



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 148/2008**

% Judgment reserved on : 2nd MAY, 2011
 Judgment delivered on : 3rd JUNE, 2011

RANBAXY LABORATORIES LIMITED **... APPELLANT**

Through: Mr. Ajay Vohra with Ms. Kavita Jha
 and Mr. Somnath Shukla, Advocates

Versus

COMMISSIONER OF INCOME TAX **... RESPONDENT**

Through: Ms. Rashmi Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

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| 1. Whether the Reporters of local papers
be allowed to see the judgment? | YES |
| 2. To be referred to Reporter or not? | YES |
| 3. Whether the judgment should be
reported in the Digest? | YES |

M.L. MEHTA, J.

- The present appeal filed under Section 260A of the Income Tax Act, 1981 (hereinafter, for short 'the Act') is directed against the order of the Income Tax Appellate Tribunal (hereinafter, for short 'Tribunal') dated May, 2007 whereby the Tribunal upheld the validity of reassessment proceedings



initiated under Section 147 of the Act. The Tribunal also confirmed the order of the lower authorities in denying deduction under Section 80-IA of the Act in respect of duty drawback, profit on sale of REP licences and cash assistance.

2. The assessee, being aggrieved of the said order, is in appeal before us. The appeal was admitted on the following substantial question of law:-

“Whether on facts the Tribunal was right in law in holding that the Assessing Officer had jurisdiction to re-assess issues other than the issues in respect of which proceedings were initiated especially when the reasons for the latter ceased to survive?”

3. The appellant company is engaged in the business of manufacturing and trading of pharmaceuticals products. It filed return of income on 31st October, 1994 which was processed under Section 143(1)(a) of the Act at the returned income. Vide notice dated 23rd January, 1998 issued under Section 148 of the Act, reassessment proceedings were initiated by the Assessing Officer under Section 147 of the Act. The Assessing Officer intimated the assessee that the items viz. club fees, gifts and presents and provision for leave encashment having escaped assessment and therefore



initiated reassessment proceedings under Section 147. The assessee vide its letter dated 15th December, 1998 explained that there was no escape of income on account of these items. This persuaded the Assessing Officer not to make any disallowance in respect of these items. However, during the course of assessment proceedings, the Assessing Officer found that deduction under Section 80HH and 80-I was claimed on certain export incentives also like duty drawback, profit on sale of REP licences and cash assistance, etc. The Assessing Officer held that since the assessment has been validly reopened under Section 147 and though no disallowance was made in respect of the items for which it was initiated, the deductions made under Section 80HH and 80-I being not allowable and the income having escaped assessment on these accounts, proceeded to bring them to tax. He accordingly, reduced the claim of deduction under Section 80HHC and 80-I in respect of some medical equipments of the assessee.

4. In appeal, the CIT(A) held that in the original assessment under Section 143(1)(a) the powers of the Assessing Officer were limited to the extent of prima facie adjustment only. On merits of additions, the CIT(A) followed its order of assessment



year 1996-97. The assessee preferred appeal before the Tribunal by challenging impugned assessment under Section 147/143(3) of the Act mainly on these grounds (i) There is no live nexus between reasons recorded and the assessment framed. The Assessing Officer has travelled beyond the scope of Section 147 of the Act by making addition/disallowance, which were not the basis of initiation, but on the basis of roving and fishing enquiries conducted during the assessment proceedings. (ii) The proceedings were initiated on the basis of opinion of the audit party without forming a reasonable belief under Section 148 of the Act that income of the appellant had escaped taxation; and (iii) The reasons recorded are vague and do not reflect application of mind. Since cogent reasons are not stated, it appears, proceedings were initiated on the basis of suspicion, to conduct further enquiry and to circumvent the limitation of assessment. The Tribunal dismissed the appeal vide impugned order with the following reasons:-

“As per section 147 if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Explanation 2 to section 147 provides that for the purpose of section 147 even in a case where return of income has been furnished but no assessment has been made and it is noticed by the Assessing



Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return it will amount to the case where income chargeable to tax had escaped assessment.”

“It is immaterial for validity of action under section 147 whether the addition/disallowance proposed in the reasons recorded were ultimately made or not. Thus even if in the reassessment order various additions/disallowance have not been made, it does not affect upon assumption of jurisdiction under section 147. Once the jurisdiction has been validly assumed the Assessing Officer may reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section i.e., section 147.”

