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Non-Speaking Assessment Orders and the Scope of Reassessment

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Statutory Background

Section 143(3) of the Income-tax Act, 1961 mandates that the Assessing Officer (AO) shall pass an order in writing after considering the evidence and material gathered during assessment, determine the total income, allow admissible deductions, and compute the tax payable or refundable. However, the provision does not require the AO to pass a speaking order, nor does it prescribe any specific format or manner in which the assessment order must be drafted.

Further, Explanation 2 to section 147 does not contain any deeming fiction whereby an assessment can be treated as erroneous or incomplete merely because the order is silent or non-speaking in form or substance. In the absence of an express statutory provision, reopening an assessment solely on the ground that the original order is non-speaking would effectively amount to a review of the assessment, which is impermissible in law and prejudicial to the taxpayer.

Judicial Precedent: Jasmine Towels (P) Ltd.

In *Jasmine Towels (P.) Ltd*. v. *Asstt. CIT* [2025] 181 taxmann.com 674 (Mad.), the Assessing Authority sought to reopen a completed scrutiny assessment on the ground that excessive deduction under section 80HHC had been allowed. The reopening was sought to be justified by invoking Explanation 2(c)(iii) to section 147, which deems income to have escaped assessment where excessive relief has been granted.

In that case, the original assessment had been completed under section 143(3) after allowing deduction under section 80HHC. Upon reopening, the assessee challenged the proceedings on the ground that the action amounted to a mere change of opinion. This argument did not find favour with the authorities.

The Madras High Court undertook a detailed examination of the assessment records. The Court observed that there was no correspondence, query, or discussion in the assessment records regarding the claim of deduction under section 80HHC. On this basis, it concluded that the assessment order was wholly non-speaking and that the AO had completely lost sight of the claim while completing the assessment. According to the Court, this demonstrated absence of application of mind and lack of formation of any opinion during the original assessment.

Changing Reassessment Landscape

The relevance of such reasoning must be viewed in the context of the assessment regime prevailing at the relevant time. Historically, scrutiny assessments were conducted in a small percentage of cases, often on a random basis, with limited information available to the tax authorities.

The reassessment framework today stands on an entirely different footing. The Revenue is now equipped with vast and continuous streams of data received from multiple sources throughout the year. The current reassessment mechanism under sections 148 and 148A is information-based and driven by risk management strategies rather than by hindsight review of completed assessments.

Once an assessment is completed under section 143(3) or even under section 143(1), it can be reopened only on the basis of receipt of specific information suggesting escapement of income, and certainly not on the premise that the AO failed to form an opinion or omitted to discuss an issue in the assessment order.

Supreme Court on Reopening and Change of Opinion

In this context, the observations of the Supreme Court in *CIT* v. *Kelvinator of India Ltd.* [2010] 187 Taxman 312/320 ITR 561 assume great significance. The Court held:

> "However, one needs to give a schematic interpretation to the words 'reason to believe', failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening 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."

This principle continues to hold the field and applies with equal, if not greater, force under the new reassessment regime.

Statutory Limits under Section 148A

Under the present framework, reassessment proceedings can be initiated only in the specific circumstances enumerated in section 148A(3), namely where information suggesting escapement of income arises from:

(*i*) Risk management strategy formulated by the Board;

(*ii*) Audit objections indicating non-compliance with the Act;

(*iii*) Information received under tax treaties (sections 90 or 90A);

(*iv*) Information made available under the scheme notified under section 135A;

(*v*) Consequential action required pursuant to an order of a Court or Tribunal; or

(*vi*) Information emanating from a survey conducted under section 133A (other than section 133A(2A)) on or after 1 September 2024.

Notably, there is no provision which permits reopening of an assessment on the presumption that the original order was non-speaking, silent, or reflective of non-application of mind.

Conclusion

In the absence of any statutory requirement under section 143(3) to pass a speaking order, reopening an assessment merely because the order does not record discussion or reasoning would amount to an impermissible exercise of review. Such an approach would have far-reaching and unintended consequences under the current reassessment regime and would run contrary to the settled legal position laid down consistently by courts over several decades.

Accordingly, reopening an assessment solely on the ground that it is non-speaking or silent, without any fresh tangible information as contemplated under section 148A, would constitute excessive and unlawful exercise of power.

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