
(1995) 12 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5595 of 1993

Chandi Ram

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Constitution of India, 1950 — Article 141, 226
Income Tax Act, 1961 — Section 147, 148, 154, 32A

Citation : (1997) 230 ITD 611 : (1997) 225 ITR 611 : (1996) WLC 121

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : N.M. Ranka and J.K. Ranka, for the Appellant; G.S. Bapna, for the Respondent

Judgement

V.K. Singhal, J.—The notice dated February 13, 1995, issued u/s 148 of the Income Tax Act, 1961, in respect of the assessment year 1987-88 has been challenged on the ground that the proceedings u/s 147 as amended by the Direct Tax Laws (Amendment) Act, 1987, could not have been initiated in respect of the assessment year 1987-88 and the said provisions are applicable from April 1, 1989, i.e., the assessment year 1989-90. The notice is without jurisdiction. This argument is based that there is substantial change in the provisions of Section 147 and now the power which has been given affects a vested right. Section 147 could not be considered merely procedural but is substantive in nature.

2. The assessment of the assessee was completed on the basis of the return submitted on October 8, 1987, declaring an income of Rs. 54,419. Investment allowance on purchase of new machinery u/s 32A at the rate of 25 per cent. to the extent of Rs. 2,03,684 was allowed. The proceedings u/s 154/155 were also initiated to withdraw the said claim but the same were dropped.

3. It is stated that the proceedings are based on change of opinion. It was the consistent view of the Tribunal and even a few of the High Courts that investment allowance u/s 32A is admissible to the persons who are engaged in

construction activities.

4. The Income Tax Officer has no reason to believe that income chargeable to tax has escaped assessment or there was failure on the part of the petitioner to disclose fully and truly all material facts of assessment. The amended provisions of Section 147 are not applicable. The Circular No. 549, dated October 31, 1989, issued by the G. Padmanabha Chettiar and Sons Vs. Commissioner of Income Tax, clarifying the amendment as retrospective is also illegal.

5. Reliance has been placed on the decision of Govind Das and Others Vs. The Income Tax Officer and Another, wherein, it was observed (headnote): "It is a well-settled rule of interpretation that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. If the enactment is expressly in language which is fairly capable of either interpretation, it ought to be construed as prospective only".

6. In this case, the provisions of Sub-Sections (6) and (7) of Section 171 of the Income Tax Act were invoked for the purpose of recovery of tax assessed on a Hindu undivided family in reassessment for the assessment year 1950-51 to 1956-57 whereas there was no such liability under the Income Tax Act and in these circumstances, it was considered by the apex court that the provisions of Sub-Sections (1) to (5) of Section 171 of the Act of 1961 are machinery provisions and Sub-section (6) of Section 171 is a substantive provision imposing new liability on the members for the tax determined as payable by the joint family. Under the provisions of Section 297(2)(d)(ii) it was considered that the substantive provisions could not be invoked.

7. Reliance has also been placed on the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, on the ground that there should be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. On the date on which the notice was issued, the decision of the Supreme Court was not pronounced and as such the assumption of jurisdiction on that basis is illegal.

8. The decision of the apex court in Controller of Estate Duty, Gujarat I, Ahmedabad Vs. M.A. Merchant, Accountable Person of Late Shri A.G. Merchant, Majirajwadi Road, Bhavnagar and Others, has also been relied on where the apex court considered that vested rights, by the subsequent legislation, unless the legislation has been made retrospective expressly or by necessary implication, cannot be interfered with. In this case, the dispute was with regard to the provisions of the Estate Duty Act, 1953, in which the original power of rectification u/s 62 was there, but a new section 59 was added subsequently with effect from July 1, 1960, and in these circumstances, it was considered that

because the power of reassessment were not existing earlier, therefore, in respect of assessments which have already been made before July 1, 1960, the new section cannot be made applicable.

9. The decision of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala, has also been relied on wherein it was considered by the apex court that it is well-settled that the Income Tax Act as it stands amended on the first day of April of any financial year must apply to the assessment of that year. Any amendments in the Act which came into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.

