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**(2010) 10 P&H CK 0053**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : IT Appeal No. 41 of 2010**

Commissioner of Income Tax

APPELLANT

Vs

Smt. Indra Devi Jindal

RESPONDENT

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**Date of Decision :** 04-10-2010

**Acts Referred:**

**Citation :** (2010) 236 CTR 421

**Hon'ble Judges :** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the Revenue u/s 260A of the IT Act, 1961 (for short, "the Act") against the order dt. 30th April, 2009 of the Tribunal, Amritsar in ITA No. 617/Asr/2008 for the asst. yr. 2004-05 proposing to raise following substantial question of law :

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in annulling the assessment ignoring that in view of amended provisions of Sections 143(1) and 148-153 of the IT Act, 1961 brought in by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1987 according to which failure to take steps u/s 143(3) of the Act does not take away the jurisdiction of the AO to tax the income escaping assessment by initiating proceedings u/s 147 of the IT Act, 1961 ?

2. Return of the Assessee for the asst. yr. 2004-05 was processed u/s 143(1) of the Act but thereafter, finding that some income had escaped assessment, notice under Sections 148 of the Act was issued to the Assessee and assessment was completed u/s 143(3) of the Act, making addition on account of capital gains. Appeal of the Assessee against the order of assessment was dismissed but on further appeal, the Tribunal held that notice u/s 148 of the Act itself was not maintainable as the AO had not resorted to Section 143(2) of the Act and if that remedy was not taken, recourse to Section 147 of the Act was not permissible.

Reliance was placed on judgment of the Hon"ble Supreme Court in Trustees of H.E.H. The Nizam's Supplemental Family Trust v. CIT (2000) 159 CTR (SC) 114: (2000) 242 ITR 381 (SC), holding that where assessment had not been finalised and notice u/s 143(2) of the Act was pending, reassessment could not be resorted. The observations of the Tribunal, after noticing the judgment in Nizam's Supplemental Family Trust (supra), are as under :

Applying the above decision to the facts of the present case, the inescapable conclusion that would have to be reached is that while assessment proceedings remain inchoate, no "fresh evidence or material" could possibly be unearthed. If any such material or evidence is available, there would be no restrictions or constraints on its being taken into consideration by the AO for framing the then regular assessment. If the assessment is not framed before the expiry of the period of limitation for a particular assessment year, it would have to be assumed that since proceedings had not been opened u/s 143(2), the return had been accepted as correct. Thereafter, recourse could be taken to Section 147, provided fresh material had been received by the AO after the expiry of limitation fixed for framing the original assessment. In the present case, the AO had attempted to travel the path of Section 147 in the vain attempt to enlarge the time available for framing the assessment. This is not permissible in law. But what cannot be done directly that cannot be done indirectly.

3. We have heard learned Counsel for the parties and perused the record.

4. Learned Counsel for the Revenue submitted that the Tribunal erred in taking the view that without resorting to Section 143(2) of the Act, power u/s 147 of the Act cannot be invoked. Judgment in Nizam's Supplemental Family Trust (supra) was clearly distinguishable. Power u/s 147 of the Act is wide and independent power and there is no requirement that before exercise of such power, recourse to Section 143(2) of the Act must be taken. It is a different matter if Section 143(2) of the Act has been resorted to and assessment is pending. Parallel proceedings for reassessment cannot be initiated, as held in Nizam's Supplemental Family Trust (supra). Where no proceedings are initiated u/s 143(2) of the Act and conditions of Section 147 of the Act are fulfilled, there is no legal bar to proceed under the said provision of Section 147 of the Act. Reliance has been placed on judgment of the Hon"ble Supreme Court in Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., , wherein it was held :

17. The scope and effect of Section 147 as substituted w.e.f. 1st April, 1989, as also Sections 148-152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of Section 147, separate Clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction u/s 147(a) two conditions were required to be satisfied: firstly the AO must have reason to believe that income, profits or gains chargeable to Income Tax have escaped assessment, and secondly he must also

have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the Assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice u/s 148 r/w Section 147(a). But under the substituted Section 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to Section 147. The case at hand is covered by the main provision and not the proviso.

18. So long as the ingredients of Section 147 are fulfilled, the AO is free to initiate proceeding u/s 147 and failure to take steps u/s 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation u/s 143(1) had been issued.

5. Learned Counsel for the Assessee on the other hand relied upon judgment of Madras High Court in CIT v. TCP Ltd. (2010) 44 DTR (Mad) 31, wherein the view taken by the Madras High Court was identical to the view taken by the Tribunal. Reliance has also been placed on judgments of Delhi High Court in CIT v. Ved & Co. (2007) 209 CTR (Del) 455: (2008) 302 ITR 328 (Del) and KLM Royal Dutch Airlines Vs. Assistant Director of Income Tax, and judgment of the Hon'ble Supreme Court in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, .

6. We are of the view that the substantial question of law proposed by the Revenue has to be answered in its favour. The matter is covered in favour of the Revenue not only by the plain provisions of Section 147 of the Act but also by judgment of the Hon'ble Supreme Court in Rajesh Jhaveri Stock Brokers (P) Ltd. (supra). In view of said judgment of the Hon'ble Supreme Court, the view taken by the Madras High Court in TCP Ltd. (supra) cannot be held to be a correct view. The judgments of Delhi High Court in Ved & Co. (supra) and KLM Royal Dutch Airlines (supra) are distinguishable, as therein proceedings for assessment were pending. As regards judgment of the Hon'ble Supreme Court in Kelvinator of India Ltd. (supra), the issue therein was only whether for a mere change of opinion, power of reassessment could be exercised, which is not the question herein. The said judgment is, thus, distinguishable.

7. Accordingly, we allow this appeal, set aside the impugned order of the Tribunal and remit the matter to the Tribunal for fresh decision on merits in accordance with law.

8. Parties may appear before the Tribunal on 20th Dec, 2010 for further proceedings.