GAHC010190832023

2025:GAU-AS:1047-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : ITA/9/2023

DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE JORHAT, OFFICE OF THE JT. COMMISSIONER OF INCOME TAX,
RANGE JORHAT, CA M.K BARDOLOI BUILDING, TARAJAN, NEAR
TARAJAN POOL, TARAJAN, JORHAT, ASSAM 785001.

. ….***Appellant***

-VERSUS-

TOOR FINANACE COMPANY LIMITED ,
KHETAN BHAWAN, SEUNI ALI, A. T. ROAD, JORHAT, ASSM, 785001.

….***Respondent***

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant : Mr. S.C. Keyal, Standing Counsel, Income Tax Department.
For the Respondent(s) : None appears

Date of Hearing **:**28.01.2025
Date of judgment **:**30.01.2025

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

This Income Tax Appeal is preferred on behalf of the Revenue being aggrieved with the order dated 20.09.2022 passed by the Income Tax Appellate Tribunal (ITAT), Guwahati Bench, Kolkata (hereinafter to be referred as "the

Tribunal") in I.T.A. No.305/GAU/2018 for the Assessment Year 2010-11 in respect of the sole respondent herein. The Revenue has also assailed the validity of the order dated 31.08.2018 passed by the Commissioner of Income Tax (Appeals), Jorhat for the assessment year 2010-11 in respect of the sole respondent herein.

2. This Court, on 16.02.2024, while admitting the appeal has framed the following substantial question of law:

> "*Whether the findings recorded by the Hon'ble ITAT is contrary to the provisions of Explanation-3 of Section 147 of the Income Tax Act, 1961 that if no addition is made on the issue which was mentioned for reopening of the case, the Assessment Officer cannot reassess in a case of escaped assessment?*"

3. The brief facts relevant foradjudication of the matterare that the respondent assessee filed its return of income on 27.012.2010 declaring a total income of Rs.57,652/-. The said return was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter to be referred as "the Income Tax Act") and the Assessing Officer re-opened the assessment under Section 148 of the Income Tax Act while disclosing the reasons for re-opening contending that he had reason to believe that an amount of Rs.18,00,000/-, which was chargeable to tax,had escaped assessment for the year under consideration and the same needed to be brought under the ambit of taxation and action was being initiated under Sections 147 and 148 of the Income Tax Act.

4. The Assessing Officer concluded the assessment under Section 143 of the Income Tax Act determining the total income of the respondent assessee at Rs.9,21,96,300/-. The Assessing Officer made two additions, namely, Rs.8,94,55,000/- as unexplained credits under Section 68 of the Income Tax Act and Rs.26,83,650/- under Section 69 of the Income Tax Act being commission

paid by the assessee for arranging this bogus accommodation entry of unexplained credit amounting to Rs.8,94,55,000/-.The Assessing Officer calculated the commission at the rate of 3% and accordingly determined the taxable income of the assessee at Rs.9,21,96,300/-

5. The assessment order in the matter was passed on 11.12.2017.The respondent assessee challenged the same by preferring an appeal before the Commissioner of Income Tax (Appeals), Jorhat [hereinafter referred to be as "the Commissioner"] and the said appeal was allowed by the Commissioner vide order dated 31.08.2018 concluding that the addition made were liable to be deleted, more so, when no addition has been made in regard to the reasons on the basis of which the reassessment was initiated. The Commissioner also examined the aggregate addition of Rs.9,21,38,650/- (i.e. Rs.8,94,55,000 + Rs.26,83,650/-) on merits and concluded that the same cannot be sustained and therefore, were liable to be deleted.

6. Being aggrieved with the order dated 31.08.2013 passed by the Commissioner, Revenue preferred an appeal before the Tribunal. However, the said appeal came to be dismissed by the Tribunal while holding that the Assessing Officer could not have made addition of any other item which was detected during the reassessment of the escaped income, which has not been specified in the reopening order. While concurring with the findings of the Commissioner on this point, that the Tribunal did not examine on merit the question of addition of Rs.9,21,38,650/- in the income of the assessee.

