

A COMMISSIONER OF INCOME TAX, DELHI
v.

M/S. KELVINATOR OF INDIA LIMITED
(Civil Appeal Nos. 2009-2011 of 2003)

JANUARY 18, 2010

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[S.H. KAPADIA, AFTAB ALAM AND SWATANTER
KUMAR, JJ.]

C *Income Tax Act, 1961: s.147 – Power to reassess – The*
word “opinion” inserted in s.147 after the enactment of Direct
Tax Laws (Amendment) Act, 1987 i.e. prior to 1st April, 1989,
vested arbitrary powers in the Assessing Officer to reopen past
assessments on mere change of opinion – The concept of
D *“change of opinion” stood obliterated with effect from 1st April,*
1989, i.e. after substitution of s.147 of the Act by Direct Tax
Laws (Amendment) Act, 1989 – Direct Tax Laws (Amendment)
Act, 1987 – Circular No.549 dated 31st October, 1989.

E The question which arose for consideration in the
present appeal is whether the concept of “change of
opinion” stands obliterated with effect from 1st April,
1989, i.e. after substitution of section 147 of the Income
Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1989.

Dismissing the appeals, the Court

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HELD: Post-1st April, 1989, power to re-open is much
wider. The words “reason to believe” need to be given a
schematic interpretation failing which, Section 147 of the
Income Tax Act, 1961 would give arbitrary powers to the
Assessing Officer to re-open assessments on the basis
G of “mere change of opinion”, which cannot *per se* be
reason to re-open. The Assessing Officer has no power
to review but he has the power to re-assess. But re-
assessment has to be based on fulfillment of certain pre-

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condition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words “reason to believe” but also inserted the word “opinion” in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words “reason to believe”, Parliament re-introduced the said expression and deleted the word “opinion” on the ground that it would vest arbitrary powers in the Assessing Officer. The Circular No.549 dated 31st October, 1989, stated that the omission of expression ‘reason to believe’ from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. The Amending Act, 1989, has again amended section 147 to reintroduce the expression ‘has reason to believe’ in place of the words ‘for reasons to be recorded by him in writing, is of the opinion’. Other provisions of the new section 147, however, remain the same. [Para 6] [772-C-H; 773-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2009-2011 of 2003.

From the Judgment & Order dated 19.04.2002 of the High Court of Delhi at New Delhi in I.T.C. No.4 of 2000 and dated 15.05.2002 in i.T.A. No. 81 of 2000.

WITH

C.A. No. 2520 of 2008.

A Arijit Prasad, Kunal Bahri, B.V. Balaram Das for the Appellant.

Kavita Jha, Bhargava V. Desai, Rahul Gupta, Nikhil Sharma for the Respondent.

B The Judgment of the Court was delivered by

S.H. KAPADIA, J. 1. Heard learned counsel on both sides.

C 2. A short question which arises for determination in this batch of civil appeals is, whether the concept of "change of opinion" stands obliterated with effect from 1st April, 1989, i.e., after substitution of Section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1989?

D 3. To answer the above question, we need to note the changes undergone by Section 147 of the Income Tax Act, 1961 [for short, "the Act"]. Prior to Direct Tax Laws (Amendment) Act, 1987, Section 147 reads as under:

"Income escaping assessment.

E 147. If--

F [a] the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

G [b] notwithstanding that there has been no omission or failure as mentioned in clause

(a) on the part of the assessee, the Income- tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped

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assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year)." A B

4. *After enactment of Direct Tax Laws (Amendment) Act, 1987*, i.e., prior to 1st April, 1989, Section 147 of the Act, reads as under:

"147. Income escaping assessment.-- If the Assessing Officer, for reasons to be recorded by him in writing, is of the opinion 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)." C D E

5. *After the Amending Act, 1989*, Section 147 reads as under:

"Income escaping assessment. F

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 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 H G

A 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)."

B 6. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe"

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but also inserted the word "opinion" in Section 147 of the Act. A
However, on receipt of representations from the Companies
against omission of the words "reason to believe", Parliament
re-introduced the said expression and deleted the word
"opinion" on the ground that it would vest arbitrary powers in
the Assessing Officer. We quote hereinbelow the relevant B
portion of Circular No.549 dated 31st October, 1989, which
reads as follows:

"7.2 Amendment made by the Amending Act, 1989, to
reintroduce the expression 'reason to believe' in Section C
147.--A number of representations were received against
the omission of the words 'reason to believe' from Section
147 and their substitution by the 'opinion' of the Assessing
Officer. It was pointed out that the meaning of the
expression, 'reason to believe' had been explained in a D
number of court rulings in the past and was well settled and
its omission from section 147 *would give arbitrary powers
to the Assessing Officer* to reopen past assessments on
mere change of opinion. To allay these fears, the Amending
Act, 1989, has again amended section 147 to reintroduce
the expression 'has reason to believe' in place of the words E
'for reasons to be recorded by him in writing, is of the
opinion'. Other provisions of the new section 147, however,
remain the same."

For the afore-stated reasons, we see no merit in these civil F
appeals filed by the Department, hence, dismissed with no
order as to costs.

D.G.

Appeals dismissed.