premium* from various parties. Reliance has been placed on several judicial pronouncements for various contentions. Per *contra*, Ld. DR submitted that Ld. AO was empowered to make any other additions which came to his notice during the course of reassessment proceedings in terms of Section 147 read with Explanation 3 thereof. On merits, it was contended that since the assessee failed to conclusively prove the primary ingredients of Section 68, the additions thereof was justified and Ld. CIT(A) erred in granting relief to the assessee.

5.1 We have carefully heard the rival contentions and perused relevant material on record. First of all, it is noted that impugned AY is 2009-10



and the original return was processed u/s 143(1). The reopening has been done by way of issuance of notice u/s 148 dated 14/03/2014 which fall within a period four years from end of relevant AY and therefore, the only requirement to be fulfilled in such a case to resort to reassessment proceedings was that Ld. AO had *reasons to believe* that certain income chargeable to tax had escaped assessment.

5.2 As evident from the quantum assessment order, the assessment was reopened after recording the reasons for reopening as under:-

An Information is received from the office of the DGIT (Inv.) which was based on inquiries conducted by the Sales Tax Department of Maharashtra that M/s Juliet Industries Ltd. has taken accommodation entries from the following parties by way of taking bogus bills of purchase:-

Sr.	Name of Purchase Party	PAN	FY	Amount (Rs.)
1)	Symphony Metalam P. Ltd.	AAHCS2397C	2008-09	9,990
			Total	9,990

It may be mentioned that the above entities have been proclaimed as hawala dealers engaged in the activity of providing bogus bills of purchase by the Sales Tax Department, Maharashtra. Analysis of the information received from the DGIT(Inv.), Mumbai and the information available in the public domain i.e. the website of Sales Tax Authorities, is that the above entities are providers of bogus bills. These parties have issued the bills without actual delivery of goods. As per the information provided by the investigation wing, it was emerged that the purchases shown by the assessee from the above parties are non-genuine and the assessee has obtained accommodation entries in the shape of bogus bills of purchase to suppress its income for AY 2009-10.

In view of the above, I have reason to believe that income chargeable to tax, in the garb of purchases by way of accommodation entries from the aforesaid entities has escaped assessment for AY 2009-10 within the meaning of Section 147 of the Act.

A perusal of the above reasons reveals that certain information came to the possession of Ld. AO in the form of report of DGIT (Inv.) which was based on inquiries conducted by other government agency i.e. *Sales Tax Department, Maharashtra* that the assessee obtained certain accommodation entries in the shape of *bogus bills* of purchases. The Ld.



AO duly analyzed the same and after matching the same from the website of *Sales Tax Department, Maharashtra* came to conclusion that the certain purchases made by the assessee were non-genuine. The possession of said information coupled with further analysis of Ld. AO, in our opinion, was quite sufficient to trigger reassessment proceedings. We have already noted that the only requirement to be fulfilled to initiate reassessment proceedings was that the Ld. AO had *reasons to believe* that certain income chargeable to tax had escaped assessment and that condition has been fulfilled in the form of receipt of certain tangible material from appropriate authorities coupled with analysis thereof by Ld. AO which suggested escapement of income. At this stage, the Ld. AO was only required to form a *prime-facie* opinion that certain income, although chargeable to tax, has escaped assessment and nothing beyond. All that is required at the stage of issuance of notice under Section 148 is the honest and reasonable belief of Ld. AO that certain income escaped assessment. The belief should not be based on mere, suspicion, gossip or rumors. The only requirement for initiating proceedings under Section 148 is that there must be reasons to justify the belief that there is escapement or suppression of income and nothing more which is duly supported by settled legal position with regard to initiation of reassessment proceedings viz.:-

- (i) *There must be material for belief.*
- (ii) *Circumstances must exist and cannot be deemed to exist for arriving at the opinion.*
- (iii) *Reason to believe must be honest and not based on suspicion, gossip, rumor or conjecture.*
- (iv) *Reasons referred to must disclose the process of reasoning by which Ld. AO holds 'reasons to believe' and change of opinion does not confer jurisdiction.*
- (vi) *There must be nexus between material and belief.*



- (vii) *The reasons referred to must show application of mind by the Assessing Officer.*

Further, the above view is fully supported by the judgment of Hon'ble Apex Court rendered in *ACIT Vs Rajesh Jhaveri Stock Brokers Pvt. Ltd [2007 291 ITR 500]*, the relevant portion of which is extracted below:-

16. *Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in *Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662*, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction *ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)*.*

Respectfully following the above, we conclude that only a *prima-facie opinion* was required to be formed by Ld. AO at the stage of initiating reassessment proceedings and nothing beyond. We have already observed that Ld. AO has duly applied his mind on the information received from the authorities and came to conclusion that certain income escaped assessment.