The operative portion of the order passed by the Tribunal is reproduced hereunder:

> "*12. The second question posed to us, is whether the ld. Assessing Officer can make addition of any other item which was detected during the reassessment*

proceedings as escaped income. Section 147 has a direct bearing on this aspect, we take note of the relevant part of this section:-

'***Income escaping assessment***

> ***Section 147****: 'If the Assessing has reasoned to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provision of section 148 to 153, assess or re-assess such income and also any other income chargeable to tax which has escaped assessment .....'*

This expression 'and also any other income chargeable to tax which has escaped assessment' and which comes to his notice subsequently has fallen for consideration before various Hon'ble High Courts, namely Hon'ble Bombay High Court – Jet Airways (I) Limited; Hon'ble Delhi High Court – Ranbaxi Laboratories Limited, Hon'ble Gujarat High Court – MohmedJundedDadani and Hon'ble Calcutta High Court in the case of M/s. Infinity Infotech Parks Limited. All the Hon'ble High Courts are unanimous in their approach to propound that expression 'and also'employed in section 147 cannot be read as being in the alternative. It means that if no addition is being made on an item for which assessment was reopened, then Assessing Officer cannot add any other item. In other words, he ought to have reopened the assessment again for the purpose of adding those escaped item because that creates an independent circumstance for proceeding against an assessee. There might be various aspects of limitation etc. Would come to the rescue of assessee. Thus following the Hon'ble High Courts decisions, we are of the view that the ld. CIT (Appeals) has rightly deleted the addition.

13. Since we have concurred with the ld. CIT (Appeals) that these amounts cannot be considered for making an addition to the income of the assessee on the ground that no addition was made for the item for which assessment was reopened, therefore, we do not deem it necessary to indulge in academic exercise, whether addition of Rs.8,94,55,000/- and commission expenditure of Rs.26,83,650/-can be added or not on merit? We are of the view that first there should be a jurisdiction with the ld. Assessing Officer to entertain this aspect only, thereafter it is to be decided on genuineness etc. With the above observation, we do not find any merit in this appeal of the Revenue. It is dismissed."

7. Despite service of notice upon the sole respondent, none has put in appearance on behalf of it before this Court.

8. Learned counsel appearing for the Revenue has submitted that the

Tribunal as well as the Commissioner has erroneously held that the Assessing Officer cannot make addition to the income of the assessee, which is not specifically mentioned in the re-opening order of the case.

9. It is submitted that with the insertion of Explanation-3 of Section 147 of the Income Tax Act by the Finance (No.2) Act, 2009 retrospectively with effect from 01.04.1989**,** it is open for the Assessing Officer to take into consideration any other income which has escaped assessmentand which has not specifically been pointed out in the reopening order.

10. In support of the above contention, learned counsel for the appellant/Revenue has placed reliance upon the Division Bench decision of the Punjab and Haryana High Court rendered in ***Commissioner, Income Tax Vs. MehakFinvest Pvt. Ltd.,*** reported in ***2014 (367) ITR 769*** and the decision rendered by the Division Bench of the High Court of Karnataka in ***N. Govindaraju Vs. Income Tax Officer & Ors.***, reported in ***2015 0 Supreme (Kar) 441***and submitted that the Division Bench of High Court of Punjab and Haryana as well as the High Court of Karnataka have held that the Assessing Officer can assess the income chargeable to tax which has escaped assessment and which has not specifically been pointed out in the reopening order and comes to his notice subsequently in course of proceedings under Section 147 of the Income Tax Act.

11. It is contended by the learned counsel for the Revenue that so far as his information is concerned, the judgments rendered by the High Court of Punjab and Haryana and the High Court of Karnataka in the above referred decisions have neither been reversed nor modified and the same still hold good.

12. Heard the learned counsel appearing for the appellant/Revenue and

perused the material available on record.

13. The High Court of Punjab and Haryana in ***MehakFinvest Pvt. Ltd.*** (supra) while taking into consideration Explanation-3 inserted to Section 147 of the Income Tax Act through the Finance (No.2) Act, 2009, prospectively with effect from 01.04.1989 has held as under:

