# Reassessment – When Illegal

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## Power of reopening is not unbridled and is governed by inbuilt checks:

§ Drastic nature of powers: Judicial application of mind: [ Venkata Reddy (1967) 66 ITR 212 (Mysore)]

§ Reason to believe is supposed to be check, limitation on the power to reopen. Requirement of recording reasons. [ Sri Krishna Pvt. Ltd. (1996) 221 ITR 538 (SC) ]

§ Powers u/s 147 may be wide but not plenary..[ Kalyanji Mavji & Co. (1976) 102 ITR 287 (SC)]

§ Reason to believe is most salutary safeguard. Belief must withstand the test of reasons which is integral part of it.[ Ganga Prasad Mahaeshwari – 139 ITR 1043 (1980) (All.)]

§ S.147 is not an unruly horse. [ CIT vs. S.R. Construction – 257 ITR 502 (2001) (MP) ]

§ Reopening of completed assessment is a serious matter. Sanction of higher authority must be taken [ Lakhmani Mewal Das (1976) 103 ITR 437 (SC) ]

§ Should not be lightly treated. Court will insist on strict compliance. [ S.P. Agarwalla 140 ITR 1010(Cal.) (1980)

## No Concession to AO for non compliance of the conditions for reopening

[ Parasuram Pottery Works Co. Ltd. vs. AO ( 1977) 106 ITR 1 (SC)]

[ Berger Paints India Ltd. vs. ACIT ( 2004) 266 ITR 462 (Cal.)]

## REASON TO BELIEVE

§ Reason – means cause or justification.

Believe – means accept as 'true' or to have faith in it must have justification.

Belief may not be open to scrutiny.

Reason due to which decision is reach, can always be examined.

Satisfaction can not be challenged but satisfaction not based on any material or it cannot withstand test of reason (which it integral part of it), it can be strike down.

Belief may be subjective but reason is objective. [Ganga Prasad Maheshwari 139 ITR 1043 (All.)]

§ Reason to believe can not be bare one without material.
[ Ram Bai vs. CIT (1999) 236 ITR 696 ( SC)]

§ Belief induced by reason and not mere belief in existence of reasons
[ Calcutta Discount Co. 41 ITR 191 (SC)]

§ Mere recording of under assessment is not sufficient : Reasons thereof must be mentioned.
[Birla VXL Ltd. V/s A.C.I.T. (1996) 130 C.T.R. (Guj.) 281.]

§ Substantial or tangible material.

Assent of mind

Nexus between reason and belief

[ L.R. Gupta (1992) 194 ITR 32 (Del.)]

§ Reasons *de hors* the facts [ Sagar Enterprises 257 ITR 335 (2001) (Guj.) ]

§ Prima –facie conclusion – [ Eveready Industries India Ltd. 243 ITR 540 (Gau.)]

§ 'Estimates' cannot tantamount to information 'material' within the meaning of sec.148 [Dr. N.L. Taniliani (1988) 170 ITR 592 (All.)]

## RELEVANCY OF MATERIAL VS. FACTUAL CORRECTNESS OF MATERIAL

- Selected Dalurband Coal Co. (P) Ltd. – (1996) 217 ITR 597 (SC)
- Extraneous or irrelevant material. Reopening void. [ Daulatram (1973) 87 ITR 349 (SC)
- Reference to material in recorded reasons [ S.P. Agarwala 140 ITR 1010 (Cal.) (1980)]

## NO REASON TO BELIEVE ON SUSPICION, GOSSIP & RUMOUR:

- The belief must be that of an honest and reasonable person based upon reasonable grounds and that the AO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour.[ Sheo Nath Singh Vs. ACC (1971) 82 ITR 147(SC)]
- Circumstances must exist and can not be deemed to exist. Reasons referred must show application of mind by AO. Material to be considered is at the time of issue of notice and not subsequent material. [Seth Brothers Vs. 251 ITR 270 (Guj.)]
- Reason to believe does not comprehend suspension or reason to doubt.
  [ Jain & Jain vs. Union of India (1982) 134 ITR 655 (Bom.) ]
- ‘Reason to believe’ vs. ‘ Reason to doubt’ / ‘ Reason to suspect’.