5.3 The Ld. AR has relied on the decision of Hon'ble Delhi High Court rendered in *Signature Hotels Pvt. Ltd. Vs. Income Tax Officer [338 ITR*



51] which has subsequently been followed by same court in *PCIT Vs. Meenakshi Overseas Pvt. Ltd.* [395 ITR 677]. However, we note that both the cases addressed a situation where reassessment proceedings were triggered after four years from the end of relevant AY. Further, in those cases, independent investigation of alleged facts by Ld. AO was missing. Further, a perusal of judgment rendered in *Signatures Hotels Pvt. Ltd.* [supra] shows that there the Hon'ble court noted that the undated reasons recorded by Ld. AO for initiation of proceedings were not same / identical as comparable to reasons recorded by Ld. AO in the *approval proforma* for initiation of action u/s 147/148. Therefore, the same, from any angle, are distinguishable and hence, could not be applied to the facts of the case.

5.4 In view of the above stated facts, we hold that reassessment proceedings were rightly triggered by Ld. AO in the present case and Ld. AO correctly assumed reassessment jurisdiction and hence, this ground of assessee's appeal stands dismissed.

6.1 As far as the other legal ground is concerned, the only question that survives for our consideration is *scope of reassessment proceedings*. The Ld. AR has stressed the point that the Ld. AO could not make fishing & roving inquiries in reassessment proceedings to unearth new grounds of addition which were never the subject matter of initiation of reassessment proceedings against the assessee whereas the plea of the revenue is that the scope of reassessment proceedings has been widened by insertion of Explanation 3 to Section 147 and therefore, Ld. AO was justified to make impugned additions.



6.2 At the outset, we find it convenient to extract the relevant statutory provisions as contained in Section 147 of the Income Tax as below:-

147. *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" (Emphasis supplied)*

Explanation-3 as inserted by Finance Act, 2009 retrospectively w.e.f. 01/04/1989 reads as follows:-

*"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.**"(Emphasis supplied)*

Upon perusal of the same, we find that post amendment, Ld. AO has wide powers to assess not only those incomes which were the subject matter of reassessment proceedings but also those escaped incomes which came to his notice during reassessment proceedings. The rationale behind insertion of Explanation-3, as evident from the reasons for insertion of this clarificatory Explanation in cl. (57) of Memorandum Explaining the Provisions of Finance Bill (No. 2) of 2009 [(2009) 224 CTR (St) 145] are as follows:-

"Some Courts have held that the AO 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 s. 147 to provide that the AO 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-s. (2) of s. 148.



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This amendment will take effect retrospectively from 1st April, 1989 and will accordingly apply in relation to asst. yr. 1989-90 and subsequent years."

Hence, newly inserted Explanation 3 makes it clear that the AO may assess or reassess the income in respect of issues which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention in the reasons recorded and the notice issued under Section 148.

6.3 In the present case, we find that reassessment proceedings were initiated on the premise that the assessee obtained accommodation purchase bills for Rs.9,990/-. This addition has been accepted by the assessee, for whatever reasons, during quantum proceedings and the same has already attained finality since it has not been contested any further.

6.4 Now the question that arises for our consideration is the power of Ld. AO to go beyond the recorded reasons. A perusal of the quantum order reveals that Ld. AO, during reassessment proceedings, upon noticing changes in the *Capital Structure* of the assessee, called for further information from the assessee to scrutinize the same by way of issuance of notice u/s 142(1). It is to be noted that no tangible material / information was available with Ld. AO *qua* this item either at the time of initiation of proceedings or during reassessment proceedings suggesting *factum* of escapement of income. It is further noted that the time limit for issuance of notice u/s 143(2) & framing assessment u/s 143(3) had already expired and the original return of income filed by the assessee had already attained finality. In that scenario, the Ld. AO, in our opinion,