However, in the present case it is seen that when the jurisdiction was assumed the Assessing Officer had reason to believe that income has escaped assessment due to claim and allowance of various expenses. It is only after the enquiries were made during reassessment proceedings the Assessing Officer came to conclusion that no addition are required to be made in this regard. But by such subsequent action original action of assuming jurisdiction under Section 147 is not affected. Whether the assumption of jurisdiction under section 147 is valid or not depends upon facts and circumstances of each case. In the present case it is found that the Assessing Officer could validly form an opinion based on material available in his possession that due to allowance of various expenses, otherwise not allowable as such on the face of it, he was justified in issuing notice under section 148 for the proposed reassessment under section 147.”

“We accordingly hold that assumption of jurisdiction by initiating reassessment proceedings is valid and reassessment cannot be annulled. It is a separate issue that after validly assuming jurisdiction the points on which reassessment was proposed are not added/disallowed. At the same time as per section 147 the Assessing Officer can also assess such income which has escaped assessment and which comes to his notice subsequent in the course of proceedings under section 147.”



5. The assessee is in appeal here against the impugned order.
6. Heard learned counsel for the parties. For considering the rival submissions it would be useful to reproduce the relevant parts of sections 147 and 148. Same are as follows:-

147. Income escaping assessment.- 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 provisions of sections 148 to 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 the proceedings under this section,*** or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

(emphasis supplied)

Explanation 2 : For the purposes 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 the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) Where an assessment has been made, but –

(i) Income chargeable to tax has been underassessed; 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.

Explanation 3.- For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

148. Issue of notice where income escaped assessment.

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

7. It is noted in Section 147 that the words 'has reason to believe' and sub-section (2) of Section 148 came to be inserted by way of amendments in the Act with effect from 1st April, 1989. Explanation 3 to Section 147 was also inserted by the Finance Act, 2009 with effect from 1st April, 1989. It is seen that conditions precedent for exercise of jurisdiction under Section 147 is formation of a reason to believe by the Assessing Officer that income chargeable to tax has escaped assessment.



8. The crux of Section 147 of the Act is the escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this Section. Explanation 3 makes it clear that the Assessing Officer may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this Section even though said issue did not find mention in the reasons recorded and the notice issued under Section 148. Since there was confusion prevailing with regard to the powers of the Assessing Officer to assess or reassess on the issues for which no reasons were recorded, this explanation came to be inserted as clarificatory. The reasons for insertion of this clarificatory explanation in clause (57) of memorandum explaining the provisions of Finance Bill (No.2) of 2009 are following:-

“Some Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issued in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.



With a view to further clarifying the legislative intent, it is proposed to insert an explanation in Section 147 to provide that the assessing officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment will take effect retrospectively from 1st April, 1989 and will accordingly apply in relation to assessment year 1989-1990 and subsequent years.”

9. By virtue of explanation 3 to Section 147 interpretive confusion came to be clarified and thus the decisions rendered by the Punjab & Haryana High Court in the case of **Vipin Khanna v. Commissioner of Income Tax** (2002) 255 ITR 220 (P&B) and Kerala High Court in the case of **Travancore Cements Limited v. Assistant Commissioner of Income Tax** (2008) 305 ITR 170 (Ker), no longer hold the field on the subject.
10. The ratio of both the aforesaid cases was that upon the issuance of notice under Section 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated. To put it differently,



once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment and proceeds to issue a notice under Section 148, it is not open to him to assess or reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

11. Now, after the insertion of explanation 3, as noted above, the position is that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under Section 147 though the reasons for such issue were not included in the reasons recorded in the notice under Section 148(2) on the basis of which he had initiated proceedings under Section 147. Similar question came for consideration before the Division Bench of Bombay High Court in **Commissioner of Income Tax v. M/s Jet Airways (I) Limited** [2011] 331 ITR 236(Bom). The Court held as under:-

“9. The effect of Section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows: (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under Sub-section (1) of Section 148, (iii)



The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) Though the notice under Section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course, of the proceedings under the section.”

12. The submission of learned counsel for the Revenue was that when reassessment is reopened by issuance of notice under Section 148, the previous assessment is set aside and the whole assessment proceedings start afresh and the Assessing Officer has power to levy taxes on the entire income which has escaped assessment. The learned counsel relied upon the cases of Supreme Court in **Commissioner of Income Tax v. Sun Engineering Work Limited** 198 ITR 297 and **V. Jaganmohan Rao and Ors. Vs. Commissioner of Income-tax and Excess Profits Tax, Andhra Pradesh** (1970) 75 ITR 373 (SC). On the other hand learned counsel for the assessee submitted that the words, ‘and also’ in Section 147 signify that unless the Assessing Officer assesses the income with respect to which he has formed reason to believe within the meaning of Section 147, it would not be open for him to assess or reassess any other income chargeable to tax which



has escaped assessment and which comes to his notice subsequently in the course of proceedings. Learned counsel relied upon the case of **Jet Airways** (supra) and also **Commissioner of Income Tax v. Shri Ram Singh** (2008) 306 ITR 343 (Raj) and **Commissioner of Income Tax v. Dr. Devender Gupta** 174 Taxman 438 (Raj.). Reliance was also placed in the case of **C.J. International Hotels Ltd. v. ITO** being ITA No. 2736/Del./2006 dated 24th October, 2008.

