

Practical 29

Can reopening under section 147 based on the report of valuation officer is valid?

Solution

The Supreme Court in case of ACIT v. Dhariya Construction Co. (2010) 328 ITR 515 held that the opinion of the DVO per se is not an information for the purpose of reopening assessment u/s.147. The Assessing Officer has to apply his mind to the information, if any, collected and form a belief thereon. **The opinion of DVO alone cannot be the basis for reopening the assessment.**

Readers Note:**Practical 30**

Can reopening under section 147 is justified when there is mere a “change of opinion” by the assessing officer. Explain with the help of example.

Solution

The Delhi Court in case of **CIT v Kelvinator of India Ltd. 256 ITR 1** held that mere change of opinion or wrong legal reference will not empower the Assessing Officer to re-open assessment. Reassessment cannot be made on fresh opinion on the same facts.

Consider the following example:

“The regular assessment of MNO Ltd. for the assessment year **2015-16** was completed under section 143(3) on **13th April, 2016**. There was an audit objection by the Revenue Audit team that interest on loan should be partly disallowed as there was diversion of borrowed fund to sister concern without charge of interest. Based on the above facts, Assessing Officer issued notice under section 148 to MNO Ltd.”

In this example, issue in respect of deductibility of interest had already been considered earlier during the course of scrutiny assessment and the Assessing Officer had come to a conclusion that no disallowance of interest paid by the assessee is required, even though loans had been given to sister concern without any interest, the same issue cannot be the basis of reassessment, merely because the revenue audit team takes a different view. Thus, assessing officer is changing his opinion based on the same facts. Therefore, the Assessing Officer cannot issue notice under section 148 on the basis of audit objection of the Revenue Audit team.

Readers Note:**Practical 31**

"Post demonetization, mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year can be a sole reason to believe that income has escaped assessment in earlier years." - Comment.

Solution

The CBDT, vide **Circular No.40/2016** dated 9.12.2016, clarified that reopening of cases under section 147 is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect.

Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, past assessments cannot be reopened merely on the ground that the current year's turnover has increased.

Readers Note:**Practical 32**

The income tax return of assessee was accepted u/s 143(1) for A.Y. **2015-16**. The assessee, thereafter, received a notice u/s 148 on **6th April, 2020** for reopening of assessment on the ground that it had claimed excessive bad debt. Can the assessee challenge the legality of the notice on the ground of change of opinion?

Solution

Supreme Court in case of **ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 500** held that where original assessment was made under section 143(1) in a summary manner, and hence where returned income was accepted in a mechanical manner without even writing a formal order, there is no question of change of opinion of Assessing Officer and hence reopening of assessment was valid.

Considering the same, challenge made by assessee on the ground of “change of opinion” is not tenable.

Readers Note:**Practical 33**

ICICI Bank submitted Income tax return for the **A.Y.2015-16** under section 139(1). Thereafter, assessing officer selected the case of ICICI bank under section 143(2). During the course of scrutiny proceedings, assessing officer called for the details necessary for the verification of depreciation claim made by ICICI Bank. All the details called for were duly furnished. Thereafter, assessing officer passed the order under section 143(3) accepting the claim of depreciation.

On **10-8-2020**, assessing officer issued notice under section 148 for re-opening the assessment of **A.Y. 2015-16** on the ground that excessive depreciation had been allowed. Whether the action taken by assessing officer is tenable?

Solution

The **Bombay high court in case of ICICI Bank Ltd. v. DCIT 349 ITR 482** held that re-opening by the assessing officer after the expiry of four year is not justified because

- (a) ICICI bank had furnished the return under section 139(1);
- (b) The assessment has already been completed under section 143(3) and
- (c) ICICI bank had disclosed fully and truly all material facts necessary for the assessment

Readers Note:**Practical 34**

The claim for deduction under Chapter VI-A made by ABC Ltd. was accepted by the assessing officer while passing order under section 143(3) of the Act. After 4 years from the end of assessment year, a notice under section 148 was issued giving reasons such as subsequent tribunal and other court decisions which show that the deduction was excessively allowed in this case.

Is the action of the Assessing Officer re-opening the concluded assessment valid?

Solution

The above issue came up before the **Bombay High Court in Allansons Ltd v. Dy. CIT (2014) 369 ITR 648**, wherein it was observed that even a subsequent change of law cannot be taken as income escaping assessment for triggering reassessment provisions beyond 4 years from the end of the assessment year unless there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.

Thus, subsequent decision of Tribunal or High Court by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.

Readers Note: