(2002) 07 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1790 of 2001 24 July 2002 A.Y. 1997-98

Lakshmi Cement APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 147, 15, 26, 29, 30

Citation : (2002) 177 CTR 595

Hon'ble Judges : Bhagwati Prasad, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Petitioner and Sangeet Lodha,s, for the appearing parties;

Judgement

Bhagwati Prasad, J.

The petitioner is a company which is engaged in the business of manufacturing and selling portland cement. The company is a registered dealer under Rajasthan Sales Tax Act, 1994 (hereinafter referred to as the RST Act) and Central Sales Tax Act, 1956 (hereinafter referred to as CST Act).

2. It is claimed by the petitioner that the Government of Rajasthan issued Notification No. F4 (72) FDGR.IV/81-18, dated 6-5-1986. By this notification, partial exemption was granted from the tax payable in respect of inter-State sales in the manner and subject to the conditions mentioned in the notification.

The petitioner claims that this partial exemption from tax payable on inter-State sales is given to reduce branch/stock transfers on which no tax is leviable under CST Act.

The petitioner claims that the present writ petition is not related to quantum of exemption available under the notification. The dispute circles around the sale of levy cement. The case of the petitioner is that in computing the tax, levy cement cannot be taken into account. The figures of levy cement has to be excluded from levy of tax.

The petitioner further claims that in terms of clause (1) of the aforesaid notification, benefit is allowable to the petitioner on the basis of its percentages of branch transfers. The base year for the purpose of the notification is claimed to be from 1-4-1984 to 31-3-1985.

3. The petitioner moved an application before the regular assessing authority, i.e., CTO, Special Circle, Pali. It was requested by the petitioner in the application that the percentages of inter-State sales and branch transfers of non-levy cement be determined for the base year 1984-85. This was required to follow the benefit under the notification dated 6-5-1986. The CTO, Special Circle, Pali, after verifying and scrutinising the records of the, petitioner determined the following percentages of intra-State sales, branch transfers and intra-State sales of non-levy cement of the base year 1984-85 in terms of the notification.

Excluding levy sales

Quantity in MT

Percentages

Branch transfers

2,26,839.800

85.28%

Inter-State sales

6,667.400

2.51%

Intra-State sales

3,24,88.550

12.21%

2,65,995.750

100.00%

Regular CST assessments for the assessment year 1989-90 (1-4-1989 to 31-3-1990) and 1990-91 (1-4-1990 to 31-3-1991) were made by the regular assessing authority. An application for rectification was moved by the petitioner in view of the order dated 3-2-1995, by virtue of which the branch transfers, inter-State and intra-State sales were delineated by the CTO, Pali. The rectification applications filed by the petitioner were rejected by the assessing authority vide order dated 21-9-1996, on the ground that claim for partial exemption was not made in time. The order of rejection was challenged by the petitioner. They filed two appeals before the Deputy Commissioner (Appeals). These appeals were allowed by the appellate authority vide common order dated

26-12-1998, and the matter was remanded back to the assessing authority to allow the benefit of partial exemption in respect of inter-State sales of non-levy cement.

It was observed by the appellate authority that the notification dated 6-5-1986, did not provide for any time-limit for claiming exemption and, therefore, compared to base year 1984-85, the petitioners inter-State sales have increased in both the years and a direction was made to refund the amount.

4. The petitioner has further claimed that the department was under obligation to refund the amount and pay tax. The petitioner has claimed that the assessment for the year 1991-92 was completed on 10-1-1995 and appeal was filed before the Deputy Commissioner (Appeals). In these proceedings, the petitioner had claimed the benefit of partial exemption under the above-mentioned notification. This appeal was, however, rejected. A second appeal in the matter is pending before the Rajasthan Tax Board, Ajmer.

5. In relation to the assessment years 1992-93 and 1993-94, the petitioner filed appeals against the assessment orders. In these appeals, the appellate authority held in favour of the petitioner and remanded the matter back to the assessing authority and a direction was given by the appellate authority that amount of partial exemption should be refunded with interest.

6. It has been further claimed by the petitioner that in partial compliance of the order of the appellate-authority, the assessing authority passed order dated 26-3-1999, for the assessment years 1992-93 and 1993-94 allowing partial exemption in respect of inter-State sales of levy cement on account of increase as against such percentages of the base year 1984-85. The assessing authority also directed refund of the amount of partial exemption. The prayer of interest was, however, not acceded to. The assessing authority did not allow the interest while ordering refund for the years 1989-90, 1990-91, 1992-93 and 1993-94. Against such orders of not allowing interest, appeals are pending before the Deputy Commissioner (Appeals), Jodhpur. Rectification-applications are also pending before the assessing authority claiming interest on the refund of amount for all these years.

The assessing authority for the assessment year 1994-95 allowed partial exemption in terms of notification. The petitioner has not claimed partial exemption in relation to the assessment years 1995-96 and 1996-97. For the year 1997-98, partial exemption was allowed.

7. The petitioner in the writ petition alleged that for year 1998-99, assessing authority namely CTO, Pali, did not allow partial exemption vide his assessment order dated 15-1-2001. It had observed that partial exemption was not admissible. Such order of the assessing authority is against the purport, terms and spirit of the notification dated 6-5-1986. The order is also against the orders of the first appellate authority which are binding on the assessing authority. The appeal against such assessment order for the year 1998-99 is pending before the

Deputy Commissioner (Appeals).

It is claimed by the petitioner that the petitioner has been granted partial exemption under notification dated 6-5-1986, during the assessment years 1990-91, 1991-92, 1992-93, 1994-95 and 1997-98 on the basis of the notification referred to hereinabove. The exemption for the years 1995-96 and 1996-97 was rejected and appeals are pending against those orders. The petitioner had not claimed partial exemption in relation to years 1995-96 and 1996-97.

The claim for the partial exemption for the years 1997-98 and 1998-99 is pending before the Rajasthan Tax Board and Deputy Commissioner (Appeals). It has also been claimed by the petitioner that partial exemption has been allowed in relation to 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 by the first appellate authority. The assessing authority has also granted exemption for the years 1994-95 and 1997-98 on the basis of notification.

8. The petitioner alleges that a survey was conducted by Anti Evasion, Circle I, Jaipur, respondent No. 2, at the business premises of the petitioner on 16-2-2001, and purportedly examined the partial exemption already granted to the petitioner for the year 1997-98. The petitioners representative fully apprised the officers conducting the survey of the entire position and complete history and convinced them of the purport of the notification dated 6-5-1986. However, the survey officers were not fully convinced and respondent No. 2 has given reassessment order dated 19-4-2001, to the petitioner inter alia stating that partial exemption has been wrongly granted in relation to the assessment year 1997-98. By the said notice, the petitioner has been called upon to show cause as to why the said exemption be not withdrawn and penalty u/s 65 of RST Act be not imposed. The said notice is under challenge in the present writ petition.

9. The claim of the petitioner is that respondent department has allowed partial exemption to the petitioner and has held that the benefit of the notification is available to the petitioner. Once denied the benefits permitted to avail, the same cannot be now interpreted differently. The interpretation sought to be given by the respondent No. 2 is patently wrong and also against the accepted position. The reassessment notice is illegal and void.

The petitioner has claimed that it is well settled that respondent No. 2 cannot re-invoke jurisdiction u/s 30 of the RST Act on mere change of opinion on same facts. It has been claimed that it cannot be disputed that in the present case, the matter of partial exemption directly received attention of the assessing authority on earlier occasion. The assessing officer cannot be vested with the power to reopen the closed assessment.

