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REASSESSMENT UNDER INCOME TAX ACT

Introduction

Reassessment means reopening the already completed assessment on fulfillment of certain conditions and reassess the total income of the assessee by including the income which has escaped earlier assessment. However it may be the First assessment where assessee has not furnished the return at all. An assessment once made can not be tampered by the AO at his will and pleasure. It can be done only as per the conditions prescribed under section 147 of the Act. Reassessment is completed under section 147 of the Income Tax Act.

Section 147 of the Income Tax Act.

The object of section 147 is to bring to tax the income which has escaped assessment. It applies under following circumstances:

- i) where a person is required to file a return has not filed the same and consequently no assessment has been made
- ii) where a return has been submitted and assessment has been made but later it came to light that some income has escaped assessment

AO may assess or reassess the total income of the assessee under section 147 on fulfilment of following condition

“If AO has reason to believe that any income which is chargeable to tax has escaped assessment for any assessment year” he may assess or reassess such income
If we analyse the above condition we get the following important terms which needs to be understood.

- i) Reason to believe
- ii) Income which has escaped assessment
- iii) Any assessment year

Reason to believe

The word “has reason to believe” is a very strong and important condition. It is not mere satisfaction. The word “ has reason to believe” is stronger than the word “ is satisfied”. The AO must form an prima facie opinion based upon expressed statement and definite and relevant material in his possession.

The word “reason to believe” also suggests that belief must be of honest and reasonable person based on reasonable grounds and not on mere suspicion, gossip or rumour.

The Supreme Court in the case of Sheo Nath Singh v. AAC 82 ITR 147 has said that the AO would be acting without jurisdiction if the reason for his belief condition is not satisfied or is not material or relevant to the belief required by the section.

In an another case The Supreme Court has stated that the AO should have reason to believe that income chargeable to tax has escaped assessment. The absence of such reason to believe affects the very jurisdiction to initiate reassessment proceedings. Calcutta Discount Co. v. ITO 41 ITR 191

Belief can be challenged

The existence of belief upon which AO has proceeded to reassess can be challenged by the assessee. The assessee can not challenge the sufficiency of the belief. The Delhi High Court in the case of United Electrical Co. Pvt Ltd v. CIT 258 ITR 317 has given the following judgement:-

When a challenge is made to the action u/s 147 what the court is required to examine is whether some material existed on record for the AO to form the requisite belief. But the sufficiency of the grounds which induced the AO to act under the said section is not a matter for the court to look into.

The Supreme court in the case of ITO v. Lakhmani Mewal Das 103 ITR 437 has said that The assessee can not challenge the sufficiency of belief.

Income which has escaped assessment.

Escaped assessment means liability to pay tax is evaded by one method or other. It includes both i.e. under assessment as well as non- assessment. Income on which tax is chargeable and required to be paid has been evaded or concealed is Income escaping assessment. Where any income comes to light or revealed and which were not subjected to tax are income escaping assessment.

But every case of under assessment can not be a case of escaped assessment. The Supreme Court in the case of Commissioner of Agrl. IT v. Lucy Kochuvareed 103 ITR 799 has reversed the order of the FB of Kerala High Court and decided that CIT is justified in remanding to AO to consider the claim relating to expenditure in accordance with the law. Same would not be case of escaped assessment.

Explanation 2 to section 147 clarifies that the following cases shall also be deemed as cases of income escaping assessment. The word “also” has enlarged the scope of the term “Income escaping assessment” Income escaping assessment is not limited to following three cases only, it also includes following three cases apart from all the cases of income which were not assessed or were not subjected to tax.

- a) where no return of income has been furnished and total income is above the taxable limit;
- b) where a return of income has been furnished, but no assessment has been made and assessee have been found to understated his income or claimed excessive loss. Deduction etc. in the return;
- c) where an assessment has been made but income chargeable to tax has been underassessed or has been assessed at too low a rate or excessive loss or relief or depreciation allowance or any other allowance under the Act has been allowed.

Any assessment year

Section 147 prescribes that AO may assess or reassess any income which is chargeable to tax has escaped assessment for any assessment year. What does it mean? Is AO empowered to reopen the assessment or assess the income for more than 6 years or 8 years or 10 years. The answer is NO. The no. of assessment years which can be reopened or reassessed or assessed are restricted u/s 148. Section 148 deals with provisions relating to issue of notice. Maximum assessment year is **six** in terms of section 148

Issue of notice u/s 148

AO should issue a notice u/s 148 and get it served on the assessee before making the assessment, reassessment or recomputation u/s 147. AO should record the reason before issue of notice u/s 148.

It appears that issue of notice u/s 148 is prerequisite if AO want to assess or reassess the income which has escaped assessment and recording the reason is again a prerequisite if AO wants to issue notice u/s 148. If the AO fails to fulfill both the prerequisites he can not proceed to assess or reassess or recomputation income u/s 147.

Time Limit for issue of notice u/s 148

- i) upto 4 years from the end of relevant assessment year ----- any amount
- ii) upto 6 years from the end of relevant assessment year ----- Rs. 1 lakh or more

Time limit u/s 148 is for issue of notice. Date of service of notice is irrelevant. The Supreme Court in the case of R K Upadhaya v. Shanabhai P Patel 166 ITR 163 has decided that These time limits are applicable for issue of notice and not for service of notice. In other words, if the AO issues notice within the time limit, it is a valid notice even if service of notice takes place after the time limit.

Exceptions

The following are the exceptions to the time limit for issue of notice u/s 148:-

- i) As per section 150(1) there is no time limit for issue of notice u/s 148 to give effect to any finding or direction in an order passed in any appeal or in revision.
- ii) If notice u/s 148 is to be served on agent of a non resident then no notice shall be issued after the expiry of 2 years from the end of relevant assessment year.

Proviso to section 147

First proviso to section 147 provides that where an assessment has been completed u/s 143(3) or 147 no action shall be taken u/s 147 after the expiry of 4 years from the end of relevant assessment year unless it is proved that income has escaped assessment because of the following reasons:-

- a) failure on part of the assessee to file return u/s 139, or
- b) failure on part of the assessee to file return in response to notice u/s 142(1) or 148, or
- c) failure on part of the assessee to disclose truly and fully all material facts necessary for assessment.

It means even if AO has reason to believe that income which is chargeable to tax has escaped assessment, he can not take action within 4 years from the end of the assessment year if there is no failure on part of the assessee and the original assessment was completed u/s 143(3) or 147.

The Calcutta High Court in the case of Simplex Concrete Piles (India) Ltd. V. CIT 134 Taxman 74. In this case the assessee was allowed deduction u/s 32A/32AB/80HH initially. AO initiated action for reopening such assessment at a later date due to a decision of the Supreme Court.

The Court held that any such action for reopening must begin with an allegation that amounts now sought to be made taxable were not disclosed. In this case they were disclosed but claimed to be non-taxable. As a result it can not be said that there was any omission or failure on part of the assessee to disclose fully and truly the material necessary for assessment.

Second proviso to section 147 provides that AO may assess or reassess such income other than the income involving matters which are the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Change of opinion can not be a ground to reopen assessment.

The Supreme Court in the case of CIT v. Bhanji Lavji 79 ITR 582 has held that an assessment can not be reopened only because of change of opinion. The mere change of opinion or wrong legal inference will not empower the AO to reopen assessment.

Conclusions

It is seen that AO has power to bring the escaped income to the tax net but he has to record the reason based on material possession and that too in time limit. If assessee evade tax by way of one method and another and escape assessment can be brought to tax net if it comes to light at a later date.