



Core Principles of Reassessment with Important Case Laws

By Rangesh Banka, Advocate

I. Recording of reasons

1. Recording of reasons is a condition precedent to invoke jurisdiction under section 147/148.

CIT vs. Rajindra Rosin & Turpentine Industries. (2008) 305 ITR 161 (Punj. & Har.)

2. Language of section 148(2) does not permit recording of reasons between date of issuance of notice and service of notice, words used by provisions in no uncertain terms require recording of reasons before issuing any notice.

Rajoo Engineers vs. Dy. CIT (2008) 218 CTR (Guj.) 53

II. Notice — Return under protest

3. When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action for the notice is to file the return and, if he so desires, to seek reasons for issuing the notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order.

GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 259 ITR 19 (SC).

III. Reasons – Recorded to be supplied

4. Reasons for notice must be given and objections of assessee must be considered.

Allana Cold Storage vs. ITO (2006) 287 ITR 1 (Bom.)

5. Assessee is entitled to be supplied with the reasons in the event he challenges the notice for reassessment; assessee is not estopped from challenging the impugned notice after having submitted to the jurisdiction of the officer by filing returns.

Berger Paints India Ltd vs. ACIT & Ors (2004) 266 ITR 462 (Cal)

6. If assessing officer rejects objections filed to notice under section 148 he shall not proceed further in matter for a period of four weeks from date of receipt of service of said order on objections, on assessee.

Asian Paints Ltd. vs. Dy. CIT (2008) 296 ITR 90 (Bom.)

7. Reassessment framed by the assessing officer without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed.

MCM Exports vs. Dy CIT (2009) 23 DTR 356 (Guj).

8. Notices issued under sections 142(1) and 143 (3) without disposing of the objections raised in response to the reasons recorded held to be invalid.

Premier Ltd vs. Dy CIT WPNo 2340 dt 22-10-2008 (Bom)

IV. Issue of notice by successor

9. Assessing officer recording reasons for assessment and assessing officer issuing notice under section 148 must be the same person. Successor assessing officer cannot issue notice under section 148 on the basis of reasons recorded by predecessor assessing officer. Notice issued invalid and deserves to be quashed.

Hynoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj.)



V. Service of notice

10. The notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void.

Y. Narayan Chetty vs. ITO (1959) 35 ITR 388 (SC),
CIT vs. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)
CIT vs. Kurban Hussain Ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)

11. Where notice was not sent by registered post nor served upon assessee in any other manner whatsoever, proceedings for assessment were void.

CIT vs. Harish J. Punjabi (2008) 297 ITR 424 (Del.)

12. Time limit for issue of notice- s. 143(2)

When period for issue of under section 143(2) not expired, reassessment held to be invalid.

CIT vs. Qatalys Software Technologies Ltd (2009) 308 ITR 249 (Mad).

VI. Reasons – Non-application of mind

13. A.O. having communicated to the auditor that a certain decision of a High Court did not apply to the facts of the petitioner case but later rejected the objections raised by the petitioner to the notice u/s. 148 taking a contrary view without giving any reasons as to why he has departed from the earlier view that the decision was not applicable there was total non-application of mind on the part of the AO, impugned communication is set aside and the matter is remanded back to the AO for de novo consideration.

Asian Cerc Information Services (P) Ltd vs. ITO (2007) 293 ITR 271 (Bom)

VII. Approval and Sanction

14. The court held that, it is not only the formation of the required belief by the Income Tax Officer to take recourse to assessment or reassessment but he is further statutorily required to record his reasons and must necessarily obtain sanction of the Commissioner or the Board as the case may be.

Chhugmal Rajpal vs. S.P. Chaliha (1971) 79 ITR 603 (SC)
Johari Lal (Huf) vs. CIT (1973) 88 ITR 439 (SC)

15. CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable.

German Remedies Ltd. vs. Dy. CIT (2006) 287 ITR 494 (Bom)
United Electrical Company (P) Ltd. vs. CIT & Ors (2002) 258 ITR 317 (Del)

VIII. Disclosure of Primary Facts

16. Statement of unconnected person

In the absence of any material before the AO a statement by an unconnected person did not constitute reason to believe that assessee income had escaped assessment especially when the assessee had produced all the material and relevant facts and therefore the reassessment proceedings could not be sustained.

Praful Chunilal Patel vs. M.J. Makwana, ACIT (1999) 236 ITR 832 (Guj)
JCIT & Ors vs. George Williamson (Aassam) Ltd. (2002) 258 ITR 126 (Guj)

IX. Re-opening beyond 4 years bad in Law

17. **Jashan Textiles Mills P. Ltd. vs. DCIT (2006) 284 ITR 542 (Bom)**



German Remedies Ltd vs. DCIT (2006) 287 ITR 494 (Bom)

18. Assessee having fully and truly disclosed all the material facts necessary for the assessment as required by the AO the precondition for invoking the proviso to S. 147 was not satisfied and therefore AO acted wholly without jurisdiction in issuing notice u/s. 148 beyond four years period mentioned in S. 147.

Wel Intertrade (P) Ltd. & Anr. vs. ITO (2009) 308 ITR 22

19. Tribunal having concluded that all the material facts were fully and truly disclosed by the assessee at the time of original assessment, invocation of provisions of S. 147 after the expiry of four years from the end of the relevant asst. year was not valid.

CIT vs. Kapil Dev (2009) 177 Taxman 6 (Del)

G.N. Shavo (Wine) (P) Ltd. vs. ITO & Anr (2003) 260 ITR 513 (Cal)

20. AO who allowed assessee is claim for deduction under S. 80HHD was well above of the primary facts and therefore assessments could not be reopened after the expiry of four years on the ground that income had escaped assessment on account of excessive relief u/s. 80HHD.

Sita World Travels (India) Ltd vs. CIT (2005) 274 ITR 186 (Del)

21. Assessee having made full disclosure of material facts in the return which was accompanied by several enclosures, assessment could not be reopened beyond four years from the end of the relevant asst. year for the reason that certain income has been wrongly assessed under the head 'Capital gains' instead of 'Profits and gains' of business or profession.

Gujarat Fluorochemicals Ltd. vs. DCIT (2008) 15 DTR (Guj)

22. A.O. having accepted the claim of the assessee for deduction u/s. 80-O on the basis of details furnished by the assessee it cannot be said that the assessee had not made full and true disclosures of all material facts for claiming deduction and therefore, notices u/s. 148 issued after expiry of 4 years from the end of relevant asst. year were wholly illegal and without jurisdiction.

Universal Subscription Agency (P) Ltd. vs. Jt. Comm. of Income Tax (2007) 293 ITR 244 (All)

23. There was no failure on the part of assessee to disclose a material fact where rateable value of the property was enhanced by the Municipal Corporation after assessment for assessment year 1991-92 to 1993-94 had been computed, hence reopening of assessment after expiry of four years from the end of relevant assessment year was barred by the Proviso to S. 147.

CIT vs. Tirathram Ahuja (HUF) (2008) 6 DTR (Del) 335.

24. There being no whisper in the reasons supplied to assessee that income escaped assessment by reason of assessee's failure to make a full and true disclosure of all material facts necessary for assessment, notice u/s. 148 issued beyond four years from the end of relevant asst. year was barred by limitation under proviso to S. 147, hence without jurisdiction.

Haryana Acrylic Manufacturing Co. vs. CIT and Anr (2009) 308 ITR 38 (Del.)

X. Reassessment with in four years

25. An assessment order passed after detailed discussion cannot be reopened within a period of 4 years unless the AO has reason to believe due to some inherent defect in the assessment.

Techspan India (P) Ltd & Anr vs. ITO (2006) 283 ITR 212 (Del)

German Remedies Ltd vs. DCIT & Ors. (2006) 285 ITR 26 (Bom)

XI. Reassessment – Change of opinion



26. Amendment as per Direct Tax Laws (Amendment) Act, 1989 w.e.f. April 1, 1989 as also of sec. 148 to 152 have been elaborated in Circular No. 549, dated October 31, 1989. A perusal of clause 7.2 of the said circular makes it clear that the amendments had been carried out only with a view to allay fears t that the omission of the expression reason to believe” from sec. 147 would give arbitrary power to AO to reopen past assessments on a mere change of opinion i.e. a more change of opinion cannot form basis for reopening a completed assessment.