10. The decision of the Privy Council in the case of AIR 1927 242 (Privy Council) has also been relied on, wherein relying upon the decision of Colonial Sugar Refining Co. v. Irving [1905] AC 369 it was observed that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

11. According to Mr. Bapna, the provisions are procedural in nature and the amendment, therefore, effective from April 1, 1989, could be made applicable in this case if limitation has not expired. Reliance has been placed on the decision of the State of Madras Vs. Lateef Hamid and Co., wherein the power was given to the Appellate Assistant Commissioner for enhancement of the assessment similar to that of the Commercial Tax Officer and such a power was considered procedural. It was observed that no assessee has any vested right in the procedure prescribed under the Act. So long as the new procedure laid down in the 1959 Act does not interfere with any of his vested rights, an assessee has no right to claim that his case must be dealt with under the provisions of the repealed Act. Reliance has been placed on the decision of Rai Bahadur Seth Shreeram Durgaprasad Vs. Director of Enforcement, wherein it was considered that the provisions relating to burden to prove are a matter of procedure.

12. In order to appreciate the contention of both learned counsel, the provisions of Section 147 as they were existing before amendment and after amendment are reproduced hereunder :

"147, as existing before amendment :

Income escaping assessment.--If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that 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 or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :--

- (a) where income chargeable to tax has been underassessed ; or
- (b) where such income has been assessed at too low a rate ; or
- (c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922) ; or
- (d) where excessive loss or depreciation allowance has been computed.

Explanation 2.--Production before the Income Tax Officer of account books or other evidence from which material evidence could with due diligence, have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this section."

Section 147, after the amendment :

Income escaping assessment. -- If the Assessing Officer has reason 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 the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under Sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Explanation 1.-- Production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence, have

been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :--

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(c) where an assessment has been made, but -

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

On the basis of the changes which have been brought by the Amendment Act of 1987, it is evident that there are substantial changes. The question, therefore, arises as to whether such changes could be considered to be procedural or substantive. In accordance with law as it was in existence, the assessment on the same change of opinion was not possible and the assumption of jurisdiction was based on the information coming in possession of the Income Tax Officer, on the basis of which he could have reason to believe that the income chargeable to tax has escaped assessment to tax or it could have been on account of not fully and truly disclosing the material facts necessary for assessment. In the case of Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, it was considered that the word "information" would embrace information as to fact as also to law. It is no doubt true that there should be a matter as to whether the investment allowance could be given has been considered by the apex court in the cases of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and Builders Associations of India Vs. Union of India and others, Any exposition of law by the apex court is not enactment of law and is only exposition of correct position of law and, therefore, even if the notice for reassessment has been issued before the decision of the apex court, it would not make any difference as while deciding this writ petition, the decision of the apex court cannot be ignored. The judgment of the apex court is binding under Article 141 of the Constitution and any judgment which has

been given by the apex court could be considered as information as contemplated u/s 147(b) and even in accordance with the existing provisions, can be a ground for reason to believe to the Income Tax Officer that the income chargeable to tax has escaped assessment. The question as to whether the proceedings should have been taken under the provisions of Section 147 as were existing earlier or as they were brought into force with effect from April 1, 1989, is merely of academic interest because even if the proceedings were considered to be u/s 147(b) of the repealed section, then there was limitation and the Income Tax Officer could validly be said to have the information in his possession and has the reason to believe that the income chargeable to tax has escaped assessment.

13. A contention was raised that the proceedings u/s 154/155 which were taken were dropped. The scope of rectification proceedings is limited and in a case where the matter is debatable or there could be two arguments, the power for rectification could not validly been assumed. The provisions of Section 147 are independent and are not affected even if the proceedings u/s 154 were initiated and dropped. It has to be seen as to whether the conditions which are contemplated are existing or not.

