

Reasons recorder for reassessment should have a nexus with reassessment order passed

Summary – The Hyderabad ITAT in a recent case of Swarnadhara IJMII Integrated Township Development Company, Madhapur., (the Assessee) held that reassessment order passed is invalid if income other than income which formed basis for reopening was considered for assessment.

Facts

- After processing of return under section 143(1) filed by the assessee, notice for reopening of assessment was issued to assessee by the Assessing Officer. In course of reassessment proceedings, the Assessing Officer made reference to the TPO for determining arm's length price. After receiving the order passed by the TPO, the Assessing Officer ultimately passed a draft assessment order making additions on account of transfer pricing adjustments.
- The assessee challenged the draft assessment order before the Dispute Resolution Panel (DRP) and contended that there was no nexus between the reasons recorded by the Assessing Officer for reopening of assessment and the reassessment order finally passed. It further contended that, in its case both the companies being resident of India, the transfer pricing regulations were not applicable.
- However, the DRP rejected both the contentions of the assessee.
- On assessee's appeal:

Held

- In course of hearing, no material has been produced whether after complying to the notice issued under section 148, the assessee had actually sought for the reasons recorded for reopening of the assessment. Only if the assessee had sought for the reasons recorded and the Assessing Officer has not communicated such reasons in course of the proceedings initiated under section 147 then only such proceedings will be vitiated as per the ratio laid down by the Supreme Court in case of *GKN Driveshafts (India) Ltd. v. ITO* [2002] 125 Taxman 963, which was followed by the co-ordinate Bench of the Tribunal in case of *Sri V. Radhakrishna v. Dy. CIT* [IT Appeal No. 748 (Hyd.) of 2012, dated 14-9-2012]. So far as the second ground is challenge to the proceedings initiated under section 147 is concerned, it can be seen from the order of the DRP, the reasons recorded for reopening of the assessment.
- A reading of the reasons makes it absolutely clear that the assessment was reopened for assessing the escaped income on account of increase in work-in-progress which according to the Assessing Officer was due to advances received from the customers. However, reading of the assessment order passed under section 143(3) read with section 147 reveals the fact that the issue was completely given a go bye in the reassessment order. The Assessing Officer not even has made a

whisper about the income which he believed to have escaped assessment as per the reasons recorded by him. In fact, as it appears during the reassessment proceeding the Assessing Officer had made a reference to the TPO for determining the arm's length price and has made additions as per the order passed by the TPO under section 92CA(5) making transfer pricing adjustment. Thus, it is very much clear that the reassessment has been made for assessment of income other than the income escaping assessment as per the reasons recorded for formation of belief while initiating proceeding under section 147. In other words, the reasons recorded for reopening the assessment has no nexus with the income ultimately assessed under section 147

- Therefore, considered in the light of the ratio laid down in various cases, it can be seen from the facts on record that the escaped income as per the reasons recorded on the basis of which reopening of the assessment was made has not at all been considered in the final assessment order passed by the Assessing Officer under section 143(3) read with section 147 whereas other incomes were considered for assessment which do not have any nexus with the reasons recorded by the Assessing Officer while initiating proceedings under section 147.
- Thus, the Assessing Officer has not reassessed the income which escaped assessment as per the reasons recorded and which was the basis for formation of belief but has assessed other income which came to his notice subsequently during the course of assessment proceeding. Therefore, he could not have independently assessed such income without assessing the escaped income on the basis of which proceedings under section 147 were initiated. In aforesaid view of the matter, it is held that the assessment order passed is invalid in law because of the fact that the income other than the income which formed the basis for reopening was considered for assessment. There cannot be any dispute with the ratio laid down by the Supreme Court in case of *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [\[2007\] 291 ITR 500/161 Taxman 316 \(SC\)](#). However, that decision is not applicable to the facts of the present case as the Supreme Court did not consider the issue whether the Assessing Officer can assess or reassess any income independent of or in exclusion to the income which formed the basis for initiation of proceeding under section 147. Accordingly, the assessment order passed has to be declared legally unsustainable. Therefore, the assessment order passed under section 143(3) read with section 147 is annulled.
- Since the assessment order on the legal issue is annulled, the ground raised on the merits of the additions have become academic and, therefore, not required to be adjudicated. However, suffice it to say, the other major addition on account of transfer pricing adjustment also cannot survive.