## BELIEF

- existed no belief
- belief was not bonafide
- belief based on vague, irrelevant and non specific information
- material available for belief

[ Phoolchand Bajranglal 203 ITR 456 (1993)(SC)]

[ Lakhmani Mewal Das (1976) 103 ITR 437 (SC) ]

## SUFFICIENCY OF BELIEF / MATERIAL FOR REOPENING:

§ Material having a rational connection or relevant bearing to the formation of the belief. [Techno craft Industries vs. AO – 186 ITR 514 (1990) (Bom.)]

§ Sufficiency or correctness of the material - prima facie

[ Phoolchand Bajranglal -(1993) 203 ITR 456 (SC)]

[ Raymond Woollen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (SC) ]

[ Lakhmani Mewal Das (1976) 103 ITR 437 (SC) ]

§ Existence of belief can be examined by the Court though the its sufficiency can not be; [Madnani Engineering Works Ltd. 118 ITR 1 (SC)] [ Phool Chand case]

§ Subjectivity permitted is not unruly horse. Inference must be demonstrable. [ Desai Bros. (1999) 240 ITR 121 (Guj.)]

## CONFESSION OF THIRD PARTY

§ General or Specific [ Lakhmani Mewaldas (1975) 103 ITR 437 (SC) ]

§ A General Statement of a Third party.[S.P. AGARWALLA vs. ITO (1983) 140 ITR 1010 (CAL.)]

§ General DDI Letter. [Technocraft Industries 186 ITR 514 (1990) (Bom.)]

§ Finding or direction against a person not connected with the Assessee [Murlidhar Bhawandas 52 ITR 335 SC]

## CHANGE OF OPINION/ CHANGED LEGAL POSITION/ REVIEW

- [ Kelvinator of India ltd. (2002) 256 ITR 1(Del.) full bench]]- Same set of facts / review in the garb of S. 147 not permissible even under the amended provisions.
- [Garden Silk Mills (Pvt.) Ltd. vs. CIT [1999] 237 ITR 668 (Guj.),]
- [ Rajnath Leasing & Finance Ltd. vs. Asstt. CIT [1995] 129 CTR (Guj.) 377. ]
- [CIT vs. Bhanji Lavji (1971) 79 ITR 582 ( SC)]
- [Sirpur Paper Mills Ltd. vs. ITO (1978) 114 ITR 404 (AP)]
- [ Maharaja Shri Umaid Mills Ltd. Vs. ITO (1962) 44 ITR 303 (Pun.)]
- [ CIT vs. Burlop Dealers Ltd. (1971) 79 ITR 609 (SC)]
- **CBDT Circular No.549 dt. 31.10.1989.**

## NON CONSIDERATION OF FACTS AT THE TIME OF ORIGINAL ASSESSMENT AND REOPENING:

- Praful Chunnilal Patel (1998) 236 ITR 832 (Guj.)
- Kelvinator of India Ltd. 256 ITR 1 (2002) [ 3 Judges bench]

## MISTAKEN VIEW ON THE FACTS:

- Calcutta Discount Co., Ltd. (1961) 41 ITR 191 (SC) Constitution bench (5 Judges)
- Smt. Laxmibai A. Wagle (decd.) (1999) 240 ITR 427 (Bom.)]
- Bogus entries ?

## AUDIT OBJECTION:

On factual issues

On legal issue

## NOTICE AFTER 4 YEARS IN SCRUTINISED CASES:

§ Conditions of proviso has to be met.

§ [Fennar (India) Ltd. CIT (1999) 107 taxman 53(Mad.)]

§ [CIT vs. Bipin Vadilal (1999) 238 ITR 1022 (GUJ.)]

