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Analysing newly proposed Regime for Re-assessments subsuming Block Assessments with Interesting Cases of Celebrities

Mayank Mohanka

Senior Partner in M/s S M Mohanka & Associates & Founder Director in TaxAaram India Pvt Ltd

"Honourable Speaker, presently an assessment can be re-opened up to 6 years and in serious tax fraud cases for up to 10 years. As a result, taxpayers have to remain under uncertainty for a long time.

I therefore propose to reduce this time-limit for re-opening of assessment to 3 years from the present 6 years."

"Wow, what a great relief."

Well yes Friends, this was my first and immediate reaction to the above announcement being made by our beloved FM in her budget speech on 1.2.2021.

But since my younger days into tax practice, my Father Sh. S.K. Mohanka, FCA, has always taught me to read the fine print of the Finance Bill first before jumping to any conclusion.

So, going by his advice, I read the fine print of the Finance Bill 2021 and penned down my observations on some of the finer and deeper nuances of the proposed budget amendments in my earlier article titled, **"A few hidden time bombs in that made in India tab containing the first paperless Finance Bill 2021"** published by the esteemed Taxmann.com, with the citation [2021] 124 taxmann.com 11 (Article), **on the budget day eve itself on 1.2.2021.**

In my said article, I have written,

"It is being said that, "Beauty lies in Details", but so does the 'Devil'. Some of the direct tax proposals & amendments as announced by our beloved FM in her Budget Speech have garnered the limelight of all news channels, like....

But at the same time, a few hidden time bombs have also been incorporated in the Finance Bill 2021, which have not been covered in the Budget Speech. These include.....treating any flagged information in accordance with the risk management parameters of CBDT, and the objection raised by CAG, as an 'information' warranting reopening of already concluded assessments u/s 147, blanket presumption of possession of information so as to warrant income escaping assessment u/s 147 by the AO in search, survey or requisition cases initiated on or after 31.3.2021."

Friends, in this **Taxalogue,** I am taking this discussion to a next level, wherein we will try **to understand the impact of these proposed amendments on the well settled and established legal**

jurisprudence of almost six decades, concerning the re-assessment/income-escaping assessments and block assessments pursuant to search action u/s 132 of the Income Tax Act, 1961, with the help of some interesting judgements in the cases of renowned and popular celebrities like **Amitabh Bachchan, Aishwarya Rai, Katrina Kaif and Sunil Gavaskar.**

The Crux of Proposed Legislative Amendments

Amendments have been proposed in the Finance Bill 2021, to substitute the existing sections 147 and 148 of the Income Tax Act, and thereby stipulating the replacement of the existing mandatory condition of formation of an independent reason to believe by the assessing authority that income of the assessee has escaped assessment so as to assume lawful jurisdiction u/s 147, by the presence of any flagged information as per the risk management strategy of CBDT or the final audit objection of C&AG, suggesting that income of the assessee has escaped assessment.

A further clarity is desirable from CBDT that whether the present "information" generated in Annual Information Return (AIR) u/s 285BA of the Income tax Act would also be considered as the "flagged information" suggesting escapement of income, so as to warrant assumption of jurisdiction under the newly proposed sections 148 and 147. If that being the case, then naturally these amendments are of a lot of concern and apprehension because in such cases, suspicion arising out of such flagged information will substitute the reason to believe of the assessing authority.

Even the newly proposed section 148A, requiring the assessing authority to provide a suitable opportunity of being heard to the assessee and also mandating prior approval of the competent income tax authority before issuing notice u/s 148, and as such being perceived by the Legislature as an adequate safeguard, authorises the assessing authority to proceed with the issuing of notice u/s 148 merely if he thinks it fit to do so and it nowhere requires the formation of an independent reason to believe by such assessing authority, of the escapement of income.

Also, the existing proviso to section 147 requiring the mandatory condition of failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessments for reopening the already concluded assessments beyond a period of 4 years and uptill 6 years, has found no place in the newly proposed section 147 and 148.