CIT vs. Kelvinator of India Ltd. (2002) 256 ITR 1 (Del) (FB)

27. Assessee having already filed his objections to the impugned notice u/s. 148 contending that it is a case of change of opinion and the issuance of notice was not justified, without making out a case of lack of jurisdiction the objections are to be considered by the competent authority and not in writ proceeding.

Jagdish Prashad Gupta vs. JCIT & Anr. (2006) 283 ITR 585 (Del)

28. Issue regarding addition of amount of deferred taxation for computing book profits u/s. 115JB having been raised by the AO at the time of original assessment u/s. 143(3) and no addition having been made by AO on the account on being satisfied with the explanation of the assessee reopening of assessment on the very same issue suffered from change of opinion in the absence of any fresh material hence invalid.

M.J. Pharmaceuticals Ltd. vs. CIT (2008) 297 ITR 119 (Bom)

29. In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

Raymond Woollen Mills Ltd. vs. Income Tax Officer and Others (1999) 236 ITR 34 (S.C.)

30. Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.

Yuvraj vs. Union of India (Bom.) (2009) 315 ITR 84.

31. Change of opinion, bad in law

CIT vs. Former Finance (2003) 264 ITR 566 (SC)

XII. Reason to believe — Satisfaction.

31. Reopening is not permissible on borrowed satisfaction of another Assessing Officer.

CIT vs. Shree Rajasthan Syntex Ltd. (2009) 212 Taxation 275 (Raj.)

XIII. Audit objection

32. AO having granted benefit of S. 72A to the assessee in respect of unabsorbed depreciation of the amalgamating company after the assessee had furnished the relevant particulars and the AO was satisfied about the eligibility of the assessee for the benefit of S. 72A are not applicable to the facts of the case amounted to a case of change of opinion and, therefore, reassessment proceedings cannot be sustained.

Stock Exchange Ahmedabad vs. ACIT (1997) 227 ITR 906 (Guj)

Apollo Hospital Enterprises Ltd. vs. ACIT (2006) 287 ITR 25 (Mad.)

33. AO having reopened the assessment at the benefit of the Audit department while disagreeing with the later objection and without entertaining his own belief that the income of the assessee had escaped assessment on the ground that assessee had claimed loss on the basis of erroneous computation as indicated by the audit party reopening is not sustainable, notice u/s. 148 quashed.

Rajesh Jhaveri Stock Brokers (P) Ltd. vs. ACIT (2006) 284 ITR 593 (Guj)



34. AO having communicated to the auditor that a certain decision of a HC did not apply to the facts of the petitioners case but later rejected the objections raised by the petitioner to the notice u/s. 148 taking a contrary view without giving any reason as to why he has departed from the earlier view that the decision was not applicable, there was total non-application of mind on the part of AO; matter remanded back to AO for de novo consideration.

Asian Cerc Information Services (P) Ltd vs. ITO (2007) 293 ITR 271 (Bom)

35. Reassessment was not valid as the AO held no belief on his own at any point of time that income of assessee had escaped assessment on account of erroneous computation of benefit u/s 80HHC and was constrained to issue notice only on the basis of audit object.

Adani Exports vs. DCIT (1999) 240 ITR 224 (Guj)

36. Audit Objection cannot be the basis for reopening of assessment to income tax by the revenue.

Indian & Eastern Newspaper Society vs. CIT (1979) 119 ITR 996 (SC).

37. AO having allowed assessee's claim for depreciation in the regular assessment and reopened the assessment pursuant to audit objection, it cannot be said that he had formed his own opinion that the income had escaped assessment, and the reopening being based on mere change of opinion, same was not valid.

**IL & FS Investment Managers Ltd. vs. ITO & Ors (2008) 298 ITR 32 (Bom)
Vijaykumar M. Hirakhanwala (HUF) vs. ITO & Ors (2006) 287 ITR 443 (Bom)**

XIV. Reasons to believe – Survey subsequent

38. Detection of excess stock or unaccounted expenditure as renovation of business premises at the time of survey u/s. 133A in a subsequent year, could not constitute reason to believe that such discrepancies existed in earlier years also and, therefore, reopening of assessments for those years on the basis of aforesaid reason to believe was not valid.

