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**(1978) 06 AP CK 0004**  
**In the Andhra Pradesh High Court**  
**Case No : R.C. No. 181 of 1976**

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

M/S. DECCAN AUTOMOBILES.

RESPONDENT

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**Date of Decision :** 07-06-1978

**Acts Referred:**

Income Tax Act, 1961 — Section 147(b)

**Citation :** (1979) 10 CTR 1

**Hon'ble Judges :** Madhava Rao, J

**Bench :** Division Bench

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## Judgement

Madhava Rao, J. - The Income Tax Appellate Tribunal at the instance of the Commissioner of Income Tax made a reference to this Court, which is as under :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the internal audit party's note did not constitute information so as to give the ITO jurisdiction u/s 147(b) of the I.T. Act, 1961 to reopen the assessment."

2. To answer the reference a few facts that are necessary, are noted below :

The respondent is an assessee-firm carrying on business in automobile spare parts. The firm initially consisted of six partners and was constituted under a deed dated 3-10-1966. Its accounting year ended with 30th September. On 13-5-1968 one of the partners, by name M. R. Patel, died. On 14-5-1968 two new partners were taken in the place of the deceased partner and from that date the firm the assessment year 1969-70, one for the period 1-10-1967 to 13-5-1968 and the other for the period from 14-5-1968 to 30-9-1968 declaring incomes of Rs. 76,071 and Rs. 47,126/- respectively. The Income Tax Officer made two separate assessments for the two period on the basis of the returns. At a later stage, on the basis of a note sent by the internal audit party of the Income Tax Department, the Income Tax Officer reopened the assessments u/s 147 of the Income Tax Act and made a single assessment for the assessment year 1969-70

purporting to be u/s 143(3) read with s. 147(a) clubbing the incomes of the two periods. He rejected the assessee's contention that with the death of Shri M. R. Patel, the firm constituted under the deed dated 3-10-1966 stood dissolved and the firm that came into existence under the deed dated 12-6-1968 was entirely a new entity. He observed that after the death of the aforesaid partner, the books of account were not closed, but they were continued right upto the account year 30-9-1968 and that the profits for the whole year were divided among the partners for the two periods on time-basis. Aggrieved by this assessment the assessee went in appeal. Before the Appellate Assistant Commissioner the assessee raised two contentions viz., (i) the assessment made u/s 147(3) read with s. 147(a) was bad in law as the conditions required u/s 147(a) were not fulfilled and (ii) even on merits, the Income Tax Officer was not correct in making a single assessment by clubbing incomes of both the periods since the earlier firm stood dissolved with the death of one of the partners, M. R. Patel, on 13-5-1968 and the latter firm succeeded to the earlier one in terms of s. 188 of the Income Tax Act and it was not a case of change in constitution as envisaged in s. 187. The Appellate Assistant Commissioner did not accept the contentions of the assessee. He held that the case may not fall under s. 147(a), but falls u/s 147(b) of the Income Tax Act. The audit note constituted information so as to give jurisdiction to the Income Tax Officer for reopening the assessment u/s 147(b). The Appellate Assistant Commissioner rejected the second contention also on merits with regard to the dissolution of the partnership-firm and maintained that it was a change in the constitution of the firm as envisaged in s. 187 of the Income Tax Act. Thus, both the contentions were rejected.

3. The assessee preferred an appeal to the Income Tax Appellate Tribunal, before which the following points were raised :

1. The assessment described as one made u/s 143(3) read with s. 147(a) is invalid and without jurisdiction in-as-much as there was no failure on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment.

2. Even assuming that the assessment was reopened u/s 147(b) the audit note could not constitute information so as to give the Income Tax Officer jurisdiction under that section and therefore the assessment is invalid.