Further, w.e.f. 1.4.2021 the existing legislative provisions contained in section 153A and 153C relating to assessments pursuant to search and seizure, are proposed to be made inoperative and such search related assessments are proposed to be subsumed in income escaping assessments.

A deeming fiction has been proposed in the Finance Bill 2021 to provide that in search u/s 132, survey u/s 133A and requisition u/s 132A cases, initiated on or after 1.4.2021, the assessing officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

For ready reference and clear understanding, it will be worthwhile to reproduce the bare text of the **newly proposed section 148** as under:

"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such 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 section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- **(*i*) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;**
- **(*ii*) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.**

Explanation 2.—For the purposes of this section, where,—

- **(*i*) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or**
- **(*ii*) a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April, 2021; or**
- **(*iii*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or**
- **(*iv*) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,**

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person."

Friends, the most convenient way to understand the practical impact of any proposed budget amendment relating to any legislative provision is to see it in the light of existing jurisprudence concerning that legislative provision.

So, in order to have better and clear understanding of the practical implications of the proposed amendments relating to newly proposed regime of income escaping assessments and search related assessments, **let us analyse some of the interesting judicial pronouncements in the cases of some very renowned and popular celebrities and try to imagine the amended fate or the final outcome of the said judgements in the newly proposed regime of income-escaping assessments and block assessments pursuant to search**.

(i) First Case:

***CIT* v. *Amitabh Bachchan* [2013] 33 taxmann.com 535/[2012] 349 ITR 76 (Bom.)**

Facts of the Case:

> "On 5th April, 2006, a notice under Section 148 of the said Act was issued to the respondent assessee seeking to reopen the assessment proceedings for the Assessment Year 2002-03. The reasons recorded for reopening the assessment were as under:
>
> "On perusal of the records, it is seen that the assessee filed the revised return claiming estimated expenses @ 30% on the professional receipts, based on adhoc estimated expenses claimed by the Insurance Agents because they cannot prove certain expenses being incurred to persuade the Insurers. However, when the Assessing Officers asked to substantiate these expenses, the claim was withdrawn by the assessee without furnishing the details regarding sources for incurring these expenses were incurred out of undisclosed source which required further verification under the provisions of Sec.69 of the Income Tax Act."

The Hon'ble Bombay High Court in the said judgement have held in favour of the assessee Amitabh Bachchan as under:

> "Both the Commissioner of Income Tax (Appeal) and the Tribunal have correctly come to the conclusion that there was no fresh tangible material before the Assessing Officer to reach a reasonable belief that the income liable to tax has escaped assessment. The order passed originally on 29th March 2005 under Section 143(3) of the said Act was passed after the respondent had made adhoc claim for expenditure at 30% of the professional receipts in the revised return of income which was later withdrawn. In fact, the reasons for reopening the assessment for the year 2002-03 itself records that the claim of 30% adhoc expenses was withdrawn when the respondent assessee was asked to substantiate the claim. Therefore, the same material was a subject matter of consideration during the proceedings for assessment leading to order dated 29th March, 2005. In the circumstances there could be no basis for the Assessing Officers **to form a belief** that income has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible. In the circumstances, we uphold the order of the Tribunal dated 19th March, 2010.
>
> In view of the above, no substantial question of law arises for consideration by this court. Appeal is dismissed. No order as to costs."

The proposed amendment in section 147 and 148 in the Finance Bill 2021 has substituted the mandatory condition of formation of an independent reason to believe by the assessing authority that income of the assessee has escaped assessment so as to assume lawful jurisdiction u/s 147, by the presence of any flagged information as per the risk management strategy of CBDT suggesting that income of the assessee has escaped assessment.

So, in the above judgement, the assessee Amitabh Bachchan would not have got the appellate relief on the legal ground of absence of formation of an independent reason to believe by the AO that income of Sh. Amitabh Bachchan has escaped assessment.

(ii) Second Case:

***Dy. CIT* v. *Aishwarya Rai Bachchan* [IT Appeal No.3873 (Mum) of 2013, dated 18-1-2017]**

Facts of the Case:

The assessee **Aishwarya Rai Bachchan** is a renowned model-cum-actress.