14. The word "information" would include information as to the true and correct state of law so as to cover the information as to relevant judicial decisions. The decision of the Supreme Court will constitute information for the purpose of Section 147(b). The objection that at the time when the notice was issued, the decision of the apex court was not pronounced would not change the legal position even by the decision which has subsequently been given and it cannot be considered that because the information was already on record, the assessment which was already framed, the reassessment proceedings cannot be initiated as it would amount to change of opinion. The limitation prescribed u/s 149 had not lapsed at the time when the notice u/s 148 was issued and, therefore, the notice issued cannot be considered to be without jurisdiction.

15. In *Lakshminarain Bhadani Vs. Commr. of Income Tax, Bihar and Orissa*, it was considered that the position in reassessment is as if the Income Tax Officer was proceeding to assess the income of that very year. In *Govind Das and Others Vs. The Income Tax Officer and Another*, the apex court observed as under (page 134) :

"These words merely refer to the machinery provided in the new Act for the assessment of the escaped income. They do not import any substantive provisions of the new Act which create rights or liabilities. The word "accordingly" in the context means nothing more than "for the purpose of assessment" and it clearly suggests that the provisions of the new Act which are made applicable are those relating to the machinery of assessment. The substantive law to be applied for determining the liability to tax must necessarily be the law under the old Act, for that is the law which applied during the relevant assessment years and it is that law which must govern the liability of the parties.

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In CIT v. Mahaliram Ramjidas [1940] 8 ITR 442 the Privy Council observed as under (page 448) :

"The section, although it is part of a taxing Act, imposes no charge on the subject, and deals merely with the machinery of assessment. In interpreting provisions of this kind the rule is that that construction should be preferred which makes the machinery workable, *ut res valeat potius quam pereat*."

In the case of Bhimraj Panna Lal Vs. The Commissioner of Income Tax, the Patna High Court observed as under (page 298) :

"In a proceeding u/s 34, however, the Income Tax Officer is only dealing with the extra income, which has not been assessed to Income Tax. This section imposes no charge on the subject, but deals with the machinery of assessment. No jurisdiction is given to the Income Tax Officer by Section 34 to make a new assessment for the purpose of taking the whole of that assessment under the Act. Section 34 does not require the whole thing to be reopened and every item under which Income Tax is charged to be considered afresh, and a fresh assessment levied. In one sense, of course, he must fix the taxable income to enable him to fix the rate, but he is not bound to reopen the items which are not in question, or which have become final, and start proceedings again. He is only bound to confine himself to the particular item which has been omitted. Where, therefore, the rate is sought to be raised u/s 34 of the Income Tax Act, an Income Tax Officer is not bound to determine afresh the correct taxable income of the assessee."

It is an established law that no one has a vested right in procedural law and whenever a change is made with regard to procedure, it is retrospective in nature. In the matter of reassessment proceedings under the Income Tax Act, the change has been brought with regard to circumstances and limitation as well. If the limitation has already expired, then the amended law would not revive the matters, where the limitation is already expired by taking into consideration the amended provisions of law on the ground that the limitation is extended. The provisions of the amended Act, therefore, would be applicable only in those cases where the limitation under the old law has not expired. So far as the question as to whether the phraseology used in the repealed section and in the amended section is concerned, I am of the view that there was no vested right in an assessee not to pay the correct tax. The provisions of assessment are meant for determination of the correct liability of tax in accordance with law which should be on the basis of correct income and if there is any escapement, then the Income Tax Officer has power to reopen the matter. The repealed section refers to the information on the basis of which the reassessment proceedings could have been initiated. The information with regard to the correct state of law by way of a judgment of the apex court is also an information on the basis of which the action could have been taken under the repealed section. Now, the Income

Tax Officer can reassess for any reason, therefore, the amended section cannot be considered to be affecting any right of the assessee. The circular which has been issued by the Central Board of Direct Taxes, though having no binding effect on the court, the view which has been taken cannot be considered to be contrary to law. The relevant extract of the Circular No. 549 (see G. Padmanabha Chettiar and Sons Vs. Commissioner of Income Tax, , dated October 31, 1989, are reproduced hereunder (page 28) :

"7.1. Simplification of the provisions relating to assessment or reassessment of income escaping assessment (Section 147), -- Under the old provisions of Section 147 of the Income Tax Act, separate Clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed, as follows :

(i) Clause (a) empowered the Income Tax Officer to assess or reassess the income escaping assessment, if he had reason to believe that income had escaped assessment on account of omission or failure on the part of the assessee to file a return of income for an assessment year or to disclose fully and truly all material facts necessary for assessment for that year.