> *"5. After hearing learned counsel for the parties, in our view, the appeal deserves to succeed. Explanation 3 to section 147 has been inserted by the Finance (No.2)Act, 2009,retrospectively witheffect fromApril 1,1989. It reads thus:*
>
> > *'147. Incomeescaping assessment.--...Explanation 3.--For the purpose of assessment orreassessmentunder this section,the Assessing Officer may assess orreassess the income inrespectof any issue,which has escapedassessment, 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.'*
>
> *6. This courtin Majinder SinghKong''s case(supra), consideringthe scope ofExplanation 3 to section 147 ofthe Act heldthattheAssessing Officer is empowered tomake additions even onthe groundon which reassessmentnoticemight not have been issuedwhereduring the reassessment proceedings,heconcludes that some other incomehasescaped assessment which comes to his notice during the course of the proceedings for reassessment under section 148 of the Act. The provision nowhere postulates or contemplates that the Assessing Officer cannot make any additions on any other ground unless some addition is made on the ground on which reassessment had been initiated. Special Leave Petition (Civil) No.13028 of 2011 against this decision was dismissed on August 19, 2011. The reassessment proceedings, thus, in the present case, cannot be held to be vitiated.*
>
> *7. Adverting tothe judgments reliedupon by learnedcounsel for therespondent,it maybenoticedthatthe decision of the Rajasthan High Court in Commissioner of Income Tax Vs. Shri Ram Singh, was held to be not applicable being prior to the insertion of Explanation 3 to section 147 of the Act. Further, Explanation 3 to section 147 of the Act was not under consideration in Empire Finvest Ltd.'s case(supra). Inview of the binding precedent of thiscourt in Majinder Singh's case (supra) against which special leave petition has been dismissed on August 19, 2011, the judgment of the Bombay High Court in Jet Airways (I) Ltd.'scase (supra),which has been followed by the Delhi High Court in Ranbaxy Laboratories Ltd.'s case(supra),wouldnot come to the rescue of the assessee. In view of the above, the order dated January 20, 2009 (annexure A.*

4) passed by the Tribunal is unsustainable and is set aside. Accordingly, the appeals are allowed.The matter isremandedto the Tribunal to adjudicatethe issue afreshon themeritsin accordance with law."

14. The High Court of Karnatakain ***N. Govindaraju***(supra) whilerelying on earlier decision of the High Court of Punjab and Haryana rendered in ***Majinder Singh Kang Vs. CIT, reported in (2012) CIT 344 ITR 358 and MehakFinvest Pvt. Ltd.*** (supra)has come to the conclusion that the Assessing Officer can take into consideration any other income which may have escaped assessment but discovered during the re-opening process, however, was not specifically mentioned in the reopening order.

The relevant portion of the decision of the Karnataka High Court rendered in ***N. Govindaraju***(supra) is reproduced hereunder:

"*S.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 S.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 recomputed 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):

Provided that …….

Provided further that……..

Provided also that …..

Explanation (1) ……

Explanation (2)…….

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 S.148.
Prior to the amendment with effect from 1.4.1989, section 147 stood as under:

S.147: Income escaping assessment – If

(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 S.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

(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 assessment for any assessment year,

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

S.148: Issue of notice where income has escaped assessment:

(1) Before making the assessment, reassessment or recomputation under S.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 S.139:

Provided that …….

Provided further that …..

Explanation: (1) …..

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

Section 148 of the Act requires the Assessing Officer to issue notice to the assessee where the income has escaped assessment. Subsection (2), which was inserted by Direct Tax Laws (Amendment) Act, 1989 with effect from 1.4.1989, requires the Assessing Officer to record his reasons before issuance of any such notice under sub-section (1) of section 148.

The question which first arises is with regard to the validity of the reopening proceedings, which is by issuance of notice under section 148, reasons for which are to be recorded under sub-section (2). The assessee has an opportunity to challenge the reasons given for issuance of notice and if the same are found to be vague or illegal or without any basis, the notice would become invalid.

In the case of Raymond Woollen Mills Ltd. Vs ITO (1999) 236 ITR 34, where such notice had been challenged, the Supreme Court held that what is to be seen is "whether there was prima facie some material on the basis of which the Department can reopen the case. The sufficiency of correctness of the material is not to be considered at this stage". Relying on this decision, the Apex Court, in the case of ACIT Vs Rajesh Jhaveri Stock Brokers(P) Ltd. (2007) 291 ITR 500, while considering the issuance of notice under section 147 of the Act prior to the amendment of 2009, has held that the final outcome of the proceedings is not relevant and at the initial stage, what is required is 'reason to believe' but not established fact of escapement of income. It further held that "at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief whether the materials would conclusively prove the escapement is not the concern at this stage".

This would clearly mean that the issuance of notice is justiciable. If the assessee chooses not to challenge the notice or if it is challenged and found to be valid, then in either case, such notice is to be treated as valid and final. Since the validity of the notice issued under section 148(2) can be challenged or is subject to judicial scrutiny, in our view, the assessment or reassessment of 'any other income' in the case of a validly issued notice cannot be said to be a case of fishing and roving enquiry. The assessee has the opportunity to challenge the notice, and if it is held to be invalid for not giving adequate reasons for reopening the assessment, the entire reopening proceedings would lapse. In such a case there would be no question of assessment of either 'such income' of the first part of section 147 or 'any other income' of its second part. But if the notice is either not challenged or if challenged and found to be justified, it would be a case of reopening the assessment on the basis of a valid notice.