It is submitted that in the Income & Expenditure Account filed along with return of income the appellant has credited an amount of Rs. 7,37,25,6561 on account of professional fees from foreign sources which is net of tax. In the said Income and Expenditure account the gross professional receipt was shown at Rs. 8,98,84,130/- in respect of services rendered in India (Page No. 47 of the paper book). In the capital account filed along with the return of income the appellant debited tax deducted at source of Rs. 65,04,630/- in respect of tax deducted in India on professional fees. However, in the capital account the tax deducted at source in the countries outside India amounting to Rs.52,83,630/- was not debited but the same was claimed separately under the head "TDS" in the computation of total Income filed along with the return of Income. It is therefore submitted that the appellant had disclosed foreign professional fees net of tax in her return of income, which is established from her computation of total income, Income & Expenditure Account and Capital Account field along with the return of income. During the course of original assessment proceedings, the appellant filed before the Ld. AO the copy of bank statements wherein' the foreign professional receipts of Rs. 7,37,25,656/-were credited and details of professional receipt in convertible foreign exchange, which clearly established that foreign professional fees was offered to tax at net of withholding taxes abroad. Further along with return of income the appellant filed the withholding tax certificates in respect of Tax Deducted at Source in the countries outside India. All these evidences filed along with return of income and/or filed during the original assessment proceedings clearly established the fact that the appellant has offered to tax the professional fees received by her in convertible foreign exchange from the person's resident outside India at net of tax which is accepted by the Ld. AO in the original assessment proceedings.

The Hon'ble ITAT, Mumbai has held in favour of the assessee as under:

The fact that the foreign professional receipts was disclosed in the return of income by the appellant at net of tax are fully and truly disclosed in the return of income and or during the course of original assessment proceedings and therefore the assessment reopened by the Ld. AD by invoking the provisions of section 147 is clearly barred by the limitation in view of the first proviso to section 147 of the Income Tax Act, 1961. The action of the Ld. A.O is based on mere change of opinion and therefore the same cannot be sustained. It may be noted that the Ld. A.O must ensure that he has significant reasons to believe that the income escaped assessment for the fault on the part of the assessee and there is essentially failure of the assessee to disclose the income that affects the assessment proceedings. The judiciary has time and again thrown light on the meaning of the term 'reason to believe '. The standard laid down has been that of a reasonable person, who will act on a reasonable ground and come to a rational conclusion. The very important conclusion that has been time and again laid drawn by the judiciaries is that mere change of opinion will not give the officer reason to reopen the assessment proceedings. If the Ld. A.O forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous,' it is not a valid reason under the law to reopen assessment. If at the time of the original proceedings, the A.O has examined all the facts on record and the belief on his part that there was some error in the decision and used this as a basis for reopening of the proceedings, the reopening cannot be sustained.

Further the term "reason to believe" is not a subjective satisfaction of the A.O, it means an objective view that is required to be disclosed in a particular case. The term is to be interpreted as a "reason to believe and not a "reason to suspect". This means that the mere instinct of the Ld. A.O that there has been some error in the original assessment cannot be the reason to reopen assessment under section 147 of the Income Tax Act 1961. It has to be noted that the section 34 of the Income tax Act, 1922 which dealt with reopening of assessments proceedings, made use of the word "definite information" this was amended in 1948. Non

usage of these words however does not mean that the information used as a basis for reopening can be vague. The A.O. is expected to act mechanically and deduce what amounted to non-disclosure, when he makes our case for re-opening of assessment proceedings. The use of the words "change in opinion" is therefore to act as an internal check of exercise the powers of the A.O. It has been observed that the function of the assessing officer is to administer the Act with solicitude for public treasury and with fairness of the taxpayers. If the conclusive and final judicial decision of the of the Hon'ble ITAT, Mumbai in the appellant own case is holding the field then the identical issue cannot be a subject matter of the administrative decision under section 147 and 148 of the Income Tax Act, 1961 and therefore ITA Nos._3791,3795,3796,3814-3816/2013 Ms. Aishwarya Rai Bachchan the impugned order under section 143(3) r.w.s.147 and reasons recorded in support thereof is liable to be quashed and set aside.