It has also been claimed that the Anti Evasion Wing had no authority to initiate proceedings. The Anti Evasion Wing under sub-rule (5) of rule 3 of Rajasthan Sales Tax Rules (hereinafter referred to as RST Rules) is not vested with such jurisdiction. The only contingency where Anti Evasion Wing can issue notice is under notification dated 23-10-1967, where a dealer is found to have evaded or concealed liability of tax. Such notice can be issued for reassessment, penalty and interest which is not the case in case of the petitioner. Therefore, notice is without jurisdiction. No case for concealment of liability of tax has been detected against the petitioner by the respondent No. 2.

10. The respondent department was issued notice and they have joined the issue with the petitioner. The respondent department has claimed that the writ petition is filed only against notice and the petitioner will have full opportunity of hearing and the questions raised by the petitioner will be decided in accordance with law. The questions sought to be raised by the petitioner should have been raised before the assessing authority. The assessing authority after affording opportunity of hearing would determine the case and, therefore, invoking of extraordinary jurisdiction of this court is not called. The respondents have Stated that the petitioner has raised the following questions :

"The respondent No. 2 an officer of the Anti Evasion Wing of the department cannot exercise jurisdiction over the petitioner inasmuch as no case of evasion of tax or concealment of liability to tax has been detected against the petitioner. Therefore, the impugned notice given by the respondent No. 2 is on its face illegal and non est.

The condition precedent for invoking reassessment jurisdiction u/s 30 of the RST Act are completely non-existent. Therefore, the respondent No. 2 has got jurisdiction to issue the impugned notice.

At the time of original assessment the benefit of exemption was granted by taking into account the already determined and accepted base year percentages of non-levy cement in terms of the notification dated 6-5-1986. Therefore, there is absolutely no scope for the respondent No. 2 for taking any different view and change the same now contrary to the said notification.

Since levy cement has been taken out of the purview of the said notification in terms of condition No. 4 of the said notification, therefore, the same cannot be taken into account either for determining the percentages of the base year or for allowing benefit of the tax payable in respect of inter-State sale in the year for which the benefit is being claimed.

(e) There is no sale of levy cement in the year in question inasmuch as levy cement itself was discontinued in the year 1997-98. Therefore, the question of such exclusion has merely become academic."

11. The petitioner has, according to the respondents, not correctly appreciated the fact and law and have reply to the points in the following terms :

"(a) That during the survey of the business premises of the petitioner made by the respondent authority, it was detected that during the assessment year 1984-85, the petitioner effected sale of cement as under : branch transfer 2,26,839.800 MT 47.28 per cent inter-State sale 1,72,874.400 MT 36.03 per cent sale within State 80,071.200 MT 16.69 per cent.

That during the assessment in question, i.e., 1997-98 the petitioner unit effected the sale of cement as under :

Branch transfer

7,98,262.070 MT

61.08 %

Inter-State sale

2,22,617.600 MT

17.02 %

Sale Within State

2,86,499.770 MT

21.92 %

Thus, it is manifestly clear that during the assessment year 1997-98 there is no increase in the percentage of quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter-State trade or commerce and despatched to head office, branch office, depot agent or outside the State for sale outside. The State against such percentage of sale during accounting year 1984-85. Therefore, the petitioner unit was not entitled to avail the benefit of partial exemption in terms of notification dated 6-5-1986. However, with an intention to evade the tax, the petitioner unit while computing percentage of sale during the base year 1984-85 excluded the sale of levy cement which was not permissible in terms of the notification. In this view of the matter, the respondent No. 2 has rightly invoked the jurisdiction for the reassessment of the tax and levy of penalty and interest under sections 30, 65 and 58 of the RST Act, 1994.

A perusal of the notification dated 1-4-1997, goes to show that the Assistant Commissioner/CTO, Anti Evasion can exercise the jurisdiction over the dealer against whom the cases of tax evasion or concealment are detected and it includes even the non-payment of tax at the rate notified. The position has been further clarified by the learned Commissioner, Commercial Taxes, Rajasthan, Jaipur, by circular dated 6-5-1998. A correct copy whereof is annexed herewith and marked as Annexure R/1. It is abundantly clear that on detection of case against any dealer regarding evasion/concealment of the tax which includes non-payment of tax at the notified rate, the officers of the Anti Evasion Wing have jurisdiction to pass assessment/ reassessment order of the dealer for the relevant assessment year. Thus, the notice issued by the respondent No. 2 is absolutely in accordance with law and simply does not suffer from any infirmity or illegality.

That as detailed supra the case of the evasion/concealment of tax on the part of respondent dealer was detected during the survey conducted by the assessing authority on 16-2-2001. Admittedly, while claiming and availing the benefit in terms of the notification dated 6-5-1986, the petitioner excluded sale of levy cement while computing the percentage of sale during the base year 1984-85. As a matter of fact, while computing the percentage of sale within the State, and in the course of inter-State trade and commerce or branch transfer, the petitioner was not entitled to exclude the sale of levy cement during the relevant base year, if the sale of levy cement as aforesaid during the base year 1984-85 is taken into account, then there is no increase in the percentage of quantum of goods sold in the course of inter-State trade or commerce out of total quantum of goods sold within the State in the course of inter-State trade or branch transfer during the accounting year in question, i.e., 1997-98 as against such percentage during the accounting year 1984-85. Therefore, by no stretch of imagination, it can be said that the impugned notice has been issued only on the basis of change of opinion. At the cost of repetition it is submitted that the notice has been issued on the basis of detection of evasion/concealment of tax during the survey conducted on 16-2-2001. A fortiori as per the provisions of section 30 of the RST Act, if for any reason the levy of tax or any fee or sum payable under the tax escaped wholly or in part or the tax has been wholly or in part unassessed or underassessed in any way or under any circumstances, then the same shall be deemed to be escaped assessment, then the assessing authority has jurisdiction to complete such assessment on the basis of the material on record after making such enquiry as it may consider necessary. Therefore, it simply cannot be said that the conditions precedent for invoking the jurisdiction u/s 30 of the RST Act, 1994, are not satisfied.

It is also absolutely incorrect that the words for any reason used in the said section does not authorise the reopening of the assessment on change of opinion. As a matter of fact, the words if for any reason used in section are of wide import and the powers of the assessing authority under the section are not circumscribed by any condition. On the basis of the material on record, the assessing authority prima facie arrives at the conclusion that there has been escapement of assessment or underassessment, then he has every jurisdiction to issue the notice for reassessment in conformity with the provisions of section 30 of the RST Act. Thus, the impugned notice issued by the respondent authority is absolutely in accordance with law and cannot be said to be without jurisdiction for any reason whatsoever.

That in the matter of assessment of the sales-tax under the provisions of RST Act, each years assessment is complete and the decision arrived at in the previous year by the assessing authority cannot be regarded as binding in the assessment in the subsequent year. Each assessment preceding being a separate distinct proceeding, the determination in the earlier preceding year cannot operate as bar by invoking the principle of res judicata. Moreover, if the assessing authority has committed any error during any particular assessment year, then the assessing authority simply cannot be compelled to follow the same and perpetuate illegality. He has every authority to assess/reassess the tax in conformity with the provisions of the RST Act 1994 independently unaffected by any contrary finding, if any, recorded by the assessing authority for the previous years. This aspect of the matter stands settled by various decisions of the Honble High Courts and Honble Supreme Court which shall be kept ready for the perusal of the Honble court.

That a bare perusal of the notification dated 6-5-1986, goes to show that the reduction in tax payable has been allowed to a dealer only after and in respect of increase which is effected in percentage of quantum of the goods sold in the course of inter-State trade or commerce out of total quantum of goods sold within the State in the course of inter-State trade or commerce and despatched to head office, branch office, depot or agent outside the State for sale outside the State during any accounting year as against such percentage during the accounting year 1984-85.