(ii) Clause (b) empowered the Income Tax Officer to reopen an assessment, notwithstanding the fact that there had been no omission or failure, as mentioned in Clause (a), on the part of the assessee if the Income Tax Officer, on the basis of information in his possession, had reason to believe that income had escaped assessment for the relevant assessment year.

Since under the new scheme of assessment (refer to paragraph 5.1 of these Explanatory Notes), introduced by the Amending Act, 1987, returns filed will now be accepted as such and passing of assessment orders will not be necessary, it follows that in the majority of cases there would not be any application of mind by the Assessing Officer after the returns are filed, unless the case is picked up for scrutiny and a regular assessment order is passed u/s 143(3). The Amending Act, 1987, has, therefore, rationalised the provisions of Section 147 and other connected sections to simplify the procedure for bringing to tax the income which escapes assessment, especially in non-scrutiny cases. Thus, the Amending Act, 1987, has substituted a new Section 147 which contains simplified provisions as follows :

(i) Separate provisions contained in Clauses (a) and (b) of the old section have been merged into a single new section, which provides that if the Assessing Officer is of the opinion that income chargeable to tax for any assessment year has escaped assessment, he can assess or reassess the same after recording in writing the reasons for doing so.

(ii) The requirements in the old provisions that the Income Tax Officer should have "reason to believe" or "information in possession" before taking action to assess or reassess the income escaping assessment, have been dispensed with.

(iii) The existing legal interpretation that once an assessment has been reopened, any other income that has escaped assessment and comes to the notice of the Assessing Officer subsequently during the course of proceedings under this section can also be included in the assessment, has been incorporated in the new section itself.

(iv) A proviso to the new section provides that an assessment, which has been completed u/s 143(3) or Section 147, i.e., a scrutiny assessment, can be reopened after the expiry of four years from the end of the relevant assessment year only if income has escaped assessment due to the failure on the part of the assessee to file a return of income or to disclose fully and truly all material facts necessary for his assessment.

7.2. Amendment made by the amending Act, 1989, to reintroduce the expression "reason to believe" in Section 147. -- A number of representations were received against the omission of the words "reason to believe" from Section 147 and their substitution by the "opinion" of the Assessing Officer. It was pointed out that the meaning of the expression, "reason to believe" had been explained in a number of court rulings in the past and was well settled and its omission from Section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended Section 147 to reintroduce the expression "has reason to believe" in the place of the words "for reasons to be recorded by him in writing, is of the opinion". Other provisions of the new Section 147, however, remain the same.

7.3. Deemed cases of income escaping assessment (Explanation 1 to Section 147)--Under the old provisions of Explanation 1 to Section 147, income chargeable to tax was deemed to have escaped assessment if it had been underassessed or assessed at too low a rate or if any excessive relief or loss or depreciation allowance had been allowed. The new provisions in this respect, as contained in Explanation 2 to new Section 147, are more elaborate and cover those cases where assessments have been completed (called as scrutiny cases) as well as those cases where no assessments have been completed (called as non-scrutiny cases). Thus, the new Explanation 2 to the section clarifies that the following shall be deemed to be cases of income escaping assessment :

(i) Where no return of income has been furnished by the assessee, although the total income is above the taxable limit.

(ii) Where a return of income has been furnished, but no assessment has been made (i.e., in a non-scrutiny case)--If the assessee is found to have understated his income or claimed excessive loss, deduction, allowance or relief in the return.

