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## ***Issue considered in original assessment and no change in facts – Supreme Court upholds quashing of reassessment proceedings***

April 30, 2018

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### ***In brief***

In a recent decision,<sup>1</sup> the Supreme Court (SC) dismissed Revenue's appeal challenging the Delhi High Court (HC) decision, wherein it was held that the initiation of the reassessment proceedings under section 147 of the Income-tax Act, 1961 (the Act) on the taxpayer was nothing but change of opinion and was liable to be quashed.

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### ***In detail***

#### ***Facts***

- The taxpayer was engaged in the business of development and export of computer softwares and human resource services.
- The taxpayer allocated common expenses for both the businesses. Thereafter, it claimed deduction under section 10A for the income from software development.
- The return of the taxpayer was selected for regular assessment under section 143(3) of the Act.
- During the assessment proceedings, the tax officer (TO) questioned the deduction claimed under section 10A, with regard to the allocation of common expenses between the two sources.
- The issue was duly contested, and the assessment proceedings were concluded.
- Subsequently, a notice for reassessment under section 148 was issued on the ground that deduction under section 10A had been allowed in excess, and the income had escaped in the original assessment.
- The taxpayer filed a reply objecting to the reassessment. However, the same was rejected, and reassessment was approved.
- Being aggrieved, the taxpayer challenged the reassessment by filing a writ before the HC.
- The HC set aside the notice as well as the reassessment order stating that no new

material came to light and the TO merely had a change of opinion.

- Hence it was held that the reassessment was unjustified and without jurisdiction.
- Aggrieved by the order of the HC, Revenue filed an appeal before the SC.

#### ***Issue before the Supreme Court***

Whether re-opening of an assessment was justified when the issue under consideration was examined during the original assessment proceedings?

#### ***Supreme Court's decision***

- The use of the words "reason to believe" in section 147 has to be interpreted schematically.

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<sup>1</sup> Civil Appeal No. 2732 of 2007

- The liberal interpretation would have the consequence of conferring arbitrary powers on the TO, who may initiate such reassessment merely on change of opinion, which could not be the intention of the legislature.
- Provision enabling reassessment was incorporated to empower the TO to reassess any income on the grounds that it was not brought on record during original proceedings and had escaped his knowledge, and would have bearing on the outcome of the relevant order.
- The Act does not allow reassessment merely on the basis of change of opinion on the facts that were in his knowledge at the time of assessment.
- While section 147 confers the power to reassess, but does not

confer the power of review to the TO.

- Every attempt to bring to tax income that had escaped assessment could not be absorbed by judicial intervention on an assumed change of opinion, even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings.
- In the facts of the present case, the SC observed that, as per the bare perusal of the original assessment notice, the point on which reassessment proceedings was initiated was well considered in the original proceedings.
- Hence, initiation of the re-assessment proceedings was merely a change of opinion on the same facts.

- The SC upheld the HC's order and set aside the re-assessment proceedings.

### ***The takeaways***

- This decision reaffirms the position that reassessment proceedings cannot be initiated merely on change of opinion, when the subject matter was considered during the course of original assessment proceedings.
- It further reaffirms that section 147 confers TO with the power to reassess the income that escaped assessment, but does not confer the power to review the original assessment proceedings.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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