13. Similar contention was raised before the Division Bench of Bombay High Court in the case of **Jet Airways** (supra). The Court referred to the interpretation by Rajasthan High Court in **Ram Singh** (supra) wherein it was observed as under:-

“.... it is only when, in proceedings under Section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under Section 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under Section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer



may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under Section 147.

14. The Bombay High Court also discussed the case of **Jaganmohan Rao** (supra) and **Sun Engineering** (supra) of the Apex Court. In the case of **Sun Engineering** (supra) the issue before the Supreme Court was whether in the course of reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of Section 147, as they stood prior to the amendment on 1st April, 1989. In this context, the Supreme Court held that the expression “escaped assessment” includes both “non-assessment” as well as “under-assessment”. The expression “assess” was defined as referring to a situation where the assessment is made for the first time under Section 147, whereas “reassess” as referring to a situation where the assessment has already been made, but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds stipulated in Section 147. The Supreme Court referred to the judgment in the case of **Jaganmohan Rao** (supra) wherein it was held that the object of Section 147



enures to the benefit of the Revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

15. In ***Dr.Devendra Gupta's*** case (*supra*), learned Tribunal has relied upon the judgment of the Punjab & Haryana High Court, in ***Atlas Cycle Industries*** case (*supra*), and concluded that the basic condition is, that the AO has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found, that the section puts no bar on the powers of the AO, to put to tax, any other income, chargeable to tax, which has escaped assessment, and which subsequently comes to his notice, in the course of the proceedings, but then, the prefixing words "and also", which succeeded "any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of ss. 148 to 153, assess or reassess such income". This expression was found to be making clear, that existence of the income, for which the AO formed belief, to have escaped assessment, is a precondition, for including any other income chargeable to tax, escaping assessment, and coming



to the notice of the AO subsequently, in the course of the proceedings. Thus, unless and until such income, as giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject-matter of assessment, under s.147 “no other income” coming to the notice of the AO, during the course of the proceedings, can be roped in.

16. In the case In the case of ***C.J. International Hotels Ltd.*** (*supra*) before the Tribunal, the facts were almost similar as in the present case. The Tribunal relied upon the case of ***Commissioner of Income Tax v. Shri Ram Singh*** (*supra*) while holding that the Assessing Officer was justified in initiating the proceedings under Section 147/148 , but then, once he came to the conclusion, that the income, with respect to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction, to put to tax, any other income which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.
17. Now, coming back to the interpretation which was given by the Bombay High Court to Sections 147 and 148 in view of the precedent on the subject. The Court held as under:-



“11. ... Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under Section 147 and following the issuance of a notice under Section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words “and also” cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words “assess or reassess such income and also any other income chargeable to tax which has escaped assessment”, the words “and also” cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word “or”. The Legislature did not rest content by merely using the word “and”. The words “and” as well as “also” have been used together and in conjunction.”

...

Evidently, therefore, what Parliament intends by use of the words “and also” is that the Assessing Officer, upon the formation of a reason to believe Under Section 147 and the issuance of a notice under Section 148(2) must assess or reassess: (i). ‘such income’; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words ‘such income’ refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only



that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under Section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of Section 147 with effect from 1st April 1989 clearly stipulated that the Assessing Officer has to assessee or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter.”

Section 147 has this effect that the Assessing Officer has to assessee or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under Section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under Section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of **Jaganmohan Rao** (supra). We may also note that the heading of Section 147 is “income escaping assessment” and that of Section 148 “issue of notice where income escaped



assessment". Sections 148 is supplementary and complimentary to Section 147. Sub-section (2) of Section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue



coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under Section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under Section 80 HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under Section 80HH and 80-I and accordingly reduced the claim on these accounts.
20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80 HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make dis-allowance in



respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue.

22. The present appeal is accordingly allowed.

**M.L.MEHTA
(JUDGE)**

**A.K.SIKRI
(JUDGE)**

JUNE 03, 2011

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