Apparently the words total quantum of goods sold used in condition No. 1 of the notification refer to total sales of all the three types of transactions, i.e., sale within the State, inter-State sale during the course of inter-State trade and commerce and branch transfer of the goods manufactured in the State. There is no express or implied exclusion of any sale effected during the period. The words total quantum of goods are preceded by the words out of shows that the increase in the inter-State trade or commerce during the relevant assessment year for which the exemption is claimed, has to be computed on the basis of the quantum of inter-State sale during the relevant base year 1984-85. Therefore, as per the notification so as to determine the entitlement of any dealer to avail the partial exemption in terms of the notification, the following procedure is required to be adopted :

1. In the first instance the percentage of the total sales effected by the dealer during the assessment year 1984-85;

admissible shall be allowed to the dealer.

However, the increase effected in the percentage as referred above in the course of inter-State trade and commerce shall be limited to the extent of decrease in percentage in respect of despatch of the goods to the head office, branch office, depot or agent outside the State for sale outside the State during the relevant accounting year as against such percentage during the accounting year 1984-85.

Thus, while assessing the entitlement of the petitioner for partial exemption in terms of the notification dated 6-5-1986, the sale of the levy cement simply cannot be excluded and it has to be taken into account while determining the percentage of the base year for allowing the benefit of tax payable in respect of inter-State sales in the year for which the benefit is being claimed.

(e) It is absolutely misconceived to contend that since no benefit of partial exemption are extended on the levy cement, therefore, while determining the percentage of the base year, the sale of levy cement cannot be taken into account. It is settled law that the exemption being in the nature of exception has to be construed strictly. While interpreting a notification granting exemption, the assessing authority has to construe words strictly and cannot extend any benefit beyond the express language used in the notification. It goes without saying that for availing the benefit of exemption the dealer has to fully and strictly satisfy the condition precedent under the exemption notification. In construction of the exemption notification, there is no scope for the possible intendment, assumption or presumption. Therefore, simply because sale of levy cement has been excluded from availing the benefit of partial exemption in terms of the notification, the petitioner cannot claim that while computing the percentage of sales during the base year 1984-85 in terms of condition No. 1 the sale of levy cement has to be excluded. As a matter of fact, while making such claim the petitioner wants to read something in the notification which is not there. Thus, the entire edifice of the writ petition raised by the petitioner is absolutely without foundation and the writ petition deserves to be dismissed for this reason alone."

Thus, have prayed that the writ petition be dismissed.

12. The petitioner has submitted reply to the preliminary objections of the respondents and have reiterated their stand taken in the writ petition.

Learned counsel for the petitioner has submitted oral as well as written submissions regarding objections to the notice issued to the petitioner. The argument of the learned counsel for the petitioner is that the notice has been issued by the respondent No. 2. He is an officer of Anti Evasion Wing of the Commercial Taxation department. This department has no jurisdiction to issue notice to the petitioner. Any notice can only be issued by the Anti Evasion Wing when there is evasion or concealment. In absence of these two factors, no notice could be issued.

13. Learned counsel for the petitioner has argued that the existence of mens rea is a must before the Anti Evasion Wing can invoke jurisdiction. In this case, there was no mens rea involved. According to the learned counsel for the petitioner there does not involve any dispute about rate of tax connected or unconnected with the evasion or concealment. In absence of such evasion, the notice would be patently without jurisdiction. The benefit granted to the petitioner in the shape of partial exemption was after due consideration and due application of mind in terms of notification dated 6-5-1986, (Annexure-1). Such benefit was granted to the petitioner consistently. Therefore, also the impugned notice is ex facie and patently without jurisdiction and hence, be quashed.

14. Learned counsel for the petitioner has relied on a decision of Taxation Tribunal, wherein it was held that in such cases, the Anti Evasion Wing has no jurisdiction. A Division Bench decision of this court has upheld the decision of the Tribunal holding that under article 227 of the Constitution of India, any challenge

to such decision would not merit any consideration. The High Court had not expressed itself in anyway on questions involved.

15. It has further been argued on behalf of the learned counsel for the petitioner that Annexure-R/1 cannot be of any assistance to the department because this circular speaks about the disputes which relate to the rate of tax and in absence of such a contingency, this circular cannot be enforced. Further, the circulars cannot override prejudicial decisions. Thus, according to the learned counsel for the petitioner, the notice should be struck down on the question of jurisdiction.

16. The next point of the learned counsel for the petitioner is that the conditions precedent to invoking reassessment power do not exist as provided u/s 30 of the RST Act, which corresponds to section 12 of the RST Act, 1954, and, therefore, no notice could be issued to the petitioner. All the three conditions a, b and c according to the learned counsel for the petitioner are non-existing because according to the learned counsel, sub-section (a) of section 30(1) would not be applicable because that involves the fact of registration which is not germane to the controversy. The case of the petitioner will be then governed by either of sub-sections (b) and (c) of section 30(1). In the present case, no case of escapement of levy of tax is existent. According to the learned counsel for the petitioner, there is no case of overassessment or underassessment of tax. The entire taxable turnover of inter-State sale has been assessed and taxed in the original assessment. In the notice, there are no allegations that the case is covered by clause (b) or clause (c). The department, therefore, could not have issued the notice. The assessment order dated 20-7-1999, which decided the assessment for the year 1997-98 was after correct and true disclosure of facts. The assessment was made after due application of mind. The order reveals that the assessing authority determined the levy of tax in respect of the entire inter-State sales. The order does not in anyway dispute the position. There is no allegation in the impugned notice that the levy of tax has escaped assessment for any reason wholly or in part or that the tax has been unassessed or underassessed under any circumstances in the original assessment.

In the original assessment, the case of partial exemption under notification dated 6-8-1986, has been accepted by the department. Such assessment was on the basis of excluding levy cement sales base year 1984-85. Now, the department intends to obviate the exemption benefits on the basis of changed opinion. The terms being that the base year percentages in terms of notification should be inclusive of levy cement, according to the learned counsel for the petitioner, such case cannot be said to be covered by any one of the clauses of sub-section (1) of section 30. The notice is thus without jurisdiction.

The case of the petitioner is that it is only a case of change of opinion that such notice has been issued. Mere change of opinion cannot form the ground for issue of notice. Since the change of opinion cannot be made the base of any reopening, the respondent No. 2 cannot be permitted to usurp the reassessment jurisdiction u/s 30 of RST Act.

17. The petitioners have placed reliance on a Division Bench decision in the case of Blackstone Rubber Industries (P) Ltd. v. State of Rajasthan & Ors. RLW 2001 (3) Raj 1486 and has stressed that this court has specifically considered the question whether mere change of opinion can be the ground of reopening assessment and has answered that such cannot be the contingency. Learned counsel has his own impression of the judgment relied upon by him in the following terms :

"However wider or narrower view of the expression used in such provisions are taken, in our opinion, there is no warrant for contention that mere change of opinion on the same facts, without anything more vests the assessing authority with power to reopen a closed assessment as and when he changes his mind. When we say mere change of opinion, we say on the premise that the matter has directly received the attention of the assessing officer on earlier occasion and after due application of mind to that issue, he has reached his conclusion on earlier occasion than if on the very officer or his successor in office, by simply taking different view of the very same material wants to redecide the very same issue, that case is really a case of change of opinion and that case is not envisaged to be governed by the provisions of section 12 even under the expression "for any reason". In that sense, the courts have held that reason cannot exist in vacuum and reason must have relation to some existing material which can have objection rational link with the question of escapement of assessment or earlier assessment being subjected to too lower a rate."

The aforesaid Division Bench after laying down the ratio in para Nos. 11 and 31 of the report as mentioned above considered the question as to whether in Blackstones case (supra) the assessing authority acted on mere change of opinion. On consideration of facts of that case, the Bench came to the conclusion in para 38 of the report that it cannot be said that the assessing officer has invoked jurisdiction on mere change of opinion on the same material on the issue heard and decided earlier.

