

Allahabad HC - Re-assessment quashed as all facts were disclosed in assessment proceedings

Summary – The Allahabad of High Court ITAT in a recent case of Surendra Chand Bansal, (the Assessee) held that reopening of assessment on ground that assessee had made unexplained investment in purchase of silver sold during year was not justified when assessee had fully and truly disclosed all relevant materials in respect of investment in purchase of silver sold during assessment proceedings

Facts

- The assessee filed return showing certain income which included capital gain on sale of silver. The assessment was completed under section 143(1).
- The Assessing Officer thereafter reopened assessment on the ground that the assessee could not produce the relevant purchase bills of silver sold and made addition on account of unexplained investment in the purchase of silver, which was sold by the assessee.
- The Commissioner (Appeals) dismissed the assessee's appeal.
- On second appeal, the Tribunal held that the assessee had fully and truly disclosed all relevant materials in respect of investment in the purchase of silver sold for the purpose of assessment for the year under consideration and, therefore, found that the initiation of proceedings under section 147(a)/148 was not legally sustainable.
- On revenue's appeal:

Held

- Prior to 1-4-1989 the powers of the Assessing Officer to take proceedings under section 147 were not confined to cases where the assessee had concealed his income. The power could also be exercised where there was no concealment but the Assessing Officer has reason to believe in consequence of information in his possession that the income had escaped assessment. The fact, that the assessment had become final in appeal, also did not preclude the Assessing Officer from exercising the power. Such power, however, was hedged with several safeguards, to eliminate its abuse by the Assessing Officer. The Assessing Officer could exercise the power of reassessment where he had reason to believe that the income chargeable to tax had escaped assessment for the relevant year; the assessee had been under-assessed; the assessee had been assessed at a lower rate or that the assessee has been made the subject of excessive relief or excessive loss. The Assessing Officer was required to have reason to believe that the income has escaped assessment by reason of the omission or failure on the part of the assessee to make a return of his income under section 139 for the year; to disclose fully or truly all material facts necessary for his assessment (Section 147(a)) or the Assessing Officer should have in consequence to the information in his possession reason to believe that the income has escaped assessment (Section 147(b)). On the

satisfaction of the conditions referred as above, a notice under section 148 was required to be given recording his reasons for issuing notice under section 148(2) and calling for his return within the prescribed time.

- The judicial interpretation of words 'reason to believe' was that such belief must be that of an honest or reasonable person based upon reasonable grounds. The Assessing Officer must act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The reason must have live-link or close nexus between the material coming to the knowledge of the Assessing Officer, and formation of his belief. It was held by the Supreme Court in *Parashuram Pottery Works Co. Ltd. v. ITO* [\[1997\] 106 ITR 1](#), that even if there has been any omission or failure on the part of the assessee but such omission or failure did not result in the escapement, the action under section 147(a) would not be competent. The mere fact, that full particulars regarding the computation of income are not supplied, cannot, by itself, lead to an inference that the income has escaped assessment.
- In the instant case, the Tribunal found that the assessee had placed all materials and relevant facts before the department and, thus, there was no material to record satisfaction by the Assessing Officer that the income had escaped assessment.
- Therefore, the Tribunal was justified in quashing reassessment order and additions made thereunder.