In the instant case, the original assessment u/s.143(3) was completed on 29.12.2006 and there was no failure on the part of the appellant to disclose fully and truly all material facts necessary for its assessment, for the assessment year 2004-05 Therefore, no action can be taken u/s.147 after the expiry of four years from the end of relevant assessment year. It is therefore, submitted that the time limit for initiation of action u/s.147 has expired on 31.03.2009 and in the instant case the notice u/s.148 has been issued on 17. 03.2011. Therefore, it is submitted that the issue of notice u/s.148 and the consequent assessment u/s.143(3) r. w.s, 147 are illegal as the same is barred by limitation in view of the first proviso to Sec. 147 and therefore, the same is liable to be quashed. This proposition is duly supported by following the decisions of the Hon'ble jurisdictional High Court.

In the assessment years 2004-2005, 2005-2006, CIT(A) has held the reopening as invalid, illegal and barred by limitation not only because of change of opinion but also on the plea that reopening was beyond 4 years and there is no failure on the part of the assessee to disclose fully and truly all materials facts necessary for assessment. He has also confirmed that the claim of the assessee is based on its order for the Asst. Year 2000-01. He further observed that the reasons for reopening do not allege any failure on the part of the assessee, hence the assessment cannot be reopened beyond 4 years. The CIT(A) further observed that 14A disallowance is not a part of the reasons for reopening for any assessment year."

In this case, the appellate relief has been given to the assessee Mrs. Aishwarya Rai Bachchan on the grounds that the AO has not formed any independent reason to believe that any income of the assessee has escaped assessment and also on the ground that there was no failure on the part of the assessee to disclose all material facts truly fully and truly for the purpose of her assessment.

However, in view of the proposed amendments, the assessee Mrs Aishwarya Rai Bachchan would not have gotten the above appellate relief.

(iii) Third Case:

***Sunil Gavaskar* v. *ITO(IT)* [2017] 88 taxmann.com 372 (Mum.)**

Facts of the Case:

These appeals have been filed by the assessee against separate orders of the learned Commissioner (Appeals)-10, Shri Sunil Gavaskar Mumbai, passed against the separate assessment orders under section 143(3) r/w section 147 of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2001-02 and 2002-03.

....The second issue raised by the learned Counsel for the assessee is that there was some audit objection raised by the audit team in its draft review report on eligibility of the assessee to claim deduction under section 80RR. With the assistance of both the parties, it is noted that there is a letter dated 29th September 2006, returned by the Assessing Officer to the CIT, City-5, Mumbai, on the subject of "Review on assessment of selected companies in selected sectors in the case of Shri Sunil Gavaskar - A.Y. 2000-01 to 2002-03 - comments reg". One relevant para from the said letter is reproduced hereunder:-

"At the outset it is submitted that when the returns for A.Y. 2000-01 & 2002-03 are processed under section 143(1) of I.T. Act, 1961 and the adjustment pointed by the audit are not permissible while processing the return u/s 143(1), hence, in principle the objections raised by the audit are not acceptable for these two years. However, since the issue involved in all the three assessment years is of debatable in nature, further necessary action in this case will be taken after carrying out necessary verification. A final reply will be sent to the audit in due course."

The Hon'ble ITAT Mumbai has held in favour of the assessee Sunil Gavaskar as under:

