(1995) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5595 of 1993, 22nd December, 1995

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
FINANCE ACT, 1989 — Section 20
Income Tax Act, 1961 — Section 139, 142, 143, 144, 144B

Citation : (1996) 131 CTR 256

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

Bench : Division Bench

Judgement

V. K. SINGHAL, J. :

The notice dt. 13th Feb., 1995 issued under s. 148 of the IT Act, 1961 in respect of asst. yr. 1987-88 has been challenged on the ground that the proceedings under s. 147 as amended by Direct Tax laws (Amendment) Act, 1987 could not have been initiated in respect of asst. yr. 1987-88 and the said provisions are applicable from 1st April, 1989, i.e., the asst. yr. 1989-90. The notice is without jurisdiction. This argument is based that there is substantial change in the provisions of s. 147 and now the power which has been given effect vested right. Sec. 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 8th Oct., 1987 declaring the income of Rs. 54,419. The investment allowance on purchase of new machinery under s. 32A at the rate of 25% to the extent of Rs. 2,03,684 was allowed. The proceedings under 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 few of the High Courts that the investment allowance under s. 32A is admissible to the persons who are engaged in construction activities.

4. The ITO has no reason to believe that the 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 s. 147 are not applicable. The Circular No. 549, dt. 31st Oct., 1989 issued by the CBDT [(1990 1 ITR 182 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, 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-s. (6) and (7) of s. 171 of the IT Act were invoked for the purpose of recovery of tax assessed on an HUF for reassessment of asst. yr. 1950-51 to 1956-57 whereas there was no such liability under the IT Act and in these circumstances it was considered by the apex Court that the provisions of sub-s. (1) to (5) of s. 171 of the Act of 1961 are machinery provisions and sub-s. (6) of s. 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 s. 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 could have a direct nexus or live link between the material coming to the notice of the ITO 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 Honble Supreme Court was not pronounced and as such the assumption of jurisdiction on that basis is illegal.

8. The decision of 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 where the apex Court considered that the vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication cannot be interfered. In this case the dispute was with regard to the provisions of ED Act, 1953 in which the original power of rectification under s. 62 was there, but a new s. 59 was added subsequently w. e. f. 1st July, 1960 and in these circumstances, it was considered that because the power of reassessment were not existing earlier, therefore, in respect of assessment which have already been made before 1st July, 1960 the new section cannot be made applicable.

9. The decision of Karimtharuvi Tea Estate Ltd. Vs. State of Kerala, has also been

relied wherein it was considered by the apex Court that it is well settled that the IT Act as it stands amended on the first day of April of any financial year must apply to the assessment of that year. Any amendment in the Act which come 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 Privy Council in the case of AIR 1927 242 (Privy Council) has also been relied, wherein relying upon the decision of Colonial Sugar Refining Co. vs. 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 1st April, 1989 could be made applicable in the 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 AAC for enhancement of the assessment similar to that of CTO 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 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 is matter of procedure.

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

" Income escaping assessment. - If -

(a) the ITO has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under s. 139 for any assessment year to the ITO 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) not withstanding that there has been no omission or failure as mentioned in cl. (a) on the part of the assessee, the ITO 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 ss. 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 (hereinafter in ss. 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 IT Act, 1922 (11 of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

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

Sec. 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 ss. 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 (hereinafter in this section and in ss. 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-s. (3) of s. 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 under s. 139 or in response to a notice issued under sub-s. (1) of s. 142 or s. 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 an 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."

13. 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 ITO, 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 case 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 apex Court cannot be ignored. The judgment of the apex Court is binding under Art. 141 of the Constitution and any judgment which has been given by the apex Court could be considered as information as contemplated under s. 147(b) and even in accordance with the existing provisions, can be a ground for reason to believe to ITO that the income chargeable to tax has escaped assessment. The question as to whether the proceedings should have been taken under the provisions of s. 147 as were existing earlier or as they were brought into force w. e. f. 1st April, 1989 is merely of an academic interest because even if the proceedings were considered to be under s. 147(b) of the repealed section, then there was limitation and the ITO 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.

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

15. The word information would include the information as to the true and correct state of law so as to cover the information as to relevant judicial decisions. The decision of Honble Supreme Court will constitute information for the purpose of s. 147(b). The objection that at the time when the notice was issued, the decision of 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 under s. 149 had not lapsed at the time when the notice under s. 148 was issued and, therefore, the notice issued cannot be considered to be without jurisdiction.

16. In Lakshminarain Bhadani Vs. Commr. of Income Tax, Bihar and Orissa, it was considered that the position in reassessment is as if the ITO was proceeding to assess the income of that very year. In Govinddas vs. ITO (supra), the apex Court observed as under :

"These words merely refer to the machinery provided in the new Act for the assessment of 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 liabilty of ithe parties."

17. In CIT vs. Mahaliram Ramjidas (1940) 8 ITR 442 the Privy Council observed as under :

"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."

