

Reasons to believe for reassessment has to be furnished even when assessment is completed under sec. 143(1)

Summary – The High Court of Bombay in a recent case of Khubchandani Healthparks (P.) Ltd., (the Assessee) held that Notice issued under section 148 would be without jurisdiction for absence of reason to believe that income had escaped assessment even in case where assessment has been completed earlier by intimation under section 143(1)

Facts

- In the writ petition filed by the assessee challenging reopening notice issued under section 148, the revenue raised preliminary objection that impugned notice could not be subjected to challenge in view of the fact that during the regular assessment proceedings, the return of income-tax filed by the assessee was accepted by virtue of intimation under section 143(1).
- The revenue contended that the Supreme Court in *Dy. CIT v. Zuari Estate Development & Investment Co. Ltd.* [[2015\] 373 ITR 661/63 taxmann.com 177/\[2016\] 236 Taxman 1](#) held that where the original return has been accepted by intimation under section 143(1), there could be no change of opinion and further, it impliedly held that in such cases where assessment is completed by intimation under section 143(1), there is no requirement for the Assessing Officer to have reason to believe that income chargeable to tax has escaped assessment, so as to exercise jurisdiction under section 148.

Held

- The Apex Court, in *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [[2007\] 291 ITR 500/161 Taxman 316](#), had no occasion to deal with identical facts, namely reopening notices issued under section 148 where assessment is completed earlier by intimation under section 143(1). In the above case, the Apex Court held that a notice for reopening an assessment under section 148 could only be justified if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. This decision of the Supreme Court in *Rajesh Jhaveri Stock Brokers (P.) Ltd.'s case (supra)* has not been disturbed by the Apex Court in *Zuari Estate Development & Investment Co. Ltd. (supra)*. In fact, the Supreme Court in *Zuari Estate Development and Investment Co. Ltd. (supra)* makes a specific reference to its decision in *Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra)* to hold that where the assessment has been completed by intimation under section 143(1), there can be no question of change of opinion.
- The Apex Court in *Zuari Estate Development & Investment Co. Ltd. (supra)* has not dealt with the issue whether before invoking section 148, the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment, where the original assessment has been completed by intimation under section 143(1). The revenue is trying to infer that because the Apex Court in *Zuari Estate Development & Investment Co. Ltd.'s case (supra)* has set aside the order of this

Court and restored the issue to be decided on merits by the Tribunal, it must be inferred that the Apex Court had come to the conclusion that reason to believe was not necessary for issuing reassessment notices where the regular assessment was completed under section 143(1).

- It is settled position in law that the decision of the Court has to be read in the context of the facts involved therein and not on the basis of what logically flows therefrom as held by the Supreme Court in *Ambica Quarry Works v. State of Gujarat* [1987] 1 SCC 213. The Apex Court in *Zuari Estate Development & Investment Co. Ltd.*, case (*supra*) not having dealt with the issue of reason to believe that income chargeable to tax has escaped assessment on the part of the Assessing Officer in cases where regular assessment was completed by intimation under section 143(1), it would not be wise to infer that the Supreme Court in *Zuari Estate Development & Investment Co. Ltd.* case (*supra*) has held that the condition precedent for the issue of reopening notice namely, reason to believe that income chargeable to tax has escaped assessment, has no application where the assessment has been completed by intimation under section 143(1). The law on this point has been expressly laid down by the Apex Court in the case of *Rajesh Jhaveri Stock Brokers (P.) Ltd.* (*supra*) and the same would continue to apply and be binding upon the Court. Thus, even in cases where no assessment order is passed and assessment is completed by intimation under section 143(1), the *sine qua non* to issue a reopening notice is reason to believe that income chargeable to tax has escaped assessment. In the above view, it is open for the petitioner to challenge a notice issued under section 148 as being without jurisdiction for absence of reason to believe even in case where the assessment has been completed earlier by intimation under section 143(1).
- Accordingly, the objection raised by the revenue is not acceptable.