CIT vs. Gupta Abhushan (P) Ltd. (2008) 16 DTR (Del) 76

XV. Reassessment – Interpretation of High Court decision

39. Reopening of assessment on the basis of wrong interpretation of High Court decision was invalid.

Assam Co. Ltd vs. UOI & Ors (2005) 275 ITR 609 (Gau)

XVI. Supreme Court decision cannot be the basis

40. The ITO cannot seek to reopen an assessment under section 147 on the basis of the Supreme Court decision in a case where assessee had disclosed all material facts.

Indra Co. Ltd. v. ITO (1971) 80 ITR 559 (Cal.)

XVII. Ignorance of board circular is not sufficient

41. The mere fact that the ITO was not aware of the circular of the board is not sufficient to reopen the assessment.

Dr. H. Habicht v. Makhija (1985) 154 ITR 552 (Bom.)

XVIII. Notice – 143 (2).

42. Proceeding u/s. 147 cannot be initiated once return is filed by the assessee and no assessment is finalized by AO; since inquiries had been initiated u/s. 143(2) it became mandatory that they should have culminated in an order u/s. 143(3).

KLM Royal Dutch Airlines vs. ACIT (2007) 292 ITR 49 (Del)



43. Notice u/s. 143(2) cannot be issued after the expiry of 12 months from the end of the month in which the return was furnished reopening of assessment without any fresh material and without assigning any reason cannot be sustained.

Bapalal & Co. Exports vs. JCIT (2007) 289 ITR 37 (Mad)

XIX. Intimation - Section 143(1)

44. So long as the ingredients of section 147 are fulfilled, Assessing Officer is free to initiate proceeding under section 147 even where intimation under section 143(1) has been issued; as intimation under section 143(1)(a) is not assessment there is no question of treating reassessment in such a case as based on change of opinion.

Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC)

XX. Reassessment - Valuation report

45. AO had no jurisdiction to reopen the concluded assessments on the strength of valuation report of valuation officer obtained subsequently and that too not in exercise of powers u/s. 55A impugned notices under S. 148 quashed.

Prakash Chand vs. Dy. CIT & Ors (2004) 269 ITR 260 (MP)

46. Assessing Authority having made a detailed enquiry before making the assessment of the petitioner u/s. 143(3) the impugned notice u/s. 148 was issued only on the basis of change of opinion and was therefore, invalid, notice was also illegal on the ground that it was based on the valuation report of cost of construction.

Girdhar Gopal Gulati vs. UOI (2004) 269 ITR 45 (All)

47. Mere DVO's report cannot constitute reason to believe that income has escaped assessment for the purpose of initiating reassessment and therefore Tribunal was justified on holding that the reassessment proceedings initiated on the basis of DVO's report were invalid ab initio, more so when it has found that the DVO's report suffers from various defects and mistakes.

CIT vs. Smt. Meena Devi Mansinghka (2008) 303 ITR 351

48. Reference to the valuation officer only in the course of the assessment. Reopening on the basis of valuation report not valid.

Manjusha Estate Pvt. Ltd. v ITO (2009) 314 ITR 263 (Guj).

49. Where apart from the valuation report which was relied upon by the ITO there was no material before him to come to the prima facie conclusion that the assessee had received the higher consideration than what had been stated in the sale deed, reassessment would not be justified.

ITO vs. Santosh Kumar Dalmia (1994) 208 ITR 337 (Cal.)

XXI. Rectification

50. Dept. having taken one of the two possible views in the matter of calculation of deduction u/ss. 10B and 80HHE assessment cannot be reopened by taking the other view more so when the CIT (A) has already quashed the rectification u/s. 154 which was made on the very same ground.

Western Outdoor Interactive (P) Ltd. vs. A.K. Phute, ITO & Ors (2006) 286 ITR 620 (Bom)

51. Allowance u/s. 80HHC having been granted by the ITO in rectification proceedings the remedy against lay with the dept. either u/s. 154 or S. 263 and not S. 147 further reassessment having been made on a date earlier than fixed same was bad. Alternative remedy was no bar for the maintainability of writ in such circumstances.