(iii) where an assessment has been made (i.e., in a scrutiny case)--If income chargeable to tax has been underassessed or assessed at too low a rate or if any excessive relief or loss or depreciation allowance or any other allowance under this Act has been allowed.

7.4. Amendment of provisions relating to issue of notice where income has escaped assessment (Section 148)--The old provisions of Section 148 of the Income Tax Act provided that a notice issued under this section shall tantamount to a notice u/s 139(2). It was also provided in Sub-section (2) of the said Section 148 that before issuing a notice under this section, the Income Tax Officer will record the reasons for doing so. The Amending Act, 1987, has substituted a new Section 148. The main features of the new section are :

(i) Consequent upon the omission of Sub-section (2) of Section 139, reference to the same has been removed and the new Section 148 has been made self-contained.

(ii) Sub-section (2) of this section has been omitted, as the requirement of recording reasons in writing has been incorporated in the new Section 147 itself.

7.5. Consequent upon further amendment of Section 147 by the Amending Act, 1989, whereby the requirement of recording reasons in writing has been omitted from that section (refer to paragraph 7.2 ante), the Amending Act, 1989, has again amended Section 148 to reinsert subsection (2). Thus, the requirement of recording reasons in writing before issuing a notice u/s 148 continues to remain in the Act.

7.6. Provisions relating to time limits for issue of notice u/s 148 (Sub-section (1) of Section 149) -- Under the old provisions of Sub-section (1) of Section 149, time limits for opening or reopening of past cases were laid down depending upon whether the case was covered under Clause (a) or Clause (b) of the old Section 147. Thus, no notice u/s 148 could be issued in a case falling under Clause (b) after the expiry of four years and in a case falling under Clause (a) after the expiry of eight years from the end of the relevant assessment year. However, in a case falling under Clause (a) if the income which had escaped assessment amounted to Rs. 50,000 or more in that year, the case could be reopened up to 16 years.

7.7. In view of the new procedure for assessment (refer to paragraph 5.1 of these Explanatory Notes) whereby the majority of cases will be non-scrutiny cases, while only a very small percentage will be scrutiny cases (i.e., where an assessment order will be passed u/s 143(3) or 147), the Amending Act, 1987, has substituted a new Sub-section (1) in Section 149, which contains an entirely different basis for the time limits. The time limits now depend upon whether the case is a scrutiny case or a non-scrutiny case and also the amount of income which has escaped assessment. The income limits for opening or reopening a non-scrutiny case are lower than those for reopening a scrutiny case. The new provisions of Section 149(1) are explained in a chart given in paragraph 7.11 post.

7.8. Time limits not to apply to give effect to an order of a court in any proceedings (Sub-section (1) of Section 150) -- Under the old provisions of Sub-section (1) of Section 150, a notice u/s 148 could be issued at any time,

notwithstanding the time limits prescribed in Section 149, if an assessment, reassessment or recomputation was to be made in pursuance of any finding or direction contained in an order of appeal, reference or revision passed under the Income Tax Act. However, there can be proceedings other than those under the Income Tax Act, which can have a bearing in quantifying the past income of the assessee, which may have escaped assessment. For example, a writ proceeding challenging the constitutional validity of any other Act may have a bearing on the assessment of income. To plug this loophole, the Amending Act, 1987, has amended the said Sub-section (1) to empower the Assessing Officer to issue a notice u/s 148 at any time to give effect to any finding or direction contained in an order passed by a court in any proceeding under any other law.

7.9. Provisions, relating to sanction of superior authorities for issue of notice u/s 148 (Section 151)--Under the old provisions of Section 151, the sanctioning authorities for opening or reopening of past cases were prescribed depending upon the period after which action was being taken. Thus, if notice u/s 148 was to be issued after the expiry of four years from the end of the assessment year, the sanction of the Commissioner was necessary, while after the expiry of eight years from the end of the assessment year, the sanction of the Board was necessary.