Once the notice for reopening of a previously closed assessment is held to be valid, the assessment proceedings as well as the assessment order already passed would be deemed to have been set aside. The Assessing Officer would then have the power to pass fresh assessment order with regard to the entire income which has escaped assessment. As long as the proceedings have been initiated on the basis of a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income which may have escaped assessment during the assessment year.

The said section 147 of the Act, as it now stands after 1.4.1989, may be read in a simple manner, in parts, as follows:

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, he may 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……..

The 'reason to believe' that any income chargeable to tax has escaped assessment, is one aspect of the matter. If such reason exists, the Assessing Officer can undoubtedly assess or reassess such income, for which there is such 'reason to believe' that income chargeable to tax has escaped assessment. This is the first part of the section and up to this extent, there is no dispute.

It is the latter part of the section that is to be interpreted by this Court, which is as to whether the second part relating to 'any other income' is to be read in conjunction with the first part (relating to 'such income') or not. If it is to be read in conjunction, then without there being any addition made with regard to 'such income' (for which reason had been given in the notice for reopening the assessment), the second part cannot be invoked. But if it is not to be read in conjunction, the second part can be invoked independently even without the reason for the first part surviving.

From a plain reading of section 147 of the Act it is clear that its latter part provides that 'any other income' chargeable to tax which has escaped assessment and which has come to the notice of the Assessing Officer subsequently in the course of the proceedings, can also be taxed. The said two parts of the section having been joined by the words 'and also', what we have to now consider is whether 'and also' would be conjunctive, or the second part has to be treated as independent of the first part. If we treat it as conjunctive, then certainly if the reason to believe is there for a particular ground or issue with regard to escaped income which has to be assessed or reassessed, and such ground is not found or does not survive, then the assessment or reassessment of 'any other income' which is chargeable to tax and has escaped assessment, cannot be made.

Chapter XIV of the Act deals with the 'Procedure for Assessment'. It provides for filing of Return of Income (s.139), Self Assessment (s.140 A), Assessment (s.143), Best Judgment Assessment (s.144) and also for Income Escaping Assessment (s.147). The purpose of these provisions is to bring to tax the entire taxable income of the assessee and in doing so, where the Assessing Officer has reason to believe that some income chargeable to tax has escaped assessment, he may assess or reassess such income. Since the purpose is to tax all such income which has escaped assessment, in our view, besides 'such income' for which he has reason to believe to have escaped assessment, it would be open to the Assessing Officer to also independently assess or reassess any other income which does not form the subject matter of notice.

Although in a different context, which was whether in the course of reassessment of an escaped item of income an assessee could seek review in respect of an item which stood concluded in the original assessment order, the Supreme Court in the case of Sun Engineering Works Pvt. Ltd. Vs CIT (1992) 198 ITR 297 has held that "the proceedings under S.147 of the Act are for the benefit of the Revenue and not an assessee and are aimed at garnering the 'escaped income' of an assessee".

While interpreting the provisions of section 147, different High Courts have held differently, i.e., some have held that the second part of section 147 is to be read in conjunction with the first part, and some have held that the second part is to be read independently. To clarify the same, in the year 1989, the legislature brought in suitable amendments in sections 147 and 148 of the Act, which was with the object to enhance the power of the Assessing Officer, and not to help the assessee. Explanation 3 was inserted in section 147 by Finance (No.2) Act, 2009 with effect from 1.4.1989. By the said Explanation, which is merely clarificatory in nature, it has been clearly provided that 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, notwithstanding that the reasons for such issue had not been included in the reasons recorded under sub-section (2) of section 148. Insertion of this Explanation cannot be but for the benefit of the Revenue, and not the assessee.

In this background, if we read Section 147 it would be clear that in the phrase 'and also' which joins the first and second parts of the section, 'and' is conjunctive which is to join the first part with the second part, but 'also' is for the second part and would be disjunctive. It segregates the first part from the second. Thus, when we read the full section, the phrase 'and also' cannot be said to be conjunctive.

