

Mere change of opinion cannot be a ground for the re-opening of assessment

The Hon'ble Bombay High Court in *Konark Life Spaces v. Assistant Commissioner of Income - Tax and Ors. [Writ Petition No. 2840 of 2022 dated February 10, 2023]* has set aside the notice issued under Section 148 of the Income Tax Act, 1961 (“**the IT Act**”) for re-opening of the assessment, on the grounds that the Revenue Department had neither sought any new information nor made a reference to new material on record. Held that, a change in opinion that does not satisfy the jurisdictional foundation under Section 147 of the IT Act.

Facts:

Konark Life Spaces (“**the Petitioner**”) has challenged the notice under Section 148 of the IT Act dated March 30, 2021 (“**the Impugned Notice**”) issued by the Revenue Department (“**the Respondent**”) seeking to re-open the assessment for the A.Y. 2015-16 (“**Impugned period**”) on the ground of omission and non-disclosure of material facts during the assessment of the income for the impugned period.

The Respondent contended that, as the Petitioner had failed to fully and truly disclose all material facts in regard to INR 17,76,08,505/- during the assessment by the Assessing Officer (“**AO**”) therefore, the reassessment was sought.

The Petitioner argued that the clarification in relation to INR 17,76,08,505/- was submitted during the assessment scrutiny vide communication dated June 5, 2017, August 16, 2017 and December 22, 2017 and the reopening of the assessment was made on the same ground for which the Petitioner has already provided clarification.

Issue:

Whether the Respondent fulfils the test of “reason to believe” for reopening assessment under Section 147 of the IT Act.

Held:

The Hon'ble Bombay High Court in ***Writ Petition No. 2840 of 2022***, held as under:

- Noted that, the relevant assessment was reopened after 4 years. Hence, the Respondent must prove that it has reason to believe that Petitioner failed to disclose all material information necessary for assessment.
- Relied on the judgement of the Hon'ble Supreme Court in the case of ***Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd. [[2010] 320ITR 561]*** wherein it was held that the AO has the power to re-open the assessment, provided that, the AO has "reason to believe" that the assessee has concealed tangible information during the assessment scrutiny for escapement of income from assessment.
- Observed that, the matter related to INR 17,76,08,505/- was raised during the scrutiny assessment and the Petitioner had responded to it vide communications dated August 16, 2017, and December 22, 2017 and the Order of Assessment was passed on December 29, 2017.
- Stated that, there is neither a new information received nor has reference been made to any new material on record.
- Held that, the Respondent had not sought new information or material facts other than on records. It is a change in opinion that does not satisfy the jurisdictional foundation under Section 147 of the IT Act.
- Set aside the Impugned Notice and subsequent proceedings.

Relevant Provisions:

Section 147 of the IT Act:

"Income escaping assessment.–

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.-For the purposes of assessment or reassessment or re-computation 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, irrespective of the fact that the provisions of section 148A have not been complied with.”

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