

Larger Bench of the Supreme Court rules that audits cannot be reopened due to change of opinion or without tangible new material on record

In a landmark decision, the Larger Bench of the Supreme Court has ruled (in the case of *CIT vs Kelvinator of India Ltd*) that Revenue Authorities ("RA") cannot reopen an assessment on a mere change of opinion even after the amendment in section 147 of the Income Tax Act, 1961 ("the Act") with effect from April 1, 1989.

Background

The taxpayer filed its return of income in which it had omitted to claim a particular deduction. To claim this, it filed a revised return with a letter explaining the need for the revision. In the regular assessment, the RA partially allowed the claim. Later, the RA reopened the assessment on the basis that the entire deduction claimed in the revised return should have been disallowed and completed the reassessment proceedings by disallowing this claim. On appeal, the Commissioner (Appeals) and the Income Tax Appellate Tribunal held in favour of the taxpayer. Against these orders, the RA appealed to the Delhi High Court.

Decision of Delhi High Court

The Full Bench of the Court held in favour of the taxpayer by ruling that the RA cannot initiate reassessment proceedings upon mere change of opinion. It further held that the assessment may be reopened only if RA is in possession of fresh information received after conclusion of regular assessment indicating that income has escaped assessment. The Court also ruled that when a regular order of assessment is passed, it leads to a presumption that the order has been passed after the due application of mind by the RA and reopening the assessment amount to allowing the RA to take advantage of its own wrong.

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Decision of Supreme Court

The RA had appealed to the Supreme Court against the decisions of the Delhi High Court. The Full Bench of the Supreme Court dismissed the appeal of the RA with the following observations:

- After the amendment to section 147 of the Act with effect from April 1, 1989, the power of RA to reopen an assessment is wider. However, the words “reason to believe” used in section 147 of the Act should be given a schematic interpretation. It cannot confer arbitrary power to the RA to reopen the assessment.
- Since the RA does not have the power to revise his orders, the reassessment has to be based on fulfillment of certain conditions. If the concept of “change of opinion” is removed, then it would amount to conferring power of review to the RA in the pretext of reassessment.

BMR comments and analysis

- This decision sets to rest the debate on whether an assessment could be reopened based on a mere change of opinion, even if the reopening is done within a period of four years from the end of the relevant assessment year. The RA were taking a view that reopening the assessment within a period of four years does not require satisfaction of the qualitative conditions laid down in law.
- The Supreme Court has upheld the time tested principles that assessment cannot be reopened in the absence of tangible material leading to an inference of income escaping assessment.
- When the Supreme Court disposes of a civil appeal, the doctrine of merger would apply and the order of the Delhi High Court merges with the order of the Supreme Court. Consequently, the principles laid out by the Delhi High Court would be taken as upheld by the Supreme Court.
- This landmark decision would provide relief to the taxpayers in bringing finality to tax proceedings. However, care must be taken to submit all relevant documents during the course of regular assessment to preclude the RA from reopening concluded assessments based on fresh material on record.

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