18. The aforesaid binding judgment of Division Bench of this Honble court more particularly the findings, conclusions and the ratio decidendi as recorded in para Nos. 11 and 31 of the report fully applies to the present case. As already Stated above and as is evident from the record, the impugned reassessment notice in this case has been given on mere change of opinion on the same facts. The benefit of partial exemption under notification dated 6-5-1986, was granted after due, conscious and complete application of mind to the issue involved and now the successor officer namely, the respondent No. 2 by simply taking different view on very same issue on the very same material wants to redecide the same. It is nothing but a case of mere change of opinion which does not empower exercise of reassessment power. The review of original assessment order on the very same issue and material for drawing different conclusion because the successive officer is holding a different, view is impermissible as already laid down authoritatively by the Division Bench. Consequently, even on the

assumption that the present case might fall either under clause (b) or clause (c) (though not admitted), yet it is not permissible to invoke section 30 as the case would come under these clauses only when it does not fall within the parameters laid down by the Division Bench more particularly para Nos. 11 and 31 of the report. The expression "for any reason" and/or the expression "in any way or under any circumstances" which cannot go beyond or be wider than "for any reason" employed in sub-clause (b) or (c) cannot cloth the officer with the jurisdiction to invoke reassessment power on mere change of opinion as already discussed above.

Honble Supreme Court has in Sales Tax Officer, Ganjam Vs. Uttareswari Rice Mills, held that the expression "for any reason" and the expression "reason to believe" are synonyms and interchangeable. Consequently, law relating to reassessment comprised in section 147 of the Income Tax Act, also fully applies to reassessment provision containing the expression "for any reason". In several cases under Income Tax law, it has been categorically held that a case of mere change of opinion does not provide jurisdiction to the assessing officer to initiate reassessment proceedings u/s 34/147 of the Income Tax Act.

(i) Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,

(ii) Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das,

Wrong conclusion drawn earlier cannot be a ground for reopening assessment.

There does not exist any ground for reopening (because the assessing authority previously held another opinion as to the legal effect of certain primary facts and he later on took a different view.

(iii) Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, Where all primary facts fully and truly disclosed at the stage of original assessment proceedings, the assessing authority is not entitled to change of opinion to commence reassessment proceedings.

(iv) Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad, Held that having second thought on the same material does not warrant initiation of reassessment proceedings.

(v) Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , it has been held that an error discovered on reconsideration of the same material does not empower reassessment. This view also taken earlier in Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, , Bankipur Club Ltd., Patna Vs. The Commissioner of Income Tax , Bihar and Orissa, Patna, and Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others,

(vi) Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, It was held that reassessment not permitted when after due consideration turnover found not eligible to tax, merely because the assessing authority subsequently comes to take a different view.

(vii) The petitioner also places reliance on the Division Bench judgment of the Honble Delhi High Court in Jindal Photo Films Ltd. Vs. The Deputy Commissioner of Income Tax, which has been approved by Full Bench of Honble Delhi High Court in CIT v. Kelvinator of India Ltd. (2002) 174 CTR (Delhi) 617 . The judgment of Gujarat High Court in Garden Silk Mills (P) Ltd. Vs. Deputy Commissioner of Income Tax, has also been referred to in Blackstones case (supra) and the judgment of Allahabad High Court in Foramer Vs. Commissioner of Income Tax and Another,

(viii) The Full Bench of Honble Delhi High Court in (2002) 174 CTR (Delhi) 617 (supra) also held that a statute conferring an arbitrary power may be held to be ultravires article 14 of the Constitution of India and where two interpretations are possible, the interpretation which upholds constitutionality should be favoured. The court further observed that in the event it is held that by reason of section 147, if Income Tax Officer exercises its jurisdiction for initiating a proceeding for reassessment only upon mere change of opinion the same may be held to be unconstitutional.

Therefore, section 147 does not postulate conferment of power upon the assessing authority to initiate reassessment proceedings on mere change of opinion.

(ix) In the context of "for any reason" also Honble Kerala High Court has in Deputy Commissioner of Agricultural Income Tax Vs. T.K.S. Dinakaran, held that reassessment power cannot be exercised merely on change of opinion on the materials already on record. The conclusion drawn earlier cannot be reopened by forming a different opinion. The meaning of the word "for any reason" cannot be enlarged so as to take in change of opinion or error of judgment.

(x) In Ladu Ram Ramniwas v. State of M.P. 102 STC 240 it was held that the expression "for any reason" has restrictive meaning and does not empower assessing authority to revise or review or reconsider previous assessment.

(xi) In Bath Plaza v. STO 121 STC 90, it has been held that no reopening is possible on extraneous reason as envisaged under reassessment provision even though the word used in the provision is "if for any reason".

(n) It is also equally well settled from the judgments of the Apex Court that if reassessment notice has been issued without jurisdictional foundation such notice and proceedings in pursuance thereof will be without jurisdiction and liable to be struck down in writ jurisdiction. The absence of jurisdictional facts and the non-existence of conditions precedent renders the reassessment proceedings void and non est. Reference in this connection is made to the following judgments :

(i) Calcutta Discount Co. v. ITO (supra)

(ii) Indian & Eastern Newspaper Society v. CIT (supra)

19. Next point agitated by the learned counsel for the petitioner is regarding the notification dated 6-5-1986, which is the basis for claiming partial exemption. The interpretation favourable to the petitioner has been consistently followed by the department in the previous assessment orders. The first appellate authority has also accepted the similar views and are fully in consonance with the true spirit and legislative intent and scope of partial exemption benefit. The question of interpretation of the notification is a pure question of law which can certainly be determined authoritatively by this court in writ jurisdiction. The interpretation sought to be given by the department in issuing notice is patently illegal and against the very interpretation which the department has taken. The Commissioner vide his order dated 7-3-1998, has approved the proposal in terms of notification. The highest authority in the Commercial Taxation department has thus accepted the exclusion of levy cement sales percentages for the base year 1984-85. This view has to prevail in the department.

20. The next point urged by the learned counsel for the petitioner is that in view of the law laid down by this court in Blackstone Rubber Industries (supra), no other view is possible to be taken by this court.

21. Learned counsel for the petitioner has further urged that, though in general, principles of res judicata are not applicable to taxation proceedings, however, if the same notification has been pressed into service, then keeping in view the settled judicial norms that there should be finality in all litigations. The same question should not be agitated time and again. In this connection, the learned counsel for the petitioner has relied upon the following decisions :

(1) Sardar Kehar Singh Vs. Commissioner of Income Tax and Others,

(2) Commissioner of Income Tax Vs. Bhilai Engineering Corporation Pvt. Ltd.,

(3) Taraben Ramanbhai Patel and Another, Harshadkumar Natvarlal Dalal and Others, Arvindbhai Chhotabhai Patel and Another Vs. Income Tax Office and Others,

(4) Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat,

(5) (1992) 113 ITR 321 (sic);

(6) COMMISSIONER OF Income Tax Vs. P. KRISHNA WARRIER. (AND VICE VERSA)., ; and

(7) M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax,

22. Further, the learned counsel for the petitioner has stressed that the petitioner has come against notice. The department has said that he can go before the department and argue the case. But if the notice is ex facie void, then he need not go to the department. This has been held by this court in the following cases :

(1) K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.,

(2) State of U.P. v. Mohd. Nooh AIR 1958 SC 86;

(3) A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another,

(4) Calcutta Discount Co. v. ITO (supra); and

(5) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,

In view of the aforesaid, it has been argued by the learned counsel for the petitioner that the case of the petitioner be accepted and the notice issued to the petitioner be quashed.