7.10. For the same reasons as discussed in paragraph 7.7 ante, the Amending Act, 1987, has substituted a new Section 151, which contains substantially changed provisions. The issuing or sanctioning authorities will now depend upon whether the case is a scrutiny case (i.e., where an assessment order has been passed u/s 143(3) or Section 147) or a non-scrutiny case, and also the period after which the case is being opened or reopened. Thus, a scrutiny assessment will not be reopened by an Assessing Officer of the rank below the rank of an Assistant Commissioner. After the expiry of four years from the end of the relevant assessment year, a scrutiny assessment can be reopened only with the approval of the Chief Commissioner or Commissioner. A non-scrutiny case can be opened or reopened by any Assessing Officer and after the expiry of four years from the end of the relevant assessment year it can be opened or reopened with the approval of the Deputy Commissioner. However, where the Assessing Officer is the Deputy Commissioner himself, no sanction of the higher authority will be necessary for opening or reopening a non-scrutiny case.

7.11. The new provisions of Section 149(1) regarding time limits and Section 151 regarding issuing and sanctioning authorities for the issue of a notice u/s 148 are explained in the following chart :

SI. No. Up to four
years
Beyond four years
but up to seven

years

Beyond seven years

but up to ten years

1 2 3 4

1. Scrutiny cases, i.e., (where an assessment order has been passed under, section 145(3) or 147).

(i) Assessment can be reopened only by an Assessing Officer of the rank of an Assistant Commissioner or Deputy Commissioner,

(ii) Assessment can be reopened whatever be the amount of income which has escaped assessment.

(i) Same as (i) in column (2).

(ii) Assessment can be reopened only if the income which has escaped assessment is Rs. 50,000 or more for that year,

(iii) Assessment can be reopened only with the approval of the Chief Commissioner or Commissioner,

(i) Same as (i) in column (2).

(ii) Assessment can be reopened only if the income which has escaped assessment is Rs. 1 lakh or more for that year,

(iii) Same as (iii) in column (3).

2. Non-scrutiny cases (i.e., where no assessment order has been passed u/s 143(3) or 147).

(i) Any Assessing Officer can reopen an assessment himself.

(ii) Assessment can be reopened whatever be the amount of income which has escaped assessment.

(i) Same as (i) in column (2).

(ii) Assessment can be reopened only if the income which has escaped assessment is Rs. 25,000 or more for that year.

(iii) Assessment can be reopened by the Assessing Officer below the rank of Deputy Commissioner only with the approval of the Deputy Commissioner.

(i) Same as (i) in column (2).

(ii) Assessment can be reopened only if the income which has escaped assessment is Rs. 50,000 or more for that year,

(iii) Same as (iii) in column (3).

7.12 Consequential amendment to Section 152(2).--The Amending Act, 1987, had made an amendment of consequential nature in Sub-section (2) of Section 152, containing a provision for dropping a reopened assessment under certain circumstances, pursuant to the merger of Clauses (a) and (b) of the old Section 147 into a single new Section 147.

7.13 Amendments to have retrospective effect--These amendments come into force with effect from the 1st day of April, 1989. However, it may be clarified that since the provisions of Sections 147 to 152 lay down procedural law, these have retrospective effect, unless the amending statute provides otherwise. Therefore, the amendments made to these sections by the Amending Acts, 1987 and 1989, discussed in the preceding paragraphs, which came into force with effect from 1st April, 1989, will be retrospective in the sense that these will apply to all matters which were pending on 1st April, 1989, and had not become closed or dead on this date.

7.14 Thus, from 1st April, 1989, onwards, any action for opening or reopening an assessment for the assessment year 1988-89, and earlier assessment years will have to be taken in accordance with the amended provisions. The following examples will clarify the position :--

(i) No notice u/s 148 can now be issued for the assessment years 1975-74 to 1978-79, even if the escaped income is Rs. 50,000 or more in each year, although under the old provisions this could have been done with the Board's approval.