in the absence of any new tangible material or information, by making roving / fishing inquiries could not unearth completely new grounds of addition by calling further information from assessee which had already attained finality by way of acceptance of original return of income. There was no iota of evidence on record to suggest escapement of income *qua* this item. Therefore, the Ld. AO, in our opinion, has exceeded his jurisdiction by way of making fishing & roving inquiries, which could not be sustained. The reassessment proceedings were never meant to give second inning or chance to revenue to scrutinize the assessee's return of income particularly when no tangible material suggesting escapement of income was available on record. There should have been minimum material to trigger further action on the part of Ld. AO so as to assume valid jurisdiction u/s 147/148. It is trite law that there must be an end to litigation and finality of issues and the issues could not be agitated / re-agitated or revisited by the respective parties except within the framework of law. The basic objective of reassessment proceedings is to bring to tax escaped incomes and the same could not, by any stretch of imagination, empower Ld. AO to delve into completely independent and unconnected issues which already attained finality and with respect to which no new tangible material was available on record.

6.5 The Explanation-3 to Section 147, in our opinion, could not enlarge the scope of basic provisions as contained in Section 147 and the primary conditions as envisaged by Section 147 viz. *reasons to believe* was required to be fulfilled before resorting to reassessment proceedings. Our view is fully supported by the observation of our jurisdictional Hon'ble Bombay High Court rendered in *CIT v. Jet Airways*



(I) *Ltd.* [2011 331 ITR 236] which has subsequently been followed by Delhi High Court in *Ranbaxy Laboratories Ltd. v. CIT* [2011 336 ITR 136]. The decision by Hon'ble Bombay High Court has been rendered after considering the judgment of Hon'ble Apex Court in *CIT Vs. Sun Engg. Works P. Ltd.* [198 ITR 297] and several other judgments and the Hon'ble Court have held as under:-

16. In *CIT vs. Sun Engineering Works (P) Ltd.* (1992) 107 CTR (SC) 209 :(1992) 198 ITR 297 (SC) : (1992) 64 Taxman 442 (SC), the Supreme Court dealt with the following question of law in the course of its judgment :

"Where an item unconnected with the escapement of income has been concluded finally against the assessee, how far in reassessment on an escaped item of income is it open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income ?"

*The issue which arose before the Supreme Court was whether, in the course of a reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of s. 147, as they stood prior to the amendment on 1st April, 1989. The Supreme Court held that the expression "escaped assessment" includes both "non assessment" as well as "underassessment". Income is said to have escaped assessment within the meaning of the section when it has not been charged in the hands of an assessee during the relevant assessment year. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of s. 147. The expression "reassess" refers to a situation where an assessment has already been made but the AO has reason to believe that there is underassessment on account of the existence of any of the grounds contemplated by Explan. 1 to s. 147. The Supreme Court adverted to the judgment in *V. Jaganmohan Rao vs. CIT* (1970) 75 ITR 373 (SC), which held that once an assessment is validly reopened, the previous underassessment 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. The Court held that the object of s. 147 enures to the benefit of the Revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.*

17. *The judgment in V. Jaganmohan Rao vs. CIT (supra) dealt with the language of ss. 22(2) and 34 of the Act of 1922 while the judgment in Sun Engg. Works (P) Ltd. (supra) interprets the provisions of s. 147 as they stood prior to the amendment on 1st April, 1989.*

18. *The effect of the amended provisions came to be considered in two distinct lines of precedent on the subject. The first line of authority, to which a reference has already been made earlier, adopted the principle that where the AO has formed a reason to believe that income has escaped assessment and has issued a notice*



under s. 148 on certain specific issues, it was not open to him during the course of the proceedings for assessment or reassessment to assess or reassess any other income, which may have escaped assessment but which did not form the subject-matter of the notice under s. 148. This view was adopted in the judgment of the Punjab & Haryana High Court in Vipan Khanna (supra) and in the judgment of the Kerala High Court in Travancore Cements Ltd. (supra), This line of authority, would now cease to reflect the correct position in law, by virtue of the amendment which has been brought in by the insertion of Expln. 3 to s. 147 by Finance (No. 2) Act of 2009. The effect of the Explanation is that once an AO has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice under s. 148, it is open to him to assess or reassess income in respect of any other issue though the reasons for such issue had not been included in the reasons recorded under s. 148(2).

19. The second line of precedent is reflected in a judgment of the Rajasthan High Court in CIT vs. Shri Ram Singh (2008) 217 CTR (Raj) 345 : (2008) 306 ITR 343 (Raj). The Rajasthan High Court construed the words used by Parliament in s. 147 particularly the words that the AO '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 s. 147. The Rajasthan High Court held as follows :

". . . it is only when, in proceedings under s. 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had 'reason to believe' to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under s. 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under s. 147, the AO were to come to the conclusion, that any income chargeable to tax, which, according to his 'reason to believe', had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under s. 147."