23. Replying to the stand taken by the learned counsel for the petitioner, the learned counsel for the respondent department has urged that the sheet anchor of the argument of the learned counsel for the petitioner is the reasoning given by a Division Bench of this court in the case of Blackstone Rubber Industries (supra). According to the learned counsel for the respondent department, case of Blackstone Rubber (supra) does not lay down the correct proposition of law. For the reasons which have been expressed in Blackstone Rubber Industries (supra) that the Division Bench decisions of this court in Centuary Ecka Vs. The State of Rajasthan, Akbarali Amanatazi v. Asstt. CTO 1976 RLW 648 is per incuriam, for the similar reason this decision also is required to be declared to be per incuriam. It cannot form the basis of any justifiable argument.

24. According to the learned counsel for the respondent department, the law laid down in Blackstone Rubber Industries (supra) has been laid down on the basis of certain decisions. Firstly, the court decisions are not to be read as statutes itself. It has been held by Honble Supreme Court in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, as under :

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclids theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of the statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (at page 761) Lord Mac Dermot observed : (All ER.14C-D)

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as thought they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished

Judge."

Learned judges have quoted a portion of the Supreme Court decision rendered in STO v. Uttareswari Rice Mills & Anr. and in para 13 have quoted some part of the same decision of Uttareswari Rice Mills (supra).

25. Before appreciating the reliance placed by the learned judges, it would be important to know as to what was the controversy in Uttareswari Rice Mills (supra). It has been noticed in the judgment which read as under :

"Whether notice issued u/s 12(8) of the Orissa Sales Tax Act, 1947 (Act 14 of 1947) (hereinafter referred to as "the Act"), should be quashed on the ground that it does not mention the reasons for the issue of the notice is the main question which arises for determination in these two appeals. Nos. 1190 and 1191 of 1969, which have been filed by special leave against the common judgment of the Orissa High Court allowing writ petitions filed by the respondents against the appellants."

The court was concerned in the aforesaid case regarding the reasons to be mentioned in the notice itself and the court has expressed itself in the following terms regarding this question :

"We would like to make it clear that if the STO is in possession of the material which he proposes to use against the dealer in proceedings for reassessment, the said officer must before using that material bring it to the notice of the dealer and given him adequate opportunity to explain and answer the case on the basis of that material."

If in coming to the aforesaid conclusion, the court has made certain general observations, then certainly that portion is not the ratio of the case. As per the established judicial discipline, a case is considered authority on the point it decides. This point has been considered in Prakash Amichand Shah Vs. State of Gujarat and Others, , Amar Nath Om Prakash and Others Vs. State of Punjab and Others, and in case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . Thus, Uttareswari Rice Mills (supra) cannot be considered to have laid down any such law which can support the reason of decision of Blackstone Rubber Industries (supra).

26. The Division Bench in Blackstone Rubber Industries (supra) have also relied on Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., . In this case, Honble Supreme Court was considering the question whether the power u/s 15(1) of the Kerala General Sales Tax Act could be invoked in the given facts. The question which the Honble Supreme Court considered in Dhanalakshmi Vilas Cashew (supra) was in relation of revisional jurisdiction. The same has been dealt with in the following terms :

"Section 15(1) is meant for interference when there is some illegality or impropriety or irregularity in the order of the assessing authority which has to be set right. It can hardly be said to cover those cases in which the turnover has escaped assessment."

In holding so in relation to revisional powers, the question of escapement of assessment was also referred. But the decision has not been on the question of escapement of assessment. The court was of the opinion that the decision in the case of State of Kerala v. M. Appukutty was applicable to the case which related to powers of revision. In this judgment, the court was not considering the question of escapement of turnover. It is an authority on the point of scope of revisional powers where escapement was brought to the notice of the court in following terms :

"The second question was whether the turnover which had been assessed by the Deputy Commissioner on suo motu revision had escaped assessment within rule 33 to which the bar of three years provided thereby would be attracted."

Finally, the court has held as under :

"It may be that the case before the learned judge involved a question of escapement of turnover but there can be no manner of doubt that in the present appeals before us, the previous decision of this court in State of Kerala v. M. Appukutty would be fully applicable."

The referred case was related to the revisional powers.

Thus, Dhanalakshmi Vilas Cashew (supra) cannot be considered to be a case deciding the controversy of escapement of assessment. The question answered in the aforesaid case was not the question as understood by this court in Blackstone Rubber Industries (supra).

In para 17 of the decision of Blackstone Rubber Industries (supra), it has been observed by learned judges as under :

"We may recall that in the case of Deputy Commissioner of Agrl. IT v. Dhanalakshmi Vilas Cashew Co. (1969) 24 STC 491, the Supreme Court answered this question by holding that while the same officer or the successor officer is not entitled to take recourse to reassess the assessee by reopening the assessment merely on the basis of change of opinion because he holds a different view."

Learned counsel for the respondent submit that such was not the question raised in Dhanalakshmi Vilas case (supra). Dhanalakshmi Vilas (supra) was only considering the question of validity of powers of revisional jurisdiction u/s 15(1) of the relevant Act.

27. In Blackstone Rubber Industries (supra), while considering the case of Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, , it has been observed that it does not conclude controversy regarding change of opinion. It has been observed in para 18 as under :

"However, we do not find any such observation that mere change of opinion was held by the court to be a ground falling within the term for any reason."

28. A thoughtful reading is required to be given to the case of Maharajadhiraj Kameshwar Singhs case (supra) wherein Honble Supreme Court in para 8 has held as under :

"The short question is whether income which was returned but was held to be exempt from tax could be said to have escaped assessment so that the Agrl. Income Tax Officer could exercise his powers u/s 26 of the Act to tax it. This question arising u/s 34 of the Indian Income Tax Act has been considered on many occasions by the High Courts and also by the Privy Council and this court. The Patna High Court has correctly pointed out that the preponderance of opinion is in favour of holding that such income can be said to have escaped assessment."

The observations of this paragraph is that as and when an assessing authority considers a returned income to be exempt from tax, that can subsequently be reopened. The Supreme Court approved the Patna High Courts observation that in such cases, income can be said to have escaped assessment. It clearly lays down that if the officer has earlier held that the income was exempt from tax, yet power of reassessment was held to be available. Such income has been held to come within the category of escaped assessment.

29. The learned counsel for the respondent State has urged that it may not be in so many words but what has been said by the Honble Supreme Court is nothing short of fact that reopening is possible even in cases of change of opinion. This inference is available from the following observation. Honble Supreme Court in para 14 in case of Maharajadhiraj Kameshwar Singh (supra) has further held as under :

"In our opinion, even in a case where a return has been submitted, if the Income Tax Officer erroneously fails to tax a part of assessable income, it is a case where the said part of the income has escaped assessment. The appellants attempt to put a very narrow and artificial limitation on the meaning of the word escape in section 34(1) cannot, therefore, succeed."

30. The observations of the Supreme Court that where Income Tax Officer has erroneously failed to tax assessable income then, it can be said that part of income has escaped assessment, does not support the observation made in Blackstone Rubber (supra). Learned counsel has further invited attention to the observation of the court in more clear terms. In Maharajadhiraj Kameshwar Singh (supra) the Honble Supreme Court has held as under :

"For the reasons we have given, we are of the opinion that the Agrl. Income Tax Officer was competent u/s 26 of the Act to assess an item of income which he had omitted to tax earlier, even though in the return that income was included and the Agrl. Income Tax Officer then thought that it was exempt. The answer given by the High Court was, therefore, correct."

According to the learned counsel for the petitioner, the aforesaid observations leave no shadow of doubt on the question that as and when assessing officer earlier thought that the income has to be omitted from taxability, reassessment was permissible. Thus, in view of the aforesaid observations in Maharajadhiraj Kameshwar Singh (supra) the conclusions arrived at by this court in Blackstone (supra) does not appear to be the correct proposition of law.