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

"In a proceeding under s. 34, however, the ITO 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 ITO by s. 34 to make a new assessment for the purpose of taking the whole of that assessment under the Act. Sec. 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, 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 under s. 34 of the IT Act, an ITO is not bound to determine afresh the correct taxable income of the assessee."

19. It is an established law that no one has vested right in procedural law and whenever a change is made with regard to procedure, it is retrospective in nature. In a matter of reassessment proceedings under the IT 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 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 ITO 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 correct state of law by way of 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 ITO can reassess for any reason, therefore, the amended section cannot be considered to be effecting any right of the assessee. The circular which has been issued by the CBDT, though is having no binding effect on the Court, but the view which has been taken cannot be considered to be contrary to law. The relevant extract of the circular dt. 31st Oct., 1989 are reproduced hereunder :

"7.1. Simplification of the provisions relating to assessment or reassessment of income escaping assessment (s. 147). - Under the old provisions of s. 147 of the IT Act, separate cls. (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 ITO 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 ITO to reopen an assessment, notwithstanding the fact that there had been no omission or failure, as mentioned in cl. (a), on the part of the assessee if the ITO, 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 para 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, if follows that in the majority of cases there would not be any application of mind by the Assessing Officer (AO) after the returns are filed, unless the case is picked up for scrutiny and a regular assessment order is passed under s. 143(3). The Amending Act, 1987, has, therefore, rationalised the provisions of s. 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 s. 147 which contains simplified provisions as follows :

(i) Separate provisions contained in cl. (a) and (b) of the old section have been merged into a single new section, which provides that if the AO 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 ITO 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 AO 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 under s. 143(3) or 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 s. 147. - A number of representations, were received against the omission of the words reason to believe from s. 147 and their substitution by the opinion of the AO. 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 s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s. 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 s. 147, however, remains the same.

7.3. Deemed cases of income escaping assessment (Expln. 1 to s. 147). - Under the old provisions of Expln. 1 to s. 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 Expln. 2 to new s. 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 Expln. 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 it 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 (s. 148). - The old provisions of s. 148 of the IT Act provided that a notice issued under this section shall tantamount to a notice under s. 139(2). It was a notice under this section, the ITO will record the reasons for doing so. The Amending Act, 1987, has substituted a new s. 148. The main features of the new section are :

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

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

7.5. Consequent upon further amendment of s. 147 by the Amending Act, 1989, whereby the requirement of recording reasons in writing has been omitted from that section (refer to para 7.2 ante), the Amending Act, 1989, has again amended s. 148 to re-insert sub-s. (2). Thus, the requirement of recording reasons in writing before issuing a notice under s. 148 continues to remain in the Act.

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

7.7. In view of the new procedure for assessment (refer to para 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 under s. 143(3) or 147], the Amending Act, 1987, has substituted a new sub-s. (1) in s. 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 s. 149(1) are explained in a chart given in para 7.11, post.

7.8 Time limits not to apply to give effect to an order of a Court in any proceedings (sub-s. 1 of s. 150). - Under the old provisions of sub-s. (1) of s. 150, a notice under s. 148 could be issued at any time, notwithstanding the time limits prescribed in s. 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 IT Act. However, there can be proceedings other than those under the IT Act, which can have a hearing 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-s. (1) to empower the AO to issue a notice under 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 under s. 148 (s. 151). -Under the old provisions of s. 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 under s. 148 was to be issued after the expiry of four years from the end of the assessment year, the sanction of the CIT 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 para 7.7 ante, the Amending Act, 1987, has substituted a new s. 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 under s. 143(3) or s. 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 AO of the rank below the rank of an Asstt. CIT. 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 AO 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 Dy. CIT. However, where the AO is the Dy. CIT himself, no sanction of the higher authority will be necessary for opening or reopening a non-scrutiny case.

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

Sl. No.

Upto four years

Beyond four years but upto 7 years

Beyond seven years but upto ten years

1.

2.

3.

4.

1. Scrutiny cases i.e. where an assessment order has been passed under s. 143(3) or 147

(i) Assessment be reopened only by an AO of the rank of an Asstt. CIT or Dy. CIT

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

(i) Same as (i) in coln. (2) (ii) Assessment can be reopened only if the income which has escaped assessment is Rs. 50,000 or year. (iii) Same as (iii) in column (3)

(i) Same as (i) in coln. (2). (ii) Assessment can be reopened only if the income, which has escaped assessment is Rs. 1 lakh or more for that

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

(i) Any AO can reopen an assessment himself

(ii) Assessment can be reopened whatever be the amount of income which has which has assessment year. can be reopened by AO below the rank of Dy. CIT only

(i) Same as (i) in coln. (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 (iii) in co, (3) with the approval of the Dy. CIT

(i) Same as (I) coln. (2)

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

(iii) as same

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

7.13 Amendments to have retrospective effect. - These amendments come into force w. e. f. 1st April, 1989. However, it may be clarified that since the provisions of ss. 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 w. e. f. 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 reopening or reopening an assessment for the asst. yr. 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 under s. 148 can now be issued for the asst. yrs. 1973-74 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 Boards approval.

