

### **Mere change of opinion does not provide jurisdiction for re-opening of assessment**

The Hon'ble Bombay High Court in *Survival Technologies Pvt. Ltd. v. the Deputy Commissioner of Income Tax [Writ Petition No. 3035 of 2022 dated February 20, 2023]* has set aside the notice issued under Section 148 of the Income Tax Act ("the IT Act") seeking to reopen the assessment of the assessee and the consequential order rejecting the objections of the assessee for reopening such assessment proceedings, on the grounds that the notice was issued without any tangible material with the Revenue Department. Held that, mere change of opinion does not provide jurisdiction to the Revenue Department to re-open assessment.

#### **Facts:**

Survival Technologies Pvt. Ltd. ("the Petitioner") filed its return of income for the Assessment Year ("A.Y.") 2015-16 which was subsequently selected for scrutiny assessment and notices were issued under Section 143(2) of the IT Act on March 17, 2016 and under Section 142(1) of the IT Act on January 23, 2017 by the Revenue Department ("the Respondent"). The Petitioner furnished necessary information and details pursuant to such notices including its claim for deduction under Section 35(2AB) of the IT Act.

Subsequently, an order of assessment dated June 13, 2017 was passed under Section 143(3) of the IT Act, assessing the total income at INR 8,48,00,190/-, by disallowing INR 32,70,724/- being excess deduction claimed under Section 35(2AB) of the IT Act. However, the disallowance was reduced to INR 16,35,262/- as per rectification order dated June 23, 2017 passed under Section 154 of the IT Act.

Thereafter, a Notice dated March 30, 2021 ("the Impugned Notice") was issued under Section 148 of the IT Act seeking to reopen assessment for the A.Y. 2015-16 on the ground that income chargeable to tax had escaped assessment. The Petitioner objected such proposed reopening

of assessment but the objections were rejected vide Order dated February 21, 2022 (“**the Impugned Order**”).

Being aggrieved, this petition has been filed.

**Issue:**

Whether the reassessment proceedings could be initiated on account of change of opinion, after the expiry of period of four years unless any income chargeable to tax has escaped assessment?

**Held:**

The Hon’ble Bombay High Court in ***Writ Petition No. 3035 of 2022*** held as under:

- Analyzed Section 147 of the IT Act which empowers the Assessing Officer (“**AO**”) to assess or re-assess an income if it has reasons to believe that such income has escaped assessment, however, no action shall be taken after the expiry of period of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment.
- Observed that, since this is a case of reopening beyond the period of four years, the Respondent had to satisfy the jurisdictional conditions on both counts, i.e. ‘reason to believe’ and ‘failure to disclose fully and truly the material facts’. Further, it is a settled principle of law that the jurisdiction exercised under Section 147 of the IT Act by an AO has to be tested on the touchstone of the reasons recorded, which can neither be improved subsequently nor added in the reply or in the subsequent pleadings.
- Relied on the earlier judgment in ***Hindustan Lever Ltd. v. Rb. Wadkar, Assistant Commissioner of Income-Tax and Others [(2004) 268 ITR 332 dated February 25, 2004]*** wherein, the AO was obliged to disclose as to which fact or material was not disclosed by

the assessee fully and truly, for the purposes of assessment of that A.Y., so as to establish a vital linkage between the reasons and the evidence while noting that, the jurisdictional condition has not been satisfied by the Respondent, except having made a bald statement that the material facts were not disclosed fully and truly.

- Opined that, the Respondent has failed to establish that there was any failure on the part of the Petitioner to disclose fully and truly any material fact.
- Further observed that, the Impugned Notice has been issued without there being any tangible material with the Respondent as he clearly relied upon the material which was already on record.
- Relied on the judgment of Hon'ble Delhi High Court in ***Jindal Photo Films Ltd. v. Deputy Commissioner of Income-Tax and Another [(1998) 234 ITR 170 dated May 28, 1998]*** wherein, it was held that, if materials for reason to believe is available, the writ court will not exercise its power of judicial review to go into the sufficiency or adequacy of the material available.
- Held that, mere 'change of opinion' does not provide jurisdiction to the Respondent to initiate proceedings under Section 147 of the IT Act.
- Set aside the Impugned Notice and Impugned Order.

**Our comments:**

The above judgment brings up a significant issue concerning whether the assessment proceedings could be initiated merely on the ground of change of opinion.

Recently, a similar view was taken up by the Hon'ble Bombay High Court in Court in the matter of ***Punia Capital Pvt. Ltd. v. the Assistant Commissioner of Income Tax and Ors. [Writ Petition No.1091 of 2022 dated February 15, 2023]*** wherein, it was held that, the

Revenue Department could only re-open an assessment beyond four years, if there was a failure on the part of the assessee to disclose material facts fully and truly and not on the basis of “reason to believe” without satisfying the jurisdictional condition required under the provisions of Section 147 of the IT Act.

### **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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