" The perusal of the aforesaid paragraph would show that the AO himself found that the issue was debatable in nature. The requirement of law for reopening of the case is that the AO should be in a position to form a belief about escapement of income. Although, it is true that at the stage of reopening, the belief need not be conclusive, but it is equally expected that the position of law should be clear in the mind of the AO, at least prima-facie. The belief need not be conclusive but it should be firm and clear. No belief can be formed out of confusion and doubtful thoughts. If this kind of situation is allowed to be sustainable in law, then it is quite possible that there will be experiments by the revenue officials by reopening the case of any assessee at their whims and fancies and that too on the basis of doubts and suspicions and without complying with jurisdictional and other procedural requirements of law. The re- assessment proceedings are not meant to make fishing enquiries and to experiment with the legal issues. In this regard, the position of law is well settled by many judgments Shri Sunil Gavaskar coming from various High Courts. We find support of our view from the judgment of Hon'ble Jurisdictional High Court in *IL And FS Investments Managers Ltd.* v. *ITO* [2008] 298 ITR 32 (Bom.) wherein it was held by the Hon'ble Jurisdictional High Court that where the AO himself disagreed with the audit objection, under such circumstances, there could not have been valid basis to reopen the already concluded assessment. This judgment has been recently followed again by Hon'ble Bombay High Court to reiterate this point in the case of *Reliance Industries Ltd.* [IT Appeal 2000 of 2013, dated 1-2-2016]. Some of the useful observations of Hon'ble jurisdictional High court are reproduced below:

"The jurisdictional requirements to reopen an assessment are:

- **(*i*) the AO must have reason to believe that the income chargeable to tax escaped assessment;**
- **(*ii*) the AO in the regular assessment proceedings had not formed an opinion in regard to the issue on which the reopening notice is issued; and**
- **(*iii*) there has been a failure on the part of the Assessee to truly and fully disclose all necessary facts for the assessment.**

In this case, the CIT (A) as well as the Tribunal have, on consideration of the facts arising before them, have concluded that none of the three conditions precedent have been satisfied. The reason to believe that income chargeable to tax has escaped assessment on the part of Shri Sunil Gavaskar the AO is a sine qua non for issue of a reopening assessment under section 148 of the Act as non- satisfaction of reason to believe would by itself make the notice fatal. In such a case, the satisfaction of other conditions would not even require examination.

Both the CIT(A) as well as the Tribunal, on the aforesaid basis came to the conclusion that in view of the fact that the AO himself has not accepted the audit objection, there could be no reason for him to believe that income chargeable to tax has escaped assessment. It is clear from Section 147 of the Act that the jurisdictional requirement to issue a notice for reopening the assessment is the satisfaction of the "AO." This

satisfaction of the AO cannot be outsourced or arrived at on the basis of directions of his superiors. The Act requires his reason to believe that income chargeable to tax has escaped assessment. Thus, the impugned notice is not sustainable. In that view, the first condition precedent of reason to believe is that income chargeable to tax is escaped assessment being the primary requirement is not satisfied, the notice for reopening is without jurisdiction

The third issue raised by the learned Counsel, which is also quite significant in law, is that the impugned reopening is Shri Sunil Gavaskar barred by limitation in view of the fact that reopening has been done after expiry of four years and original assessment having been done under section 143(3), reopening could not have been done as there was no failure on the part of the assessee in disclosure of material facts.

It has also been mentioned in the said reply that assessee was conferred Sanman certificate as one of the top tax payer and copy of Sanman certificate was enclosed with the reply. It was also mentioned that assessee was prepared to give further details and evidences in support of income and expenditure claimed in the return of income. Perusal of the Income and Expenditure A/c again reveals that complete item- wise break-up of the income received by the assessee from Shri Sunil Gavaskar various sources has been given. These avenues of income include column writing and commentary, foreign remittances and honorariums and royalty on books. We find that as far as disclosures are concerned, the assessee had provided requisite information and details in his return of income and also furnished further details and evidences during the course of original assessment proceedings. It is not at all a case of failure on the part of the assessee in disclosure of material facts. If at all there was any failure, it would be on the part of the AO in not appreciating the facts and applicable legal position, in the manner as the AO and his DIT want now at the reassessment stage. The law in this regard is very clear. The AO cannot be given benefit of its own wrong, and particularly in those cases which are covered by the first proviso to section 147. The position of law in this regard is well settled on the basis of umpteen numbers of judgments from Hon'ble Jurisdictional High Court and various other Courts of the Country. For ready reference, we shall rely upon a judgment of Hon'ble Bombay High Court in the case of Hindustan Petroleum Corporation Ltd. v. DCIT 328 ITR 534 (Bom) and MAPS Enzyms Ltd. v. DCIT 41 taxmann.com 527 (Guj) wherein it was held that if the assessee had made disclosure of all material facts relating to its claim for the deductions in the return which were allowed by the AO, during the course of original assessment proceedings, then, reopening u/s 147 sought to be done beyond the period of 4 years from the end of the relevant assessment year, on the Shri Sunil Gavaskar ground that the assessee had wrongly been allowed deduction was not permitted under the law and barred by limitation, in view of first proviso to section 147 of the Act. Thus, in view of the above discussion, we find impugned reopening to be barred by limitation in terms of first proviso to section 147."