Smt. Jamila Ansari vs. ITO & Anr (1997) 225 ITR 490 (Addl)

52. Rectification proceedings initiated and dropped



i) Dept. having taken one of the two possible views in the matter of calculation of deduction u/ss. 10B and 80HHE assessment cannot be reopened by taking the other view, more so when the CIT(A) has already quashed the rectification u/s. 154 which was made on the very same ground.

Western Outdoor Interactive (P) Ltd. vs. ITO (2006) 286 ITR 620 (Bom)

ii) Rectification and reassessment due to audit objection on interpretation law, cannot be the basis for reopening of assessment.

CIT vs. Lucas T.V.S. Ltd. (2001) 249 ITR 306 (SC)

XXII. Direction of the Higher Authorities

53. Revisional authority having directed the AO to adjudicate specific issues which were addressed and examined by him, assessment made by the AO on a higher total income by assuming more powers than that of the revisional authority is patently illegal and without jurisdiction.

N. Seetharaman vs. CIT (2008) 298 ITR 210 (Mad)

54. The assessing officer for the assessment year 2000-01 recorded a specific note in the assessment order which indicated that the assessment order was passed under the dictates of the Commissioner. The Supreme Court in the challenge to the reopening for the same assessment year held that the assessment order passed on the dictates of the higher authority being wholly without jurisdiction, was a nullity. Therefore with a view to complete the justice to the parties, the Supreme Court directed that the assessment proceedings should be gone through again.

CIT vs. Greenworld Corporation (2009) 314 ITR 81 (SC).

XXIII. Amendment of Laws

55. No notice u/s. 148 having been served on the assessee prior to re-opening of assessment, assessment made u/s. 147 was bad in law; argument based on S. 292BB was not sustainable on the facts of the case.

CIT vs. Mani Kakkar (2009) 18 DTR (Del) 145

XXIV. Cases where full disclosures are not made

56. AO having accepted the claims of the assessee for deduction u/s. 80-O on the basis of details furnished by the assessee, it cannot be said that the assessee had not made full and true disclosure of all material facts for claiming deduction and therefore notice u/s. 148 issued after expiry of 4 years from the end of relevant assessment years were wholly illegal and without jurisdiction.

Universal Subscription Agency (P) Ltd vs. JCIT (2007) 293 ITR 244 (All)

XXV. Information

57. Information for reassessment should be based upon good faith and not mere pretence or purely subjective satisfaction.

S. Narayanappa vs. CIT (1967) 63 ITR 219 (SC) Culcutta Discount Co. vs. ITO (1961) 59 (SC) 41 ITR 191.

XXVI. Disclosure in balance sheet

58. Disclosure in balance sheet also amounts to disclosure.

CIT vs. Corporation Bank Ltd. (2002) 254 ITR 791 (SC)

XXVII. Jurisdiction — Second Appeal

59. Jurisdiction can be challenged in Second Appeal.



Investment Corpn. Ltd. vs. CIT (1992) 194 ITR 548 (Bom) (556)
N. Nagaganath Iyer vs. CIT (1996) 60 ITR 647 (Bom) (655)

60. Appeal was pending before ITAT and the matter was subject matter of appeal before CIT (A).

Metroauto Corpn vs. ITO (2006) 286 ITR 618 (Bom)

Note: Provisio to section 147 was inserted by the Finance Act, 2008, w.e.f. 1-4-2008

61. Dealing with the powers of 263, the court held that when the Commissioner (A) passes the order the entire order of AO, merges with the order of CIT (A), hence 263 cannot be initiated in respect of any other issue. The same principle will apply to reassessment under section 147 of the Act.

CIT vs. P. Munercherjii and Co. (1987) 167 ITR 671 (Bom.)

XXVIII. Scope of Powers

62. Since the proceedings under section 147 are for the benefit of the revenue and in the assessee, and are aimed at gathering the escaped income of the revenue and an assessee and are aimed at gathering the escaped income of an assessee the same cannot be allowed to be converted as revisional or review proceedings at the instance of the assessee, thereby making the machinery workable.

CIT vs. Sun Engineering Works (P.) Ltd. (1992) 198 ITR 297 (SC)

63. Proceeding under section 147 are for the benefit of the revenue and not the assessee and hence the assessee cannot form the be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected, or claim relief in respect of items not claimed in the original assessment proceedings unless relatable to the escaped income and reagitate concluded matters. Allowance of such a claim in respect of escaped assessment in the case of reassessment has to be limited to the extent to which they reduce the income to that originally assessed. Income for the purpose of reassessment cannot be reduced beyond the income originally assessed.