(ii) Notice u/s 148 can now be issued for any of the assessment years 1979-80 to 1981-82, if the following conditions are fulfilled :-

(a) In a scrutiny case (i.e., where an assessment order had been passed u/s 143(3) or 147), if the escaped income is Rs. 1 lakh or more in each year and approval of the Chief Commissioner or Commissioner has been obtained.

(b) In a non-scrutiny case, if the escaped income is Rs. 50,000 or more in each year, and approval of the Deputy Commissioner has been obtained.

(Under the old provisions, there was no distinction between a scrutiny and a non-scrutiny case. Action could have been taken in respect of both types of cases for the assessment year 1981-82, with the approval of the Chief Commissioner or Commissioner, whatever be the amount of escaped income, while for the assessment years 1979-80 and 1980-81, action could have been taken with the Board's approval if the escaped income was Rs. 50,000 or more in each year. These old provisions, however, have no application now from 1st April, 1989, onwards).

(iii) Notice u/s 148 can now be issued for any of the assessment years 1982-83 to 1984-85, if the following conditions are fulfilled :-

(a) In a scrutiny case, if the escaped income is Rs. 50,000 or more in each year

and approval of the Chief Commissioner or Commissioner has been obtained.

(b) In a non-scrutiny case, if the escaped income is Rs. 25,000 or more in each year and approval of the Deputy Commissioner has been obtained.

(Under the old provisions, action could have been taken for these assessment years, in respect of both types of cases, with the approval of the Chief Commissioner or Commissioner, whatever be the amount of escaped income. These old provisions, however, have no application now from 1st April, 1989, onwards.)

(iv) Notice u/s 148 can now be issued for any of the assessment years 1985-86 to 1988-89, whatever be the amount of income which has escaped assessment, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment.

(Under the old provisions action could have been taken for these assessment years, if the circumstances mentioned in Clause (a) or (b) of the old Section 147 were satisfied. These old provisions, however, have no application now from 1st April, 1989, onwards).

(v) a scrutiny assessment for any assessment year cannot be reopened now by an Assessing Officer below the rank of an Assistant Commissioner ; under the old provisions, there was no such restriction.

[Sections 54 to 58 of the Amending Act, 1987]

[Sections 23 and 24 of the Amending Act, 1989]

Time limit for completion of assessments and reassessments.

8.1 Time limit for completion of assessment u/s 143(3) or Section 144 (Sub-section (1) of Section 153).-Under the old provisions of Sub-section (1) of Section 153 of the Income Tax Act, various time limits were laid down for completion of an assessment u/s 143(3) or u/s 144. The old Sub-section (1) consisted of four, Clauses (a) to (d) and Clause (a) consisted of three Sub-clauses (i) to (iii). The general time limit for completion of an assessment, as laid down in Sub-clause (iii) of Clause (a), was two years from the end of the assessment year in which the income was first assessable.

8.2 The Amending Act, 1987, has substituted a new Sub-section (1) in Section 153. The provisions of all the clauses and sub-clauses of the old Sub-section (1), except the provisions of Sub-clause (iii) of Clause (a), have been omitted, because either these provisions have become redundant or they were impractical and were not being used in practice. Therefore, the new Sub-section (1) of Section 153, substituted by the Amending Act, 1987, is much shorter and provides that no order of assessment u/s 143 or Section 144 shall be made after the expiry of two years from the end of the assessment year in which the income was first assessable.

Note.--Section 20 of the Finance Act, 1989, has further amended the said Sub-section (1) of Section 153 to provide for transitory provisions whereby an exception is made in the case of a return or a revised return filed under Sub-section (4) or (5) of Section 139 relating to the assessment year 1988-89, or any earlier assessment year. In such a case, assessment can be completed before the expiry of one year from the end of the financial year in which the said return or revised return is filed.