In this case, the appellate relief has been given to the assessee Sh. Sunil Gavaskar on the grounds that the AO has not formed any independent reason to believe that any income of the assessee has escaped assessment and also on the ground that there was no failure on the part of the assessee to disclose all material facts truly fully and truly for the purpose of his assessment.

However, in view of the proposed amendments, the assessee Sh. Sunil Gavaskar would not have gotten the above appellate relief.

(iv) Fourth Case:

Asstt. CIT* v. *Ms. Katrina Rosemary Turcotte **[2017] 87 taxmann.com 116 (Mum)**

Facts of the Case:

A search and seizure operation was conducted in assessee's case on 24th January 2011, under section 132 of the Income-tax Act, 1961. In pursuance to the search and seizure operation, assessment proceedings were initiated by issuance of notice under section 153A of the Act. In response to the notice issued under section 153A of the Act, the assessee filed her return of income on 31st January 2012, declaring total income of Rs. 95,82,109. During the assessment proceedings, the Assessing Officer found that during the survey / search operation conducted at the premises of assessee's manager Ms. Sandhya Ramchandra, and assessee's agent Matrix India Entertainment Pvt. Ltd. (in short "Matrix") print outs were taken from the computer back–up impounded and seized which were marked as "Annexure–A, B, C, D & E" and were provided to the assessee to reconcile with her books of account. the Assessing Officer found that as per Page no.D–59, D–60 of Annexure–D found and seized from the computer of Ms. Sandhya Ramchandra, assessee has received cash payment of Rs. 30,80,000 for various appearances and shows. The Assessing Officer observed, though the assessee had actually received cash payments for performance, however, she could not provide any details for reconciling these entries. He also observed, as per the seized documents, the cash receipt is to be shared at the ratio of 80% to the assessee and 20% to the agency. The Assessing Officer found that seized documents also mentioned cash expenditure of Rs. 16,17,100. After reducing the cash expenditure, the net amount payable to the assessee was found to be Rs. 30,80,000. Accordingly, he added back the amount to the income of the assessee. The assessee challenged the addition before the first appellate authority.

The Hon'ble ITAT Mumbai has held in favour of the assessee Ms Katrina Kaif as under:

> **"**We have heard rival contentions and perused the material available on record. Undisputedly, the Assessing Officer has made the addition of Rs. 30,80,000 being of the view that as per the document found and seized from the computer of Ms. Sandhya Ramchandra, assessee was supposed to have received cash @ 80% of the amount mentioned therein and 20% has gone to Matrix. Undisputedly, the aforesaid seized documents was not found from the possession of the assessee but from a third party. It is also a fact that apart from this seized material, there is no other corroborative material on record to demonstrate that the cash payment mentioned in the seized material was actually made to the assessee. On the contrary, the assessee when was confronted with the seized material had categorically denied of having received the cash payment. Further, an affidavit was also filed on behalf of Matrix India Entertainment Pvt. Ltd., stating that no cash payment was made to the assessee. In fact, Ms. Sandhya Ramchandra, in her statement also could not state anything about cash payment as it was prior to her employment. Thus, in the absence of any other corroborative evidence, except the seized material, which was found from a third party it cannot be presumed that the assessee has received the cash amount of Rs. 30,80,000. That being the case, we do not find any infirmity in the order of the learned Commissioner (Appeals) in deleting the addition. Ground no.2 is dismissed."