K Sudhakar S. Shanbhag vs. ITO (2000) 241 ITR 865 (Bom.)

64. Statements by the third party cannot form the basis

A mere confessional statement by the third party (who is the lender of the assessee) that he was the mere name lender and that all his transactions of loans were bogus, without naming the assessee as one who had obtained bogus loans, would not be sufficient to hold that the assessee's income had escaped assessment

S.P. Agarwalla Alias Sukhdeo Prasad Agarwalla vs. ITO (1983) 140 ITR 1010 (Cal)

65. Assessing Officer cannot launch an inquiry on grounds not covered in reassessment notice. Where the Assessing Officer initiated proceedings for reassessment on the only ground that the assessee had claimed excess depreciation by adopting a higher rate as against the normal rate, he would not be justified in launching inquiry into issues which were not connected with the claim for depreciation. A letter issued to the assessee requiring the assessee to furnish information on issues in respect of which there was no allegation of any escapement or under assessment of income either in the reasons recorded or during the course of proceedings under the section would tantamount to reviewing the whole assessment which is not permissible. The letter was therefore vacated.

Vipin Khanna vs. CIT (2001) 251 ITR 782 (Del.)

XXIX. Block Assessment

66. Re-opening of assessment of a particular assessment year which was included in the block period — block assessment held to be invalid being barred by limitation. Merely because block assessment is time barred, the department cannot have reasons to believe that income has escaped assessment. And assessment for a particular year cannot be re-opened on that ground.

Smt. Mira Ananta Naik (2009) 183 Taxman 40 (Bom.)



XXX. Determination of losses

67. From reading of clause (d) of the explanation one can clearly visualize a prohibition on determination of loss for the first time in a proceeding under section 147 on the basis of a return of loss filed in pursuance of a notice under section 148.

Koppind (P.) Ltd. vs. CIT (1994) 207 ITR 228 (Cal)

XXXI. Reassessment in pursuance of an order/direction

68. The assessment or reassessment made by virtue of an order has to be confined to item in respect of which such finding or direction is given, it is not open to the AO to deal with other item of escaped income.

CIT vs. Moduri RajaiahGari Kishtaiah (1980) 123 ITR 494 (AP).

69. As regards persons other than the assessee, who are not intimately connected with the assessee, no valid finding or direction can be given at all against them.

CIT vs. Omkarmal Meghraj (H.U.F.) (1974) 93 ITR 233 (SC) (240)

CIT vs. S. Raghbir Singh Trust (1980) 123 ITR 438 (SC)

70. Direction to make an assessment or reassessment which has become time barred is not valid.

K.M. Sharma vs. ITO (2002) 254 ITR (SC).

71. Remarks that reassessment proceedings could be taken. Not a finding or direction within meaning of section 150. Approval of Commissioner not obtained before issue of notice of reassessment — notice not valid.

Lotus Investments Ltd. vs. Asst. CIT (2007) 288 ITR 459 (Bom).

XXXII. Appeal

72. In appeal against the order under section 147, the Deputy Commissioner (Appeals) cannot enhance the assessment by adding new items of escaped income.

CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC).

XXXIII. Order set aside by the Commissioner

73. When the assessment is set aside by the commissioner under section 263, no fresh order was passed, issue cannot be said to be escaped assessment, hence the reassessment notice held to be bad in law, void ab initio and illegal.

Ador Technopark Ltd. vs. DCIT (2004) 271 ITR 50 (Bom.)

XXXIV. Writ

74. A writ petition would be maintainable to challenge invocation of proceedings for reassessment even though it was open to the assessee to challenge the same before the assessing officer during assessment as also challenge the same before the Appellate authorities after the reassessment proceedings were completed.

Calcutta Discount Co. Ltd. vs. ITO (1961) 41 ITR 191 (SC).

75. Writ petition challenging reassessment can not be thrown out at the threshold on the ground that it is not maintainable.

Techspan India (P) Ltd vs. ITO (2006) 283 ITR 212 (Delhi).