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L.L.B. Part IIIrd
Paper - VIIIth
Taxation

Income Escaping Assessment (Reassessment)

Sometimes the assessee is found to have been under-assessed and on account of it certain income has escaped assessment. Section 147 deals with cases. It empowers the Assessing Officer to assess the income which has escaped assessment in the relevant assessment year. This is called reassessment or income escaping assessment. Reassessment under Section 147 is made only for the benefit of revenue. The Court has made it clear that the assessee is not entitled to agitate matters concluded in original assessment and not dealt with in reassessment proceedings. Reassessment or income escaping assessment can be made by the Assessing Officer if the following conditions have been fulfilled—

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Sec. 147. - According to Section 147, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provision of Section 148 & 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceeding under Section 147 or recompute the loss or the depreciation allowance or any other allowance, as the case may be for the assessment year concerned.

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148

(3)

or to disclose fully and truly all material facts necessary for that assessment year.

Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

For the purpose of this section the following shall also be deemed to be cases where income chargeable to tax has escaped assessment namely:

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

(b) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that

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the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

(i) where an assessment has been made but

(i) income chargeable to tax has been under-assessed or

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

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

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

The words "reason to believe" indicated that the belief must be based on direct or circumstantial evidence and not on mere suspicion or gossip or rumour. For the purpose of this clause there must be a direct nexus or link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been an escapement of income of the assessee from the assessment on account of the assessee's failure to disclose fully and truly all material facts. There must be rational and intelligible nexus between the reasons and the belief. Thus

(5)

The belief of Assessing Officer must be that of an honest and reasonable person based upon reasonable grounds. Thus Assessing Officer cannot start re-assessment proceedings on mere change of opinion. However, the court cannot investigate the adequacy or sufficiency of the reasons for the Assessing Officer's belief but the court can examine whether the reasons are relevant and have a bearing on the matter in regard to which he is required to entertain the belief for he can issue notice under Section 147 (a). In a case the Supreme Court has made it clear that sufficiency of the reasons for forming the belief that income had escaped assessment is not for the court to judge. However the assessee can establish that there in fact existed no belief or that the belief was not a bona fide one or was based on vague irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by I.T.O and examine whether there was any material available on the record

(6)

from which the requisite belief could be formed by the I.T.O and further whether that material had any rational connection with or a line link for the formation of the requisite belief. It would be immaterial whether the I.T.O, at the time of making the original assessment could or could not have found by further enquiry or investigation whether the transaction was genuine or not, if on the basis of subsequent information, the I.T.O arrives at a conclusion after satisfying the conditions prescribed in section 147 that the assessee had not made a full and true disclosure of material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment, he can make reassessment.