3. The firm stood dissolved with the death of the partner, Shri M. R. Patel, on 13-5-1968 in terms of s. 42(c) of the Indian Partnership Act and the fact that the books of account were not closed on that date but of account were continued and closed on 30-9-1968 by the successor firm, does not make it a case of change in terms of s. 187(2). The Appellate Tribunal held that in the notice issued by the Income Tax Officer for reopening the assessment, it is merely stated that there was under-assessment and therefore he was reopening the assessment u/s 147 and that whether the assessment was being reopened u/s 147(a) or 147(b) was not indicated. On the other hand, the body of the assessment order indicated

that the assessment was being reopened on the basis of the internal audit note which constituted information. Therefore, it was clear that the assessment was reopened u/s 147(b) though it was indicated against item 7 of the assessment order form that the assessment was u/s 143(3) read with s. 147 (a) of the I.T. Act. Therefore, the Appellate Tribunal was of the view that it was only by mistake that the wrong sub-section was mentioned in the assessment order. The tenor of the assessment order clearly indicated that the assessment was reopened u/s 147(b) based on the information received by the ITO through a note of the internal audit party of the Department. The Appellate tribunal then proceeded to decide whether the audit note would constitute information so as to give jurisdiction to the ITO u/s 147(b) to reopen the assessment. The Appellate Tribunal relied upon a decision of the Gujarat High Court in *Kasturbhai Lalbhai v. R. K. Malhotra*. In that case, the reassessment was opened u/s 147(b) on the basis of an audit note pointing out certain deductions made in the original assessment were not admissible. The Gujarat High Court was of the view that the information or knowledge must be from an external source and obviously such information or knowledge must be from a person, body or authority competent and authorised to give it. It must have an element of authority behind it. It cannot be a mere information of some one who has no authority to pronounce upon the law. Keeping this view of the Gujarat High Court, the Appellate Tribunal held that, in the instant case, the source of information was the note of the internal audit party, which was not a person, body or authority competent and authorised to give interpretation of law and therefore it is not possible of information as contemplated u/s 147(b) of the I.T. Act on the basis of which he could validly reopen the assessment. It further held that in the present case the ITO did apply his mind to the material before him at the time of original assessment and recognised the implication of the material when he made the original assessment. He was completely seized of the facts and took the view that in view of the death of the partner there was a dissolution of the firm and therefore two separate assessments will have to be made in terms of s. 188 of the I.T. Act. Such being the case, the audit party's note cannot be considered as information so as to enable the ITO to reopen the assessment u/s 147(b) of the Income Tax Act. For the above reasons the Appellate Tribunal that the assessment made by the ITO u/s 147(b) was without jurisdiction and therefore invalid in law. Accordingly it cancelled the same and restored the original assessment orders. After cancelling the reassessment order the Tribunal did not think it necessary to go into the merits of the third contention raised on behalf of the assessee.

4. Shri Rama Rao, the learned Standing Counsel for the I.T. Department, has brought to our notice the Judgment of the Supreme Court reported in *R. K. Malhotra v. Kasturbhai Lalbhai* against the Judgment of the Gujarat High Court referred to by the I.T. Appellate Tribunal. The Supreme Court discussed the provisions of s. 147(b) of the I.T. Act. Kailasam, J. speaking for the Bench, took the view that two conditions are necessary for invoking s. 147(b) viz. (i) the

Officer should have received information after the original assessment and (ii) in consequence of such information he should have reason to believe that income has escaped assessment. It was further held that the information may be of facts or of law. The information of a fact may be from external source. The only question before the Supreme Court was whether the intimation which the ITO received from the Audit Department would constitute information within the meaning of s. 147(b) of the Act. The learned Judge relied upon several authorities and ultimately was of the view that it constitutes information within the meaning of s. 147(b) of the Act. While specifically dealing with the view of the Gujarat High Court the Supreme Court held thus :

"The Gujarat High Court was correct in its view that it would be information of law if it is stated by a person body or authority competent and authorised to pronounce upon the law and is invested with authority to do so. In applying this principle, the Court erred in holding that the Audit Department is not an authority competent and authorised to declare the correct state of law or to pronounce upon it. The Audit Department is the proper machinery to scrutinise the assessments of ITO and point out the errors, if any, in law."

In that view of the matter, the Supreme Court had not accepted the conclusions arrived at by the Gujarat High Court and held that the ITO, in the circumstances, was entitled to reopen the assessment u/s 147(b) of the I.T. Act and allowed the appeal.

5. The I.T. Appellate Tribunal in this case holding that the re-assessment made by the ITO u/s 147(b) was without jurisdiction, did not go into the merits of case. As the view expressed by the I.T. Appellate Tribunal cannot be accepted, the reference in view of the Supreme Courts Judgment is answered in favour of the Department. We remit the case for consideration to the I.T. Appellate Tribunal on merits. In the Circumstances, we make no order as to costs.