§ [264 ITR 566 (SC) CIT vs. Foramer France]

## FAILURE TO INVESTIGATE vs. SEEKING TO INVESTIGATE

§ Indo Aden Salt manufacturing Pvt. Ltd. 159 ITR 624 (SC) (1986)

§ Chhugamal Rajpal (1971) 79 ITR 603 (SC)

§ Star Ferro Alloys 90 ITD 63 (TM) (Del.)

## SUMMONS TO REOPEN:

§ Summons u/s 131 only after issue of notice.

§ [ Jamnadas Madhavji & Co. Vs. ITO (1986) 162 ITR 331 (Mumbai)]

## SUBSEQUENT VALUATION REPORT

§ [Amala Das vs. CIT (1984) 146 ITR 216 (punj.)]

§ [Abdul Majid v. ITO 178 ITR 616]

§ [ Kamalam Rajendran (1999) 237 ITR 299 (Mad.)]

## PRIMARY FACTS:

- § Nature of primary facts not brought on record needs to be brought on record in the recorded reasons.
- § [Calcutta Discount Co. Ltd. 41ITR 191(SC)] : primary facts vs. inferential facts.
- § [Kuberdas Hargovandas Modi Vs. K.N. Lalchandani, ITO {1972} 83 ITR 783 (GUJ.)]
- § [Associated Stone Industries (Kotah ) Ltd. (1997) 224 ITR 560(SC)]
- § [ Ranchi Handloom Emporium vs. CIT 235 ITR 604 (Patna)]

## ‘DISCLOSE’ MEANING OF :

- § [CANARA SALES CORPORATION LTD. vs. CIT (1989)176 ITR 340(KAR.)]- meaning of ‘disclose’.
- § Non disclosure of true ratio of SC / HC decision at the time of original assessment.

## 'TRULY AND FULLY'

- § What is the charge on the Assessee: failure to disclose 'fully' or 'truly' or both. [LAKHMANI MEWALDAS 103 ITR 437]
- § The assessee is not expected to make confession.[ Madhnani Engg. Works 118 ITR 1(SC)]

## ALLEGATION OF FAILURE TO DISCLOSE MATERIAL FACTS FULLY & TRULY:

- § Hindustan Lever Ltd. (2004) 268 ITR 332 (Bom.)
- § Krishna Metal Industries 225 ITR 853 (Guj.)(1997)

## NECESSITY OF APPLICATION OF MIND BY AO / CIT-- APPROVAL BY CIT U/S 151

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§ [ Gordhara Singh (1980) 125 ITR 240 (P&H) ]- what was the material to arrive at ‘satisfaction’ by CIT.

§ [ United Electricals Co. (P) Ltd. (2002) 258 ITR 317 (Del.)]- CIT ‘satisfied’ – power coupled with duty.,

§ [ Johri Lal (HUF) vs. CIT (1973) 88 ITR 439 (SC)] – CIT can not act mechanically.

## COPY OF REASONS RECORDED/ DISPOSAL OF OBJECTION:

§ **GKN driveshafts (India) Ltd. (2002) 125 Taxman 963 (SC):** The AO is bound to furnish reasons recorded u/s 148(2) to the assessee and the objections of the assessee have to be disposed of by speaking order.

§ [Hanuman Sahai Chaudhri vs. Union of India (2004) 136 Taxman 93 (Raj.)]

§ [Asian Paints Ltd. vs. The Dy. Comm. Of I.T. 296 ITR 90(Bom.)]

## ONLY RECORDED REASONS CAN BE LOOKED INTO.

§ [ 216 ITR 811 (Bom.) N.D. Bhatt ]

§ [231 ITR 779 (Guj.) Sarad bhai lakhani]

§ [189 ITR 786 (Cal.) Agrawala brothers]

§ Subsequent material after the issue of notice. – Hindustan lever case.

## BURDEN ON REVENUE:

§ Tin mfg. of India 222 ITR 323 (All.)]