8. 3 Time limit for completion of assessment, reassessment or recomputation u/s 147 (Sub-section (2) of Section 153).--Under the old provisions of Sub-section (2) of Section 153, different time limits were laid down for completion of assessment, reassessment or recomputation u/s 147 depending upon whether the case fell under Clause (a) or Clause (b) of the old Section 147. Normally, the time limit, in a case falling in Clause (a), was four years from the end of the assessment year in which the notice u/s 148 was served and in a case falling in Clause (b), the same was four years from the end of the assessment year in which the income was first assessable.

8.4. Consequent upon the merger of Clauses (a) and (b) into a single new Section 147, the Amending Act, 1987, has substituted a new Sub-section (2) in Section 153, which provides a uniform time limit for completion of assessment, reassessment, etc., u/s 147. The limit is two years from the end of the financial year in which notice u/s 148 was served. Thus, the time allowed for completion of all assessments u/s 147 has now been reduced to two years to facilitate quicker assessments.

8.5 As a transitory measure, an exception has been made in cases where notice u/s 148 was served on or before 31st March, 1987. In such cases, order of assessment, reassessment or recomputation can be made up to 31st March, 1990. This would help to tide over the difficulties during the transitional period while switching over from the earlier four year limit to the new two year limit.

8.6. Consequential amendment in Explanation 1 to Section 153.--The Amending Act, 1987, has amended Explanation 1 to Section 153 by omitting Clause (iv) of the said Explanation, which provided an extended time limit in a case referred to the Inspecting Assistant Commissioner u/s 144B. This is consequent to the deletion of Section 144B itself.

8.7 These amendments come into force with effect from the 1st April, 1989.

[Section 59 of the Amending Act, 1987]"

In the case of the assessee, the power could have been exercised under the repealed section as well as the amended section. The matter with regard to the applicability of the repealed section is merely an academic argument; however, in view of the fact that the power of reopening was existing in respect of escaped assessment prior to April 1, 1989, therefore, it cannot be said that any new right has been acquired by the Income Tax Officer or the said amendment has effected

any vested right of the assessee. The object of reassessment is to assess the correct income and is a matter of procedure. The provisions of Section 148, therefore, have to be considered as procedural in nature. A change in the procedure may be by way of limitation or otherwise does not affect the vested right and as such I am of the opinion that the Income Tax Officer was competent to invoke the provisions after April 1, 1989, in accordance with the amended law in respect of the previous years which have not become time barred.

16. The Income Tax Officer would be free to take the proceedings in accordance with law. It may also be observed that the initial assessment in this case was made u/s 143(1) and not u/s 143(3) of the Income Tax, Act, and, therefore, the contention of learned counsel for the petitioner that the proceedings of reassessment are based on change of opinion has no force.

17. The jurisdiction under Article 226 of the Constitution while examining the validity of the notice issued u/s 148 is very limited. The court has to see as to whether the notice issued by the taxing authorities is on the basis of the reasons which have been recorded by them. If the reasons are in existence then the sufficiency thereof even could not be examined. The assessee was informed vide letter dated June 14, 1991, that the investment allowance is admissible only on machinery and plant used in the business of manufacture, production or construction of any article or thing which could not have been claimed in the return submitted by the assessee. Even if it is considered that at the time when the notice u/s 148 was issued, the judgment of the apex court was not pronounced, it will not make any difference because the apex court only interprets the law as stated above and, therefore, the legal position as explained by the apex court has to be considered as always in existence. Besides this, it was also informed to the assessee that the investment allowance reserve made in the assessment year 1987-88 has been transferred to the capital account of the assessee in the assessment year 1988-89 and in accordance with the provisions of Section 155(4A) of the Income Tax Act and the same has to be added because the reserve could have been utilised for the specified purpose after the expiry of 10 years. The basis which was taken by the Income Tax Officer for assuming the jurisdiction u/s 148, therefore, is well founded. The initiation of proceedings cannot be termed without jurisdiction. The assessee has always a remedy of filing an appeal and the Act has provided efficacious machinery. The existence of reasons, a copy of which has already been provided to the petitioner are sufficient for invoking the jurisdiction for reassessment.

18. The writ petition having no force is accordingly dismissed.