Friends, in the existing legislative provision of section 153A or 153C, the second proviso provides as under:

> "Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, **shall abate** :

The Hon'ble High Courts and even the Hon'ble Supreme Court in a plethora of judgements have held that the additions/disallowances u/s 153A of the Act towards unabated assessments (already concluded assessments or where statutory time period for issuing of notice u/s 143(2) has elapsed on the date of search), are permissible only where incriminating materials are found in search showing unaccounted income.

On the conspectus of a plethora of judgments of different Hon'ble High Courts, and even the Hon'ble Supreme Court as under:

(i) ***CIT* v. *Sinhgad Technical Education Society*** [2017] 84 taxmann.com 290/250 Taxman 225/397 ITR 344 (SC)

(ii) ***Pr.CIT* v. *Meeta Gutgutia*** [2018] 96 taxmann.com 468/257 Taxman 441 (SC);

(iii) ***CIT* v. *Kabul Chawla*** [2016] 380 ITR 573/234 Taxman 300/[2015] 61 taxmann.com 412 (Del);

(iv) ***Pr. CIT* v. *Ms. Lata Jain*** [2017] 81 taxmann.com 83/[2016] 384 ITR 543 (Del);

(v) ***Pr. CIT* v. *Mahesh Kumar Gupta*** **[CM Nos. 43256-43257 of 2016, dated 22-11-2016];**

(vi) ***CIT* v. *Continental Warehousing Corpon. Nhava Sheva Ltd.*** [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.);

(vii) ***CIT* v. *Gurinder Singh Bawa*** [2017] 79 taxmann.com 398/[2016] 386 ITR 483 (Bom);

(viii) ***Pr.CIT* v. *Desai Construction (P.) Ltd.*** [2017] 81 taxmann.com 271/[2016] 387 ITR 552 (Guj.)

(ix) ***Pr. CIT* v. *Saumya Construction (P) Ltd.*** [2017] 81 taxmann.com 292/[2016] 387 ITR 529 (Guj.)

(x) ***CIT* v. *IBC Knowledge Park (P) Ltd.*** [2016] 69 taxmann.com 108/385 ITR 346 (Kar),

the position of law as existing currently is loud and clear that additions/disallowances under s.153A of the Act towards unabated assessments are permissible only where incriminating materials are found in search showing unaccounted income. The scope of assessment under s.153A of the Act is limited to the incriminating evidence found during the search and no further in so far as unabated assessments are concerned. Unless there is incriminating material qua each assessment years to which additions are sought to be made in respect of concluded assessments, the assessment under s.153A of the Act by making additions/disallowances would be vitiated in law.

However, in the newly proposed section 148 (as reproduced supra), the Legislature it seems has deliberately done away with the terminology of abated and unabated assessments. So, in the coming time to come, the learned revenue authorities may take a plea that in the absence of any concept of abated or unabated assessments, and especially in view of the express deeming fiction of blanket presumption of possession of information by the assessing authorities suggesting that income of the assessee has escaped assessment is all cases of search u/s 132, survey u/s 133A or requisitions u/s 132A, the presence of incriminating material is no more a mandatory requirement.

However, it needs to be appreciated that such survey, search or requisition measures are extreme measures of tax administration and as such if resort to such extreme measures is being taken by the revenue authorities then it can atleast be expected of them to unearth something incriminating during the course of such survey, search or requisition so as to justify the making of their additions/disallowances in the consequential assessments pursuant to search, otherwise what difference will it remain between the regular and routine assessments and the search related assessments.

Conclusion: The idea and philosophy of bringing in more certainty to the tax eco system is appreciable and laudable, however, this certainty perse may not bring in the desired good results, if the well settled and established legal jurisprudence of last 6 decades is being disturbed and unsettled for perceived dilution of the favourable ratios (in favour of assessees) emerging out of such judgements, a few such cases of celebrities like Amitabh Bachchan, Aishwarya Rai, Katrina Kaif and Sunil Gavaskar, discussed supra.

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