

## Consequential additions to be deleted if main additions forming base for re-assessment couldn't be sustained

**Summary – The Agra ITAT in a recent case of Asha Kansal, (the Assessee) held that where quantum addition made in reassessment being deleted by Commissioner (Appeals) and accepted by Assessing Officer, and, thus reassessment proceedings becoming infructuous, other connected additions made in course of reassessment proceedings would not sustain**

### Facts

- During reassessment proceedings, the Assessing Officer found assessee's income from undisclosed sources which had escaped assessment and, hence, made additions in respect of Rs. 3,98,950. He also made additions of Rs. 3,98,593 and Rs. 3,97,955 as connected additions.
- On appeal, the Commissioner (Appeals) deleted the addition of Rs. 3,98,950 by observing that the Assessing Officer had not brought any evidence on record that the assessee had received the amount of Rs.3,98,950 in addition to the amount declared in the return of income. Thus, the quantum addition was deleted.
- On appeal to the Tribunal for deleting connected additions, even though the revenue accepted the incorrectness of the quantum addition, still defended the validity of reassessment proceedings to sustain connected additions.

### Held

- Section 147 provides that if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income 'and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section'. *Explanation 3* to section 147 inserted by the Finance Act, 2009, specifically provides that the 'Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue has come to the notice subsequently in the course of proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under such sub- section (2) of section 148'.
- When the reasons for reopening the assessment itself is incorrect, as evidenced by the fact that the Assessing Officer accepts that position by not making related addition, no further additions can be made in the course of such reassessment proceedings. The very initiation of reassessment proceedings in such a case ceases to be of any effect. In other words, the resultant reassessment proceedings are rendered infructuous. The underlying principle is not difficult to fathom. When it is a position accepted by the Assessing Officer that no addition can be made on the basis of reasons

for which reassessment proceedings were initiated, there cannot be any legal basis for the resultant reassessment proceedings either.

- Whether such an addition is not made by the Assessing Officer himself or whether the Assessing Officer does not challenge the Commissioner (Appeals) deletion of such additions made by the Assessing Officer, the legal situation remains the same. In both the situations, the Assessing Officer accepts that addition cannot be made on the basis of reasons recorded by him while reopening the assessment. The common thread in both these situations is that the Assessing Officer accepts the situation that based on the reasons recorded, while reopening the assessment, legally sustainable additions cannot be made or deletion of such additions cannot be challenged. Once he accepts such a position, whether at the stage of assessment by not making the related addition, or at a later stage by not challenging Commissioner(Appeals) order deleting such an addition, the reassessment proceedings are rendered infructuous because no other additions, even if any, made by the Assessing Officer can survive the legal scrutiny. While deleting the additions, the Commissioner (Appeals) had given categorical findings which run contrary to the reasons recorded while reopening the assessment and yet the revenue authorities had not raised, either in appeal or by any other mode, even a whisper against such findings which had thus reached finality. Further, it is the settled legal position that reasons recorded for reopening the assessment are to be read exactly as these are recorded and it cannot be open to the Assessing Officer to fill in the gaps, even if any, while justifying the reassessment proceedings. Nothing could be added to these reasons nor could anything be deleted from the same.
- For the reasons set out above, and in view of the fact the Assessing Officer had not challenged the Commissioner (Appeals) deletion of quantum addition made on the basis of reasons recorded for reopening the assessment, the reassessment proceedings were infructuous and no other additions could have been made by the Assessing Officer either. In response to specific question, the Department could not find out any infirmity in the action of the Commissioner (Appeals) or factual inaccuracies in the observations made by the Commissioner(Appeals) on this issue. The very reassessment proceedings were also thus based on, erroneous reading of facts which could not lead to a legally sustainable addition. The reassessment proceedings were, thus, infructuous and invalid. The assessee succeeds for this short reason alone. The reasons recorded while reopening the assessment are disapproved, on merits, by the Commissioner (Appeals) and those findings remain unchallenged and controverted. Thus, appeal was to be allowed.