31. This court in the case of Blackstone Rubber (supra) in para 19 has referred to a decision in the case of Commissioner of Agricultural Income Tax, Trivandrum Vs. Lucy Kochuvareed, and has observed in the following terms :

"In this connection reference may be made to a later decision of the Supreme Court in Commr. of Agrl. IT v. Smt. Lucy Kochuvareed (supra), wherein, the court referred to both the judgments of Kameshwar Singh referred to above reported in AIR 1959 SC 1203 and distinguished the case of Kameshwar Singh v. State of Bihar (supra) as having been decided on its own facts which was a case of pure and simple omission on the part of the assessee and did not apply to the facts where the case has been deliberately considered and decided by the assessing authority on earlier occasion. In Lucy Kochuvareeds case (supra) after referring to the decision in Deputy Commissioner of Agrl. IT v. Dhanalakshmi Vilas Cashew Co. (supra) case the court said Every case of underassessment is not a case of escaped assessment and the case where the order passed by the assessing officer is erroneous and illegal must be distinguished from the cases of escaped assessment. Relying on the decision in Dhanalakshmi Vilas case (supra) with reference to Kameshwar Singhs case (supra), the court said by distinguishing the same and said that it was not a case where the Agrl. Income Tax Officer omitted to assess any item of income disclosed in the assessees return."

The aforesaid observations made are broadly not seen in the case of Smt. Lucy Kochuvareed (supra). In this case, Honble Supreme Court has observed after considering the case of Maharajadhiraj Kameshwar Singh (supra) :

"This is not a case where Agrl. Income Tax Officer omitted to assess any item of income disclosed in the assessees return."

Therefore, on facts it was not a case of escapement of assessment. Further, the respondents in the case has not disputed that some amount of deduction is permissible. The court has held as under :

"Here the assessee made a full disclosure of his income and claimed certain deductions. It is not disputed that he was entitled to claim some deductions for the maintenance of the immature rubber plantation. The Agrl. Income Tax Officer allowed such deductions as he thought proper after considering the matter."

It was not a case wherein any disagreement was made by Honble Supreme Court regarding the law laid down earlier. In fact, this decision was given in the background where the department itself has not disputed that some deductions were maintainable. What can be the extent of deduction was the question. The inference drawn in Blackstone Rubber (supra) does not appear to be in conformity with the observations given in the judgment itself.

32. Then, comes the question of observations by this court in case of National Clinic v. Asstt. CTO RLR 1966 257. In this case this court decided the case by observing that in use of the x-ray film, there is no amount of sale. It is only a service rendered. Thus, the notice was quashed.

33. The sheet-anchor of the learned counsel for the petitioner in Blackstone Rubber (supra) cannot be considered to lay down correct proposition of law.

34. Learned counsel for the respondents has further submitted that the petitioner has only been issued notice. Notice cannot be said to be without jurisdiction because there is even a divergent opinion in the department about the Circular dated 6-5-1986. Some times the department has allowed the exemption and sometimes department has denied. Thus, there was no certainty in the mind of the departmental authority as to the actual purport of the notification. Thus, if these kind of observations are taken into consideration and then, the matter is judged in the light of the observations of Honble Supreme Court in the case of Maharajadhiraj Kameshwar Singh (supra) wherein, Honble Supreme Court has held that as and when the Income Tax Officer erroneously fails to tax a part of the income, then it is a case declared by Honble Supreme Court where income has escaped assessment. Admittedly, here the allegation is that the Circular dated 6-5-1986, has been wrongly applied and, therefore, income has escaped assessment. That being the position, this is a case of escapement of assessment per se and, therefore, the argument of the learned counsel for the petitioner should not be accepted that Anti-Evasion Wing had no jurisdiction to issue notice because there was no escapement of assessment.

Learned counsel for the department has urged that it is not a case of mere change of opinion. There was a survey conducted. The petitioner has not placed the correct facts at the survey. The reopening is also based on the survey report.

35. The purport of the notification is required to be gone into by the department after full application of mind, if the petitioner chooses to file a rational reply before the department and contest the notice. Therefore, it cannot be said that the petitioner is entitled to invoke extraordinary jurisdiction of this court. The only course available to the petitioner is to approach the department.

Further, the principles of res judicata are not attracted in tax matters wherein a case of escapement of assessment on account of interpretation of circular whether a notice in such circumstance be issued was a question which was raised and decided in Maharaja Kameshwar Singh (supra). Honble Supreme Court has dealt with the similar controversy wherein on account of pleaded exemption, assessment was not made. Such income in view of the Honble Supreme Court was held to be income which has escaped assessment. Therefore, the principles of res judicata as pleaded by the learned counsel for the petitioner should not be taken into account.

36. I have considered the rival submissions and given my thoughtful consideration.

The whole controversy depends on the purport of the language used in clauses (b) and (c) of sub-section (1) of section 30 of the Act. Various courts including this court have interpreted this section in many ways. Before going for the evaluation of the interpretations put forward by the courts, it would be appropriate if the section itself is read. For ready reference, section 30 of the Act is quoted hereinbelow:

"30. Escaped assessment.(1) An assessment

(a) of a person who is liable to get registration but has not got himself registered ; or

(b) in which , for any reason, the levy of tax or any fee or sum payable under the Act has been escaped wholly or in part ; or

(c) wherein tax has been wholly or in part unassessed or underassessed in any way or under any circumstances,

shall be deemed as an escaped assessment and the assessing authority shall on the basis of the material on record or after making such enquiry as it may consider necessary, complete such assessment within the time-limit provided in sub-section (3).

ExplanationThe assessment under this section shall not include that part of business which has already been assessed u/s 29. "

37. Before any exercise is undertaken to interpret a legislation, one has to remember that the cardinal rule of interpretation of a statute is that if the language of the section is clear enough, then there is no scope for making an attempt to assign meaning to the words of the section. When the legislature has given a definite, clear and unambiguous meaning to a particular enactment, the courts have not gone for interpretation. Justice Gajendragadkar in the case of Kanai Lal Sur Vs. Paramnidhi Sadhukhan, has held as under :

"The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction. It is only in such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct."

A reference may be made in this connection to a Supreme Court decision in the matter of Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd., wherein Honble Supreme Court has held as under :

"It is next contended on behalf of the landlord that the decisions cited above have stood the test of time since 1978 onwards, if not earlier, because of which the law is so understood in that part of the country, therefore, we should not interfere with the ratio laid down by the High Court of Punjab & Haryana in those cases so as not to create uncertainty in judicial thinking. We are unable to accept this argument advanced on behalf of the landlord. When we find that the interpretation of the proviso by the High Court is wholly contrary to the object of the statute, merely because it had remained to be the interpretation of the High Court for a considerable length of time, the same cannot be permitted to continue to be so when it is erroneous and it is so brought to our notice. We will be failing in our duty if we do not declare an erroneous interpretation of law by the High Court to be so, solely on the ground that it has stood the test of time. Since, in our opinion, in regard to the interpretation of the above proviso, no two views are possible. We are constrained to hold that the law declared by the Punjab & Haryana High Court with reference to the proviso is not the correct interpretation and hold that the said judgment is no more a good law. On behalf of the landlord, another argument based on equity was addressed before us giving various examples of the hardship that could be caused to the landlords by the interpretation we have now given to the said proviso. We do find that the proviso, as interpreted by us, may cause some hardship to the landlords in some cases but that is the intention of the legislature which the courts have to take to its logical end so long as it remains in the statute book. Merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. We may notice at this stage that constitutional validity of the proviso is not in challenge before us, therefore, we will have to proceed on the footing that the proviso, as it stands, is intra vires and interpret the same as such."

