

## It couldn't be said that AO didn't form his opinion just because he accepted claim without giving any reasons

**Summary – The High Court of Gujarat in a recent case of Premium Finance (P.) Ltd., (the Assessee) held that where Assessing Officer in course of assessment proceedings does not reject assessee's claim but chooses not to give any reasons, it cannot be concluded that he does not form any opinion on such a claim and, thus, reopening of assessment in such a situation on basis of change of opinion that assessee's claim for bad debt was wrongly allowed, would be impermissible**

### Facts

- For relevant year, the assessee filed its return raising a claim for bad debts written off. The Assessing Officer completed assessment under section 143(3) allowing assessee's claim.
- Subsequently, the Assessing Officer sought to reopen the assessment taking a view that aforesaid claim of assessee was wrongly allowed.
- The assessee, thus, filed instant petition contending that reopening of assessment merely on basis of change of opinion was not permissible.

### Held

- Both the sides have submitted on the issue of amendment to section 147 with effect from 01-04-1989 and therefore, to understand the said proposition one has to deal with and consider the decision delivered by apex Court in case of *CIT v. Kelvinator of India Ltd.* [\[2010\] 187 Taxman 312](#). In the said decision the short question which was posed before the Apex Court was, whether the concept of change of opinion stands obliterated with effect from 01-04-1989 *i.e.* after substitution of section 147 of the Act by Direct Tax Laws (Amendment) Act, 1987. Therefore, for consideration of the issue posed before the Court, the Apex Court analyzed the entire scheme of section 147 onwards and have considered the effect of amendment to section 147.
- The Apex Court while going through the changes which have taken place to section 147 of the Act, has found that prior to Direct Tax Laws (Amendment) Act, reopening could be done under the two conditions and fulfilment of the said two conditions would confer jurisdiction on the Assessing Officer to make a back assessment but then after examining the amended provision with effect from 01-04-1989, the Apex Court has found that subsequent to amendment only one condition remained *viz.* whether the Assessing Officer has reason to believe that income has escaped assessment. Only that condition would confer jurisdiction to reopen the assessment.
- Therefore, the Apex Court found that scope of reopening is no doubt become wider after amendment. However, the Apex Court anticipating the uncontrolled power has categorically stated that the Assessing Officer has no power to review. He has the only power to reassess and then the Apex Court stated that the reassessment also had to be done not in a routine manner but on

fulfillment of certain pre-condition therefor as laid down after 1-4-1989. The Assessing Officer has power to reopen provided that there is tangible material to come to the conclusion that there is escapement of income from assessment. It has also been propounded that reasons imposed have a live link with formation of belief.

- After considering various decisions, the Court has come to the conclusion that the reopening of assessment within a period of four years from the end of relevant assessment year after 01-04-1989 could be made as long as the same is not based on a mere change of opinion.
- It is thus well settled that after scrutinizing the claim minutely during the Assessment proceedings if the Assessing Officer does not reject such a claim but chooses not to give any reasons, such a course of action that he adopts can hardly be stated that he did not form the opinion on such a claim.
- Now in the background of these propositions of law, if one analyses the record of the present petition on hand, it would quite clear that the assessee was asked to furnish details regarding the claim of bad debt written off. It is also found from the record that the same has been cogently explained and replied and therefore, while completing the scrutiny assessment, this issue has been gone into by the Assessing Officer and the perusal of record further indicates that while assessment order came to be passed, the accountant of the assessee did attend the hearing. The case was discussed at length and assessee submitted the detailed information as called for from time to time and, therefore, considering this material which is available on record, it appears to the Court that the issue pertaining to provision for bad and doubtful debt has been gone into and only thereafter this scrutiny assessment came to be passed.
- It was categorically stated by the deponent on additional affidavit that on account of workload and pressure of various files getting time barred assessment of various assessees and on account of corporate assessees being under jurisdiction of that Assessing Officer he had categorically deposed that he could not incorporate the details of bad debts written off furnished by the assessee. This would clearly indicate that the details have already disclosed before the Assessing Officer and while framing the assessment, the Assessing Officer has considered the same. It is only because of pressure of work he could not incorporate the details in an order under section 143(3) and, therefore, considering this overall view of the matter it is opined that if the records speak like this it would not be permissible for respondent-authority to reopen the assessment otherwise the same would be based on change of opinion.
- Considering the overall set of circumstances coupled with the fact that there is no other tangible material available to justify the reopening more particularly when the issue has been gone into in detail during the course of regular scrutiny assessment, it is hardly justifiable for the revenue to reopen the issue which has relied upon, examined and even if it is within a period of four years. The action of revenue in reopening the assessment is not justified as it would tantamount to be on the basis of mere change of opinion which was not permissible as the conditions which has been retained under section 147 are not satisfied.
- In view of above, instant petition is allowed and impugned reassessment proceedings are quashed.