

No reassessment on basis of mere change of opinion by AO that computation of book profit was incorrect

Summary – The High Court of Calcutta in a recent case of Binani Industries Ltd., (the Assessee) held that where Assessing Officer initiated reassessment proceedings taking a view that computation of book profit in order of assessment was incorrect, since there was no new material on record to suggest that assessee was guilty of suppression, initiation of reassessment proceedings merely on basis of change of opinion was not justified

Facts

- For relevant year, assessee filed its return disclosing taxable income under section 115JB. The Assessing Officer completed assessment under section 143(3) making certain addition to taxable income.
- Subsequently, the Assessing Officer initiated reassessment proceedings taking a view that calculation of book profits was incorrect and that, the book profits claimed had to be treated in a different way. According to the Assessing Officer, the computation done in the order of assessment was incorrect, resulting in escapement of income from assessment.
- The assessee's objection to initiation of reassessment proceedings was set aside.
- On writ:

Held

- Section 147 is one of the statutory instruments available to the Assessing Officer to arrest, income chargeable to tax which has escaped assessment, for any assessment year. The statutory instrument, however, is with prescribed limitations. There are two parts to section 147 of the Act. One part relates to the Assessing Officer invoking such provisions when a period less than four years has elapsed from the end of the relevant assessment year. During such period of time, if the Assessing Officer, is inclined to invoke section 147, he has to have reasons to believe that, income chargeable to tax has escaped assessment. He must have tangible material to come to the conclusion that, income has escaped assessment. There has to be a live link.
- The other portion of section 147 deals with a situation where an assessment under section 143(3) or under section 147 has been made for the relevant assessment year and a period of four years from the end of the relevant assessment year has elapsed, then, the Assessing Officer will have jurisdiction to invoke section 147, if income chargeable to tax has escaped assessment for such assessment year by reason of the assessee failing to disclose fully and truly all material facts necessary for his assessment for that assessment year. In either of the two scenarios, the Assessing Officer has no power of review. He can, however, reassess, subject to the fulfilment of the conditions precedent for him to assume jurisdiction.

- In the facts of the present case, the assessee underwent a scrutiny assessment where, the order passed by the Assessing Officer dealt with the issue of book profits. He arrived at a figure after working on the materials provided to him. However, according to the Assessing Officer in the proceeding under section 147, the calculation of book profits was incorrect and that, the book profits claimed had to be treated in a different way. According to the Assessing Officer, the computation done in the order of assessment was incorrect, resulting in escapement of income from assessment. The same, will constitute change of opinion. He had all the materials at the time of scrutiny assessment to form an opinion. He had done so as appearing in the order of assessment.
- There is no new material on record to suggest that, the assessee is guilty of suppression. Therefore, it cannot be said that, there are reasons for the Assessing Officer to arrive at a finding that, income has escaped assessment. The Assessing Officer, is trying to review his order of scrutiny assessment. In the facts of the present case, he is seeking to have a different opinion than that expressed in the order of scrutiny assessment, on the basis of the same materials. The same is not permissible.
- In such circumstances, the invocation of section 147 by the Assessing Officer is quashed.