38. In my humble opinion, a reading is required to be given to section 30 of the Act in the light of the aforesaid observation of the Honble Supreme Court. The language if read, does not in anyway give an impression that it is capable of being assigned more than one meaning. The language used is clear and expressive. The language canvass only one meaning. Any attempt to assign any artificial meaning would do violence to the language used by the legislature. The objective of the exercise of interpretation is to give correct and true meaning to the statute. If the language is clear then it is to be understood as it is.

Any interpretation assigned to clauses (b) and (c) of sub-section (1) of section 30 of the Act has to conform to the test referred to above. The language of clauses (b) and (c) of sub-section (1) of section 30 of the Act if read, says that if for any reason, in anyway or under any circumstances, the levy of tax has escaped assessment, wholly or in part, then sub-section (2) of section 30 of the Act equip the designated sales-tax authorities with the powers to issue notice for reassessment. Sub-section (2) of section 30 of the Act is quoted hereinbelow for ready reference :

"Where the Commissioner or a Deputy Commissioner (Administration) has reason to believe that a dealer has escaped assessment to tax in any manner provided in sub-section (1), he may at any time, subject to the time-limit specified in sub-section (3), either direct the assessing authority to assess the tax or the fee or other sum or himself proceed to assess the same."

To my mind, there appears no ambiguity in the language used. It cannot also be said that more than one meanings are conveyed. Thus, there appears to be hardly any scope for going for searching the intention of the legislature. The expression used in clause (b) is "for any reason". The word "reason" as defined in Blacks Law Dictionary is as under :

"Reason : A faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions."

If from the expression "for any reason", the natural meaning assigned to the words is considered for the aforesaid dictionary references, then meaning of word "reason" with expression "for any" leave no manner of doubt that if natural meaning is given to the expression "for any other reason", the scope of it is wide enough to include the change of opinion. There is hardly any scope for making an exercise of interpretation of these words in the light of some other expressions which can be considered interchangeable. What is required is that the natural meaning to the expression should be assigned. An attempt should be avoided to put such constructions to the language used by the legislature which would reflect artificiality.

39. The expression "for any reason" have been considered by a Bench of three Judges of Honble Supreme Court in Maharaja Kameshwar Singhs case (supra). Honble Supreme Court in this case while interpreting section 26 of the relevant Act in the case has observed as under :

(16) "We may say at once that the words of section 26 of the Act do not involve possessing of or coming by some fresh information. The section says :

If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year ..... the Agricultural Income Tax Officer may proceed to assess such income .....

The use of the words any reason which are of wide import dispenses with those conditions by which section34 of the Indian Income Tax Act is circumscribed. The point which was thus left over by Gajendragadkar, J., cannot arise in the context of the Act we are dealing with."

In the aforesaid judgment itself, this has been noted by the Honble Supreme Court in following terms :

"The short question is whether income which was returned but was held to be exempt from tax could be said to have "escaped assessment" so that the Agricultural Income Tax Officer could exercise his powers u/s 26 of the Act to tax it. This question arising u/s 34 of the Indian Income Tax Act has been considered on many an occasion by the High Courts and also by the Privy Council and this court. The Patna High Court has correctly pointed out that the preponderance of opinion is in favour of holding that such income can be said to have escaped assessment".

Thus, the expression has been broadly interpreted to mean that as and when an Income Tax Officer wrongly grants exemption, that should be construed as an "escaped assessment".

Wrong grant of exemption has been considered to be a contingency which is good enough to engulf into it escapement. This has also been observed that the words used do not involve possession of or coming by some fresh information.

40. Apart from the expression "for any other reason" clause (c) of sub-section 1 of section 30 of the Act uses further expression "in anyway or under any circumstances". These expressions add superlative degree to the earlier expression used in clause (b) "for any reason". This leave no manner of doubt that legislature has intended empowering the designated authority u/s 30 of the Act to issue a notice of reassessment under a contingency which can be engulfed into the aforesaid statute. Thus, if the test for interpretation of a statute is applied as held by Honble Justice Gajendragadkar in Kanai Lals case (supra), then it is found that there is no ambiguity in the expressions used in section 30. There is no warrant for any exercise of assigning meaning to the words used in section. An exercise of interpretation is required to be taken only if the intention of the legislature cannot be gathered clearly. Such is not the case here.

Incidentally it may also be referred that there is no challenge to the vires of section 30 of the Act. In this background, reading some other words in place of "for any reason" will amount to reading down which is not permissible because such course could be considered to be adopted if only the vires of the section was under challenge. Also, if it was felt that the language used, if sustained will invalidate the legislation.

41. The case can be judged from another point of view. Honble Supreme Court in a recent decision rendered in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, has held as under :

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclids theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statute, they do not interpret judgments. They interpret words of the statutes, their words are not to be interpreted as statutes."

Further, in the case of Prakash Amichand Shah Vs. State of Gujarat and Others, Honble Supreme Court has held as under :

"A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never been expanded unnecessarily beyond the needs of a given situation.

An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent. In such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare."

Also, in the case of Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , it has been held by Honble Supreme Court as under :

"Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret words of statutes: their words are not to be interpreted as statutes."

Further, in the case CIT v. Sun Engineering Works (P) Ltd. (supra) it has been held by Honble Supreme Court as under :

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court, divorced from the context of the question under consideration and treat it to be the complete law declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment. have to be considered in the light of the questions which were before the court. A decision of the court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of the Supreme Court and not to pick out words or sentences from the judgment divorced from the context of the questions under consideration by the Court, to supply their reasonings."

The aforesaid Statement of law lay down the parameters which have to be assigned to the expression used and thoughts expressed in a particular judicial decision. In the light of aforesaid, if the decision of this court in Blackstone Rubber (supra) is considered, then it would not be a sound approach to give that meaning to the decision which is relied upon by the learned counsel for the petitioners.

42. I have considered the decision in Blackstone Rubber (supra) with utmost respect. The decision is ostensibly based on certain Supreme Court decisions. Honble Judges in Blackstone Rubber (supra) have relied on case of Uttareswan Rice Mills (supra). In this case, the principal question considered by Honble Supreme Court was whether the reassessment notice is required to be given with the reasons recorded in it. This was the main question decided in the judgment. In my respectful opinion, no inference can be drawn from the decision otherwise than the question which has been answered by the court. That is considered to be the ratio. Any ancillary observation is obiter dicta. Thus, this case cannot be considered to be an authority on the point considered in the aforesaid decision.

43. Another case relied upon by the Division Bench in Blackstone (supra) is Dhanalakshmi Vilas (supra). In this case, Honble Supreme Court was considering import of revisional jurisdiction u/s 15(1) of the relevant act and had come to the conclusion that reopening is different than revisional jurisdiction which has to be seen in the light of error apparent on the face of record and thus, Dhanalakshmi Vilas case (supra) was also not a case which decided the question of powers of reopening.

44. The Division Bench of this court in Blackstone Rubber (supra) has further considered a case decided by a two Judges Bench of Honble Supreme Court in the matter of Smt. Lucy Kochuvareed (supra) In this case, the judgment proceeded on the admission of the Income Tax authority that the exemption is admissible. The question of extent was the main question and thus, in this case also, the Honble Supreme Court was not considering the question of exemption as has been cited in the aforesaid judgment. The court has observed that "this is not a case where Agrl. Income Tax Officer omitted to assess any item of income disclosed in the assessees return."