(ii) Notice under s. 148 can now be issued for any of the asst. yrs. 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 under s. 143(3) or 147], if the escaped income is Rs. 1 lakh or more in each year and approval of the Chief CIT or CIT 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 Dy. CIT 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 asst. yr. 1981-82, with the approval of the Chief CIT or CIT, whatever be the amount of escaped income, while for the asst. yrs. 1979-80 and 1980-81, action could have been taken with the Boards 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, onward).

(iii) Notice under s. 148 can now be issued for any of the asst. yrs. 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 CIT or CIT 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 Dy. CIT 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 CIT or CIT, whatever be the amount of escaped income. These old provisions, however, have no application now from 1st April, 1989, onwards).

(iv) Notice under s. 148 can now be issued for any of the asst. yrs. 1985-86 to 1988-89, whatever be the amount of income which has escaped assessment, if the AO 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 cl. (a) of (b) of the old s. 147 were satisfied. These old provisions, however, have no application now from 1st April, 1989, onwards].

(v) Scrutiny assessment for any assessment year cannot be reopened now by an AO below the rank of an Asstt. CIT. Under the old provisions, there was no such restriction.

Time limit for completion of assessments and reassessments.

8.1. Time limit for completion of assessment under s. 143(3) or s. 144 [sub-s. (1) of s. 153] - Under the old provisions of sub-s. (1) of s. 153 of the IT Act, various time limits were laid down for completion of an assessment under s. 143(3) or under s. 144. The old sub-s. (1) consisted of four cls. (a) to (d) and cl. (a) consisted of three sub-cls. (i) to (iii). The general time limit for completion of an assessment as laid down in sub-cl. (iii) of cl. (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-s. (1) in s. 153. The provisions of all the clauses and sub-clauses of the old sub-s. (1), except the provisions of sub-cl. (iii) of cl. (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-s. (1) of s. 153, substituted by the Amending Act, 1987 is much shorter and provides that no order of assessment under s. 143 or s. 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 - Sec. 20 of the Finance Act, 1989, has further amended the said sub-s. (1) of s. 153 to provide for transitory provisions whereby an exception is made in the case of a return or a revised return filed under sub-s. (4) or (5) of s. 139 relating to the asst. yr. 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 under s. 147 [sub-s. (2) of s. 153] -Under the old provisions of sub-s. (2) of s. 153, different time limits were laid down for completion of assessment, reassessment or recomputation under s. 147 depending upon whether the case fell under cl. (a) or cl. (b) of the old s. 147. Normally, the time limit in a case falling in cl. (a), was four years from the end of the assessment year in which the notice under s. 148 was served and in a case falling in cl. (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 cls. (a) and (b) into a single new s. 147, the Amending Act, 1987, has substituted a new sub-s. (2) in s. 153, which provides a uniform time limit for completion of assessment, reassessment, etc., under s. 147. The limit is two years from the end of the financial year in which notice under s. 148 was served. Thus, the time allowed for completion of all assessments under 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 under s. 148 was served on or before 31st March, 1987. In such cases, order of assessment, reassessment or recomputation can be made upto 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 Expln. 1 to s. 153. - The Amending Act, 1987, has amended Expln. 1 to s. 153 by omitting cl. (iv) of the said Explanation, which provided extended the time limit in a case referred to the IAC under s. 144B. This is consequent to the deletion of s. 144B itself.

8.7. These amendments come into force w. e. f. 1st April, 1989." 20. 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 1st April, 1989, therefore, it cannot be said that any new right has been acquired by the ITO or the said amendment has effected any vested right of the assessee. The object of reassessment is to asses the correct income and is a matter of procedure. The provisions of s. 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 effect the vested right and as such I am of the opinion that the ITO was competent to invoke the provisions after 1st April, 1989 in accordance with the amended law, in respect of previous year which have not become time barred.

21. The ITO 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 under s. 143(1) and not under s. 143(3) of the IT Act and, therefore, the contention of the learned counsel for the petitioner that the proceedings of reassessment are based on change of opinion has no force.

22. The jurisdiction under Art. 226 of the Constitution while examining the validity of the notice issued under 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 dt. 14th June, 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 under s. 148 was issued, the judgment of apex Court was not pronounced, it will not make any difference because the apex Court only interpret 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 asst. yr. 1987-88 has been transferred to the capital account of the assessee in the asst. yr. 1988-89 and in accordance with the provisions of s. 155(4A) of the IT Act and the same has to be added because the reserve could have been utilised for specified purpose after expiry of 10 years. The basis which was taken by the ITO for assuming the jurisdiction under 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 assessment.

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