The Punjab & Haryana High Court, in the case of Majinder Singh Kang Vs CIT (2012) CIT 344 ITR 358 has, after noticing that the earlier judgments [of the Punjab & Haryana and Rajasthan High Courts in the cases of CIT Vs Atlas Cycle Industries (1989) 180 ITR 319 and CIT VsShri Ram Singh (2008) 306 ITR 343 respectively] were rendered prior to the insertion of Explanation 3 to section 147 of the Act, held that "a plain reading of Explanation 3 to S.147 clearly depicts that the Assessing Officer has power to make additions even on the ground that reassessment notice might not have been issued in the case during the reassessment proceedings, if he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment under S.148 of the Act. The provision no where postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other grounds on which the income has escaped assessment". The same view was reiterated by the Punjab & Haryana High

Court in the case of CIT VsMehakFinvestPvt. Ltd. (2014) 367 ITR 769. In the said judgment, it was also noticed that the Special Leave Petition filed against the judgment in the case of Majinder Singh (supra) had been dismissed by the Supreme Court.

Circular No.5 of 2010 issued by the Central Board of Direct Taxes (CBDT) after the amendment of 2009, provided for the "Explanatory Notes to the Provisions of Finance (No.2) Act, 2009" by which Explanation 3 to section 147 of the Act had been inserted with effect from 1.4.1989. The relevant paragraph 47 of this Circular is reproduced below:

"47: Clarificatory amendment in respect of reassessment proceeding under S.147.

47.1: The existing provisions of S.147 provides that 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 S.148 to 153, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment. Further Assessing Officer may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Assessing Officer is required to record the reasons for reopening the assessment before issuing notice under S.148 with a view to reassess the income of assessee.

47.2: Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to the reasons recorded for reopening of the assessment and 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.

47.3: Therefore, to articulate the legislative intention clearly Explanation 3 has been inserted in S.147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income 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 S.148.

47.4: Applicability – This amendment has been made applicable with retrospective effect from 1st April, 1989 and will apply accordingly in relation to assessment year 1989-90 and subsequent years."

It is thus clear that once satisfaction of reasons for the notice is found sufficient, i.e., if the notice under section 148(2) is found to be valid, then addition can be made on all grounds or issues (with regard to 'any other income' also) which may come to the notice of the Assessing Officer subsequently during the course of proceedings under section 147, even though

reason for notice for 'such income' which may have escaped assessment, may not survive.

In the case of CIT Vs Jet Airways (I) Ltd. (2011) 331 ITR 236 the Bombay High Court has held that "Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance or core nugatory. Section 147 has this effect that the Assessing Officer has to assess 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."

Thus, what has been held is that 'such income' in the first part of section 147 is joined with 'any other income' of the second part of the section by the phrase "and also" which is used in a "cumulative and conjunctive sense". Following the said judgment of the Bombay High Court, same view has been taken by the Delhi High Court in the cases of Ranbaxy Laboratories Ltd. Vs CIT (2011) CIT 336 ITR 136 and CIT VsAdhunikNiryatIspat Ltd. (2011) 63 DTR 212 and also the Gujarat High Court in the case of CIT VsMohmedJunedDadani (2013) 214 Taxman 38.

With due respect to the view taken in the aforesaid cases, we are unable to persuade ourselves to follow the same.

Insertion of 'Explanation' in a section of an Act is for a different purpose than insertion of a 'Proviso'. 'Explanation' gives a reason or justification and explains the contents of the main section, whereas 'Proviso' puts a condition on the contents of the main section or qualifies the same. 'Proviso' is generally intended to restrain the enacting clause, whereas 'Explanation' explains or clarifies the main section. Meaning thereby, 'Proviso' limits the scope of the enactment as it puts a condition, whereas 'Explanation' clarifies the enactment as it explains and is useful for settling a matter or controversy.

Orthodox function of an 'Explanation' is to explain the meaning and effect of the main provision. It is different in nature from a 'Proviso', as the latter excepts, excludes or restricts, while the former explains or clarifies and does not restrict the operation of the main provision. It is true that an 'Explanation' may not enlarge the scope of the section but it also does not restrict the operation of the main provision. Its purpose is to clear the cob-webs which may make the

meaning of the main provision blurred. Ordinarily, the purpose of insertion of an 'Explanation' to a section is not to limit the scope of the main provision but to explain or clarify and to clear the doubt or ambiguity in it.