45. In any case, the decision rendered by a Bench of two Judges would not affect the purport of the decision in Maharaja Kameshwar Singhs case (supra), wherein Honble Supreme Court has held as under :

"In our opinion, even in a case where a return has been submitted, if the Income Tax Officer erroneously fails to tax a part of assessable income, it is a case where the said part of the income has escaped assessment. The appellants attempt to put a very narrow and artificial limitation on the meaning of the word escape in section 34(1) cannot, therefore, succeed."

In view of the aforesaid it clearly means that if the Income Tax Officer erroneously fails to assess an income, the income will be held to have escaped assessment, may be that the expression "for any reason" is not used here in the judgment. Nothing less than that can be inferred from the aforesaid decision in the case of Maharajadhiraj Kameshwar Singh (supra).

46. In my humble opinion, the law laid down in Blackstone Rubber (supra) will not govern the facts of the present case. It runs contrary to the law laid down by Maharajadhiraj Kameshwar Singh (supra). It proceeds on strength of such Supreme Court decision, which did not decide what meaning has been assigned to them. Maharajadhiraj Kameshwar Singhs case is a decision of larger number of Judges than the decision rendered by Judges in the case of Smt. Lucy Kochuvareed (supra), therefore, the decision of Maharajadhiraj Kameshwar Singhs will prevail aver it in view of the decision rendered by Honble Supreme Court in the case of Mattulal Vs. Radhe Lal, wherein it has been held as under :

"This decision, apart from principle, should conclude the question, but we find that there is one later judgment of this court where a different view seems to have been expressed. That is the judgment in Smt. Kama Soni v. Rup Lal Mehra C.A. No. 2150 of 1966, dated 26-9-1969 (reported in AIR 1969 NSC 186). This case was decided by a Bench of three Judges and the judgment was delivered by Shah, J. who was one of the members of the Bench. The learned Judge, speaking on behalf of the court, observed in reference to section 39(2) of the Delhi Rent Control Act which confers an identical power on the High Court to interfere only where there is an error of law :

The argument that the learned Judges of the High Court exceeded their jurisdiction u/s 39(2) of the Delhi Rent Control Act, when they reversed the finding of bona fide requirement of the appellant, has no substance. Whether on the facts proved the requirement of the landlord is bona fide within the meaning of section 14(1)(e) is a finding on a mixed question of law and fact. An inference that the requirement of the appellant in the present case was bona fide could not be regarded as conclusive.

Now, there can be no doubt that these observations made in Smt. Kamla Sonis case (supra) are plainly in contradiction of what was said by this court earlier in Sarvate T.B. s case, 1966 MPLJ 26. It is obvious that the decision in Sarvate T.B.s case (supra) was not brought to the notice of this court while deciding Smt. Kamla Sonis case (supra) or else this court would not have landed itself in such patent contradiction. But whatever be the reason, it cannot be gainsaid that it is not possible to reconcile the observations in these two decisions. That being so, we must prefer to follow the decision in Sarvate T.B.s case as against the decision in Smt. Kamla Sonis case, as the former is a decision of a larger Bench that the latter. Moreover, on principle, the view taken in Sarvate TBs case commends itself to us and we think that is the right view. We must, therefore, hold that the finding of the Additional District Judge that the respondent did not bona fide require the Lohia Bazar shop for the purpose of starting business as a dealer in iron and steel materials was a finding of fact and not a finding of mixed law and fact."

Similarly, in the case of The State of U.P. Vs. Ram Chandra Trivedi, the HonIble Supreme Court has held as under :

"Constitutional position as regards the powers of court to go behind the orders of termination to find out motive of government is clear. Even in cases where a High Court finds any conflict between the views expressed by larger and smaller Benches of this court, it cannot disregard or skirt the views expressed by the larger Benches. The proper course for a High Court in such a case is to try to find out and follow the opinion expressed by larger Bench of the Supreme Court in preference to those expressed by smaller Benches of the court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself."

In view of the aforesaid, the law laid down in Blackstone Rubber (supra) cannot be read to have annulled the two earlier Division Bench decisions of this court in Century Enka (supra) and Akbarali Amanatali (supra). On the strength of these two cases, this court in case of Alcobex Metals Ltd. v. CTO RLW 1986 645 has held as under :

"Likewise in Rajasthan Felts Manufacturing Co.s case (supra), the same position has been reiterated. The other authorities cited by Mr. Balia pertains to Kerala High Court, Madhya Pardesh High Court and Madras High Court. They have also considered the provisions as appearing in their Act and has interpreted the provision and accepted our High Courts reasoning. Mr. Mehta learned counsel for the petitioner has tried to pursuade me by referring to Commr. of Agrl. IT v. Smt. Lucy Kochuvareed (supra) and K.E. Narains case (supra) that in view of the subsequent observations made by their Lordships of the Supreme Court, the matter required reconsideration. I cannot take a different view when the two Division Benches of this court have already interpreted the provisions of section 12 and have construed the expression "for any reason" to include even the change of opinion. Thus, in view of the law laid down by the two Division Bench judgments of this court, I am bound by it and hold that, the expression "for any reason" is wide enough to include even the change of opinion. Thus, this submission of the learned counsel has no merit and deserves to be rejected."

47. In my, humble opinion, the notice was issued in the circumstances where admittedly there was confusion about the applicability of the exemption. Admittedly, the department has been taking different stands about the applicability of the circular. Sometimes it has been held to be applicable for exemption and sometimes otherwise. Thus, the application of the notification has been a subject-matter of dispute. That being the position, if the notice is issued for reassessment and an opportunity is afforded to the petitioner to meet the grounds raised, then it cannot. be said that. the notice is without jurisdiction and the law laid down in Calcutta Discount (supra) will come to operation at all.

48. In tax matters, the question of res judicata had not been considered in that light as has been canvassed by the learned counsel for the petitioners. Admittedly, in the present case, the STOs have allowed exemption as claimed by

the petitioner and sometimes had not allowed exemption and forced them to file an appeal. Thus, there is inconsistency in the views expressed about the circular and, therefore, the question of res judicata cannot be considered to be right proposition to be applied in this case. It is not that the department has consistently expressed only one view. Different views have been expressed by the department on various occasions.

The aforesaid discussion would thus mean that there had been an escapement as defined by section 30 of the Act and deduced from the facts. Since, there is escapement, the Anti Evasion Wing will get jurisdiction to issue notice. In this light, the argument of the learned counsel for the petitioner is that the Anti Evasion Wing of the department had no right to issue loses significance.

49. Further, the learned counsel for the petitioner has said that there was no mens rea and unless this ingredient is present, no adverse order can be passed against the petitioner is a proposition which is not valid for fiscal enactment. A Division Bench of this court, while deciding Lalji Moolji Transport Co. v. State of RajasthanDBCW Petn. No. 234/20 vide judgment and order dated 10-4-2002, followed the judgment of seven Judges judgment of the Supreme Court in R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, and State of Rajasthan and Another Vs. M/s D.P. Metals, held that mens rea has no role in fiscal statutes. In case of fiscal enactments, whatever the text of the statute says will govern the facts of the case. Thus, this argument of the learned counsel for the petitioner has also no application.

50. Learned counsel for the petitioner has relied on a Taxation Tribunal decision which was not interfered by the High Court. I have given my thoughtful consideration to the decision. The High Court in this decision has not gone on the law which govern the facts and has discussed the matter without any expression of opinion on the subject. Thus reliance placed by the petitioner will be of no consequence. In this view of the matter, the arguments so raised by the petitioner have no bearing on the question which is germane in the present writ petition.

In addition to the aforesaid, it will be pertinent to note that the notice issuing authority has based its conclusion on a report based on a survey. In this survey, the conduct of the petitioner was not that of co-operation. Thus, also the notice is valid.

In the result, I dont find any merit in the present writ petition. The same is, therefore, dismissed. The petitioner may appear before the departmental authority and contest the notice as admissible in law.

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