## APPLICATION OF RULE 27- ITAT RULES- Question of Law:

**Rule 27: Respondent may support order on grounds decided against him.**

*The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.*

The department has appealed against the order of the CIT(A) on merits. The assessee had not preferred any appeal on legal ground; i.e. reopening after four years, which was decided against the assessee. During the course of hearing, the assessee moved an application under Rule – 27 of ITAT Rules and pleaded that the order of the learned CIT(A) be upheld on the ground that assessment was wrongly reopened. Held that ' no doubt this issue has been decided against the assessee by the learned CIT(A) and assessee has not challenged that order but it can take up this issue before the ITAT with the aid of Rule 27 provided that assessee can agitate any ground, which has been decided against it, but if those arguments are being accepted by the ITAT then the order of the learned CIT(A) can be upheld even on other issues, because the issue regarding reopening is going to hit the root and the moment it is held that reopening is bad in law then all other consequent proceedings would become redundant'.

**[ACIT vs. M/s Triace, Mumbai ITAT, ITA No. 2827/Mum./04, Bench H, A.Y. 1995-96, dt. 26-11-2007]**[ Note in this case, Cross objection was not filed by the Assessee]

## Power of CIT u/s 263 in respect of reopened Assessment

§ When the CIT sought to revise a part of the order of the assessment which was not part of the reassessment, after four years of original assessment, the SC held that the doctrine of merger did not apply in such cases and the period of limitation commences from the date of original order. The SC further held that there may not be any doubt or dispute that once an order of the reassessment is reopened, the previous under assessment will be held to be set aside and the whole proceedings would start afresh, but that would not mean that even when the subject matter of reassessment is distinct and different, the entire proceedings would be deemed to have been reopened. **[ CIT vs. Alagendram Finance Ltd. (2007) 293 ITR 1(SC)]**

## ONCE THE REASSESSMENTE IS REOPENED, WHETHER ENTIRE ASSESSMENT IS REOPENED ?

- V. Jaganmohan Rao (1970) 75 ITR 373 (SC)
- Sun Engg. (1992) 198 ITR 297 (SC)
- Vipin Khanna (2002) 255 ITR 220 (P&H)
- Amrinder Singh Dhiman 269 ITR 378 (P&H).

- The words ' such income and also any other income' in section 147, as it stood with effect from april 1, 1989, would indicate that the escaped income for which reassessment proceedings were initiated should continue to exist so as to clothe the Assessing officer with jurisdiction to assess or reassess any other escaped income chargeable to tax and which has come to his notice subsequently in the course of reassessment proceedings. The return filed by the petitioner had already become final and that finality could not be disturbed even in a proceeding under section 147 in respect of issues on which there is no material suggesting escapement of income. Thus, proceedings under section 143(2) and s. 142 were totally unconnected and had no relation with the proceedings initiated under section 148. **[Travencore Cements Ltd. vs. Asst. CIT (2008) 305 ITR 170 (Ker.)]**

- [Rama Boiled Modern Rice Mill vs. ITO (97 ITD 379) (Hyd.)] – against the assessee

- Gyarasilal Gupta vs. ITO (2005) 94 ITD 329(Jaipur) – in favour of the assessee
- Poonam Rani Singh vs. Dy. CIT (2005) 97 ITD 390 (Delhi bench)-- in favour of the assessee

## Imposition of Penalty u/s 271(1)(c) on wrongfully reopened assessment

- Tide Water Marine International Inc. vs. DCIT (2005) 96 ITD 406 (Delhi)

## EFFECT OF RAJESH JAVERI  STOCK BROKERS CASE 291 ITR 500(2007)(SC)

- Does not dilute the salutary safeguards.

## PHOOLCHAND BAJRANGLAL CASE [ 203 ITR 456 (1993)SC]

Distinguished in

- O.P.Gupta 75 ITD 123 (Del.)]
- Ranchi Handloom Emporium 235 ITR 604 (Pat.)
- Dhanraj singh 218 ITR 312 (Pat.) (1996)