

## [2023] 149 taxmann.com 63 (Article)

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## Quantifying escaped income is a prerequisite in Section 148A process



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### Basic requirement for reopening

#### A. Department arguments

In the case of Bikash Dev vs. Dy. Commissioner of Income tax [2023] 102 ITR (Trib) 701 (ITAT[Ctk]) the department after drawing support from court decisions held the following arguments as sufficient reasons to believe that there is escapement of income:

1. that the Assessing Officer had received information from Director of Income- tax (Investigation), Bhubaneswar vide letter dated December 18, 2014 about the illegal mining of iron and manganese in the State of Odisha. This was a credible fresh information which was not available at the time when the return of income was processed under section [143\(1\)](#) of the Act.
2. That at the stage of the issuance of the notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief.
3. That where the Assessing Officer had received information from the Investigation Wing, the reopening under section [147](#) of the Act on the basis of said information is justified.
4. That the assessment could be reopened on the ground of under invoicing based on report submitted by a Commission appointed to investigate illegal mining and under invoicing in respect of sale of iron ore.

In this case particular of Bikash Dev there was a reference to penalty of Rs. 243.48 crores initiated by the State Government for illegal extracting iron and manganese ores from outside the leased area and safety zone to an extent of 58,03,094 MT of iron ore and 3,55,228 MT of manganese ore valued at Rs. 158,71,60,491 and Rs. 67,48,99,832 respectively which prompted reopening alleging escaped assessment.

#### B. Petitioner's arguments

1. That the reasons recorded for reopening the assessment did not quantify the value of escapement of income.
2. That even approximate estimate has not been mentioned by the Assessing Officer

The Tribunal held that as the reasons recorded does not quantify even an estimated amount of the alleged income which has escaped assessment and as it is noticed that the reasons recorded do not contain any live link to the alleged illegal mining, the reasons recorded for the purpose of reopening of assessment are invalid and is

nothing but fishing enquiry. Consequently, the reasons recorded are held to be invalid and notice issued under section [148](#) of the Act for the purpose of reopening stands quashed. Consequently, the assessment also stands quashed.

In the nutshell therefore with respect to the show cause reasons recorded for reopening the following is pre desirable:

1. there is quantification of the income alleged to have escaped assessment; &
2. also there is an estimate of income chargeable to tax for meeting section [149](#) conditions.

The reassessment proceedings can't be initiated for verification purposes on pure suspicion and surmises without any bona fide existence of belief.

In the interim judgement rendered by the DHC in W.P.(C) 3405/2023 & CM APPL. 13157-13158/2023 dated 20.03.2023 in MANJEET KAUR DUGGAL for A Y 2013-14 it was found that the AO has only quantified the transactions of sale of penny stocks and not estimated the capital gains component chargeable to tax that have escaped assessment for section 149 purpose. In this case the petitioner has concededly sold shares concerning two entities, namely, Gemstone Investment and Priti Mercantile Pvt. Ltd., for a cumulative amount of Rs.52,06,186/- . After adjusting the cost of acquisition, has disclosed cumulative value of capital gains is shown at Rs 42,97,299/- so that it was argued that the amount claimed as exemption is less than Rs.50,00,000/- hence reopening is uncalled for. Posting the case for next date of hearing the High Court provided liberty to the AO to continue with the re-assessment proceedings with the narrative that if any order is passed which is adverse to the interest of the petitioner, the same shall not be given effect to till further directions of the Court.

This decision is nothing but add to a hung-up situation. On one hand it calls upon AO to proceed with reassessment and not to pass any adverse order. On the other hand, the assessee is compelled to submit before the AO even when there lies no case for reopening of assessment in the light of failure to estimate the income chargeable to tax that has escaped assessment in the case.

In Limine, therefore, In the right earnest there is a need for the CBDT to release suitable directions and a prescribed template and AO/AU to provide/annex such statement of computation of estimate of income chargeable to tax escaping assessment with every notice issued u/s[148A](#) in the absence of which the proceedings would be non est, failing to meet the basic requirement of the law for reopening assessment.