20. Parliament, when it enacted the Expln. (3) to s. 147 by the Finance (No. 2) Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Expln. 3 to s. 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain Courts that the AO has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by "Parliament in the form of Expln. 3 consequently provides that the AO may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice under s. 148(2). The decisions of the Kerala High Court in Travancore Cements Ltd. (supra) and of the Punjab & Haryana High Court in Vipan Khanna (supra) would, therefore, no



longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in *Shri Ram Singh (supra)*, Exln. 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana High Court in *CIT vs. Atlas Cycle Industries (1989) 180 ITR 319 (P&H) : (1989) 46 Taxman 315 (P&H)*. The decision in *Atlas Cycle Industries (supra)* held that the AO did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice under s. 148 were incorrect or non-existent. The decisions of the Punjab & Haryana High Court in *Atlas Cycle Industries (supra)* and of the Rajasthan High Court in *Shri Ram Singh (supra)* would not be affected by the amendment brought in by the insertion of Exln. 3 to s. 147.

21. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under s. 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the AO could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Exln. 3 by the Finance Act (No. 2) of 2009. **However, Exln. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory.** Sec. 147 has this effect that the AO has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. **However, if after issuing a notice under s. 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.**

22. 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 s. 147(1) and on the basis of the precedent on the subject. We agree with the submissions which has been urged on behalf of the assessee that s. 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the AO 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 of Exln. 3 to s. 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High



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Court in Shri Ram Singh (supra). 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 s. 147(1) as they stood after the amendment of 1st April, 1989 continue to hold the field.

23. In that view of the matter and for the reasons that we have indicated, we do not regard the decision of the Tribunal in the present case as being in error. The question of law shall, accordingly, stand answered against the Revenue and in favour of the assessee. The appeal is, accordingly, dismissed. There shall be no order as to costs.

(emphasis, being supplied by us)

The observation of Hon'ble Delhi High Court in *Ranbaxy Laboratories Ltd. v. CIT [2011 336 ITR 136]* which are relevant to issue in hand are as under:-

*18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra) [sic—Jet Airways (I) Ltd. (supra)]. We may also note that the heading of s. 147 is "Income escaping assessment" and that of s. 148 "Issue of notice where income escaped assessment". Sec. 148 is supplementary and complimentary to s. 147. Sub-s. (2) of s. 148 mandates reasons for issuance of notice by the AO and sub-s. (1) thereof mandates service of notice to the assessee before the AO proceeds to assess, reassess or recompute escaped income. Sec. 147 mandates recording of reasons to believe by the AO 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 Explan. 3 if during the course of these proceedings the AO 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 AO that on assuming jurisdiction under s. 147 regarding assessment or reassessment of 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 AO 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 s. 148.***

(emphasis, being supplied by us)

Although both the decisions have been rendered in a situation where no additions were made by Ld. AO with respect to those items which were the subject matter of reassessment proceedings and the additions were



made against independent and unconnected issues which is not the case here. However, we find the observations of Hon'ble Courts as emphasized by us to be very relevant and pertinent to issue before us. The Explanation 3, as per the decision of Hon'ble Bombay High Court, cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147 since an explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Similarly, as per Hon'ble Delhi High Court, the Ld. AO was not vested with blanket powers and debarred from making fishing and roving inquiries. Further, both the Hon'ble Courts have observed that a fresh notice u/s 148 with respect to new items would be required, which is missing in the present case.

6.6 In view of the above stated analysis, we find that Ld. AO was not right in assuming jurisdiction with respect to independent and unconnected items without any tangible material or information suggesting escapement of income which was the basic requirement of Section 147. Hence, impugned additions u/s 68 could not survive.

7. Since we have already allowed assessee's appeal on legal ground as above, the question of delving into the quantum additions on merits becomes merely academic in nature and we see no fruitful reason to ponder into the same which results into dismissal of revenue's appeal.

Conclusion

8. Resultantly, the assessee's appeal ITA No. 5452/Mum/2016 stands allowed in terms of our above order whereas the revenue's appeal ITA No. 5975/Mum/2016 stands dismissed.



ITA Nos.5452/Mum/2016 & 5975/Mum/2016
Juliet Industries Limited
Assessment Year 2009-10

Order pronounced in the open court on 04th April, 2018.

Sd/-
(C.N.Prasad)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 04. 04.2018
Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai