

Reopening of assessment permissible even if no scrutiny assessment - reason to believe escapement of income must exist

Summary – The Gujarat High Court in a recent case of Inductotherm (India) (P.) Ltd., (the Assessee) held that reopening of assessment is permissible even if there was no scrutiny assessment, provided there is reason to believe that income chargeable to tax has escaped assessment.

Facts

- The assessee filed return of income for assessment year 2002-03, for which intimation under section 143(1) was sent. After expiry of period for issuing notice for scrutiny assessment under section 143(2), the Assessing Officer issued notice for reopening assessment under section 147.
- In response, the assessee demanded the reasons recorded for reopening.
- The Assessing Officer instead issued notice under section 143(2). On second letter of assessee, requesting reasons, the Assessing Officer supplied the same. The objections filed by the assessee were rejected.
- On writ, challenging notice for reopening of assessment under section 147.

Held

- The HC observed that it cannot be stated that the Assessing Officer had not recorded reasons before issuance of the notice. Firstly, the reasons recorded were found on the file immediately after the original notice under section 148. Further, as noted, the issue arose when the audit party brought certain discrepancies to the notice of the Assessing Officer. Thus it would not be correct to hold that reasons were not recorded by the Assessing Officer before issuance of notice.
- The second limb of the petitioner's challenge is that the power under section 147 cannot be exercised to circumvent the proceedings under section 143(3) because the notice under section 143(2) had become time-barred and further that in any case, reasons recorded would not permit the Assessing Officer to reopen the assessment.
- It is undoubtedly true that proviso to section 143(2) prescribes a time-limit within which such notice could be issued. It is equally well-settled that such notice is mandatory and in absence of notice under section 143(2) within the time permitted, scrutiny assessment under section 143(3) cannot be framed.
- However, merely because no such notice was issued, to contend that the assessment cannot be reopened, is not backed by any statutory provisions. The case of the assessee is that in guise of reopening of an assessment, the Assessing Officer cannot try to scrutinize the return. This aspect

substantially overlaps with the latter contention of the assessee that the reasons recorded by the Assessing Officer were not germane and were not sufficient to permit reopening.

- The Apex Court in case of *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.* [[2007\] 291 ITR 500/161 Taxman 316](#)] noticed such distinction and noted that the scheme of sections 143(1) and 143(3) is entirely different. It was noticed that the intimation under section 143(1) is given without prejudice to the provisions of section 143(3) and though technically the intimation would be deemed to be demand notice under section 156, that did not *per se* preclude the right of the Assessing Officer to proceed under section 143(2)(a).
- Despite such difference in the scheme between a return which is accepted under section 143(1) as compared to a return of which scrutiny assessment under section 143(3) is framed, the basic requirement of section 147, that the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment, is not done away with.
- The term 'reason to believe' has come up for consideration in various decisions. In case of *CIT v. Kelvinator of India Ltd.* [[2010\] 320 ITR 561/187 Taxman 312 \(SC\)](#)], the Apex Court concluded that even in the case of assessment which is sought to be reopened within a period of four years from the end of relevant assessment year, the concept of change of opinion is not given a go-bye. 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. Reasons must have a live-link with the formation of the belief.
- The Apex Court observed that phrase 'reason to believe' means cause or justification. If the Assessing Officer has cause or justification to know or subjective satisfaction that income had escaped assessment, it can be stated to have reason to believe that income chargeable to tax had escaped assessment.
- It would, thus, emerge that even in case of reopening of an assessment which was previously accepted under section 143(1) without scrutiny, the Assessing Officer would have power to reopen the assessment, provided he had some tangible material on the basis of which he could form a reason to believe that income chargeable to tax had escaped assessment.
- In the present case, it is noticed that in two out of four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he needed to verify the claims. The contention of the assessee, that for mere verification of the claim, power for reopening of assessment could not be exercised, is acceptable. The Assessing Officer in guise of power to reopen an assessment, cannot seek to undertake a fishing or roving inquiry and seek to verify the claims as if it were a scrutiny assessment.
- With respect to other two grounds, however, it is found that the Assessing Officer had some material at his command to form a belief that income chargeable to tax had escaped assessment. Such reasons also would permit the Assessing Officer to reopen the assessment.
- In view of the above discussion, it is not found that the notice for reopening is invalid or lacks jurisdiction. The petition is, accordingly, dismissed. Interim relief granted earlier stands vacated.