Explanation is also different from Rules framed under an Act. Rules are for effective implementation of the Act whereas Explanation only explains the provision of the Section. Rules cannot go beyond or against the provision of the Act as it is framed under the Act and if there is any contradiction, the Act will prevail over the Rules. Same is not the position vis-à-vis the Section and its Explanation. The latter, by its very name, is intended to explain the provision of the Section, hence there can be no contradiction. Section has to be understood and read hand-in-hand with the Explanation, which is only to support the main provision, like an example does to explain any situation.

In the present case, insertion of Explanation 3 to section 147 does not in any manner override the main section and has been added with no other purpose than to explain or clarify the main section so as to also bring in 'any other income' (of the second part of section 147) within the ambit of tax, which may have escaped assessment, and comes to the notice of the Assessing Officer subsequently during the course of the proceedings. Circular 5 of 2010 issued by the CBDT (already reproduced above) also makes this position clear. In our view, there is no conflict between the main section 147 and its Explanation 3. This Explanation has been inserted only to clarify the main section and not curtail its scope. Insertion of Explanation 3 is thus clarificatory and is for the benefit of the Revenue and not the assessee.

If there is ambiguity in the main provision of the enactment, it can be clarified by insertion of an Explanation to the said section of the Act. Same has been done in the present case. Section 147 of the Act was interpreted differently by different High Courts, i.e., whether the second part of the section was independent of the first part, or not. To clarify the same, Explanation 3 was inserted by which it has been clarified that the Assessing Officer can assess the income in respect of any issue which has escaped assessment and also 'any other income' (of the second part of section 147) which comes to his notice subsequently during the course of the proceedings under the section. After the insertion of Explanation 3 to section 147 it is clear that the use of the phrase "and also" between the first and the second parts of the section is not conjunctive and assessment of 'any other income' (of the second part) can be made independent of the first part (relating to 'such income' for which reasons are given in notice under section 148), notwithstanding that the reasons for such issue ('any other income') have not been given in the reasons recorded under section 148(2) of the Act. We are thus in agreement with the view taken by the Punjab & Haryana High Court in the cases of Majinder Singh Kang and MehakFinvest (supra).

Considering the provision of section 147 as well as its Explanation 3, and also keeping in view that section 147 is for the benefit of the Revenue and not

the assessee and is aimed at garnering the escaped income of the assessee [viz. Sun Engineering (supra)] and also keeping in view that it is the constitutional obligation of every assessee to disclose his total income on which it is to pay tax, we are of the clear opinion that the two parts of section 147 (one relating to 'such income' and the other to 'any other income') are to be read independently. The phrase 'such income' used in the first part of section 147 is with regard to which reasons have been recorded under section 148(2) of the Act, and the phrase 'any other income' used in the second part of the section is with regard to where no reasons have been recorded before issuing notice and has come to the notice of the Assessing Officer subsequently during the course of the proceedings, which can be assessed independent of the first part, even when no addition can be made with regard to 'such income', but the notice on the basis of which proceedings have commenced, is found to be valid.

In the end it was vehemently argued by the learned counsel for the appellant that the reason to be given under sub-section (2) of section 148 would be the very foundation of the issuance of notice and if it is false or baseless, then everything goes and the structure erected on such foundation would crumble.

It is true that if the foundation goes, then the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. But the same can be checked at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then in either case it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can go on. We may only reiterate here that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including 'any other income') which may have escaped assessment and comes to his notice during the course of the proceedings initiated under section 147 of the Act."

15. Having given a thoughtful consideration on the above referred decisions and the provisions of Sections 147 as well as Section 148 of the Income Tax Act, we are in perfect agreement with the view taken by the High Court of Punjab and Haryana in ***MehakFinvest Pvt. Ltd.*** (supra) as well as the decision rendered by the High Court of Karnataka in ***N. Govindraju***(supra).

16. Resultantly, the question of law framed in this appeal for appropriate answer is answered in favour of the appellant/Revenue.

However, it is noticed that the Tribunal has not examined the validity of

the addition to the tune of Rs.9,21,38,650/- (Rs.8,94,55,000/- + 26,83,650/-) in the income of the assessee on merits. We deem it appropriate to remit the matter to the Tribunal for fresh consideration whether the addition to the tune of Rs.9,21,38,650/- (Rs.8,94,55,000/- + 26,83,650/-) in the income of the respondent assessee is liable to be sustained or not.

Ordered accordingly.

17. With the above observations, this appeal stands disposed of.

JUDGE **CHIEF JUSTICE**

Comparing Assistant