



## Supreme Court quashes re-assessment notice issued beyond 4 years as the taxpayer fully and truly disclosed all material facts

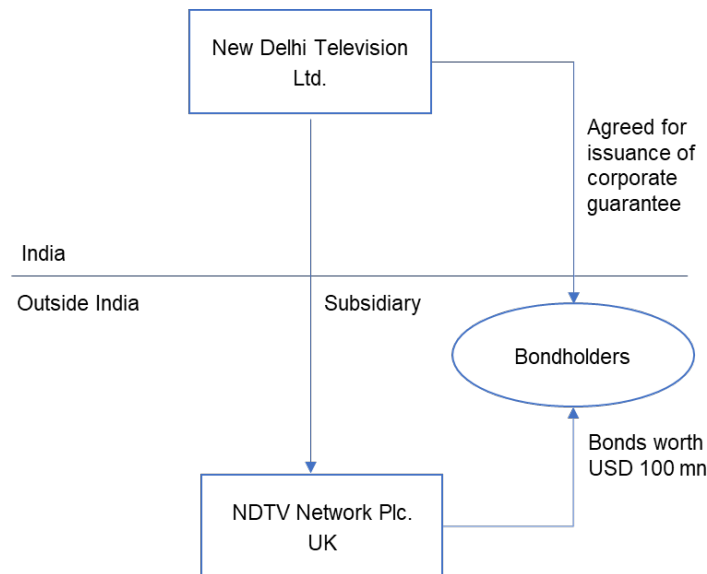
In a recent decision<sup>1</sup>, the Supreme Court quashed re-assessment notice issued after a period of limitation of four years on the basis that there was no failure on part of the taxpayer to fully and truly disclose all material facts necessary for assessment

### Background

- New Delhi Television Ltd. ('the taxpayer') is an Indian company engaged in running television channels. It has various foreign subsidiaries, inter alia, NDTV Network Plc. ('NNPLC') based out of the United Kingdom ('UK').
- The income tax return filed by the taxpayer for Assessment Year ('AY') 2008-09 was selected for scrutiny under section 143(3) of the Income-tax Act, 1961 ('the Act'). The Assessing Officer ('AO') dealt with issuance of step-up coupon bonds by NNPLC for which the taxpayer had agreed to furnish corporate guarantee. Though the taxpayer had never actually issued such guarantee, the AO was of the view that the subsidiary of the taxpayer could not have raised such a huge amount without having this assurance from the taxpayer.
- While not doubting the genuineness of the transaction, the AO added 'guarantee fee' to taxpayer's taxable income in the original assessment order.

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<sup>1</sup> New Delhi Television Ltd. v. DCIT (Civil Appeal No. 1008 of 2020)



- Subsequently (in March 2015), the taxpayer was served with notice under section 148 read with section 147<sup>2</sup> of the Act. The Revenue stated that it has reasons to believe that net income chargeable to tax for AY 2008-09 had escaped assessment based on the following:
  - Order of the Dispute Resolution Pane ('DRP') for subsequent year (AY 2009-10) which concluded that the taxpayer was involved in round tripping of income through sham transactions with subsidiary companies in the Netherlands and the UK.
  - Complaints received from minority shareholders who alleged that the money raised by NNPLC was shifted to another subsidiary of the taxpayer in Mauritius from where it was taken to an Indian subsidiary of the taxpayer and finally to the taxpayer. Further, NNPLC was itself liquidated in March 2011.
- The communication supplying reasons recorded for reopening of assessment mentioned that the escapement of income is due to failure on the part of the assessee to disclose fully and truly all facts material for assessment. Aggrieved by the AO's action, the taxpayer filed a writ petition before the Delhi High Court, which was dismissed by the High Court.
- Thereafter, taxpayer filed an appeal before the Supreme Court which framed three legal questions and adjudicated on the matter. The same are discussed below.

<sup>2</sup> Section 147 of the Act grants power to the AO to reassess the income chargeable to tax if he has reasons to believe that such income has escaped assessment. As per section 148 of the Act, notice for reassessment can be issued beyond a period of 4 years from the end of the relevant assessment year in a case where there is a failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment (under specified circumstances)



## Issue 1: Whether the Revenue had a valid reason to believe that undisclosed income had escaped assessment in the hands of the taxpayer?

Revenue's contentions	Taxpayer's contentions
<ul style="list-style-type: none"><li>• Revenue has to only establish tentative and prima-facie view of escapement of income at the time of issue of show cause notice.</li><li>• Revenue had discovered fresh tangible material subsequent to the assessment order (i.e. order of the DRP and complaints of minority shareholders).</li></ul>	<ul style="list-style-type: none"><li>• A very detailed procedure was followed during the original assessment proceedings and all aspects of the case were already noted by the AO.</li><li>• The AO had accepted the transaction of issue of step-up coupon bonds. Once the transaction was accepted to be correct, the Revenue cannot re-open the same on the basis of change in opinion and doubt the genuineness of the transaction.</li><li>• The DRP held that another transaction entered by one of the other subsidiaries (i.e. Netherlands entity) is a sham transaction, and UK entity's transaction of issuance of step-up coupon bonds was not questioned. Hence, AO had no fresh material at hand.</li></ul>

### ***Ruling of the Supreme Court***

- A detailed procedure during the original assessment proceedings cannot take away the powers of the Revenue to issue notice under section 147 of the Act.
- At the stage of issuance of notice, the AO is only required to form a prima facie view of escapement of income. The material disclosed in assessment proceedings for subsequent years as well as the material placed on record by the minority shareholders was sufficient to form such a view.
- Any information which comes to the notice of the AO during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the AO under section 147 of the Act.<sup>3</sup>
- Accordingly, the facts which came to the knowledge of the AO subsequent to completion of the original assessment proceedings can be taken into account to form valid reasons to believe that undisclosed income had escaped assessment.

<sup>3</sup> Supreme Court relied on earlier decisions in Claggett Brachi Co. Ltd. v. CIT 1989 Supp (2) SCC 182; M/s Phool Chand Bajrang Lal and Anr v. ITO and Anr (1993) 4 SCC 77; Ess Kay Engineering Co.(P) Ltd. v. CIT (2001) 10 SCC 189



**Issue 2: Whether the taxpayer did not disclose fully and truly all material facts during the course of original assessment which led to undisclosed income escaping detection?**

Revenue's Contention	Taxpayer's contention
<ul style="list-style-type: none"><li>• The taxpayer did not disclose details of the subsidiaries in its final accounts, balance sheets, and profit and loss account for the relevant period as was mandatory under the provisions of the Companies Act, 1956 to avoid detection of the actual source of funds of its subsidiaries.</li><li>• The taxpayer did not disclose all the relevant details at the time of original assessment and did not provide all the information.</li></ul>	<ul style="list-style-type: none"><li>• The taxpayer had disclosed all information as was required by the AO during the course of assessment proceedings.</li></ul>

***Ruling of the Supreme Court***

- The extended period of limitation beyond 4 years to issue notice under section 148 of the Act shall not apply if the taxpayer fully and truly disclosed all material facts necessary for assessment.
- The taxpayer had disclosed all material facts necessary for assessment such as:
  - Agreement to stand as a guarantor for the transaction of issue of bonds by NNPLC
  - Factum of the issuance of convertible bonds and their redemption
  - The AO was aware about the entities who had subscribed to convertible bonds. In proceedings relating to the other subsidiaries, the same AO had knowledge of addresses and the consideration paid by each of the bondholders (as is apparent from assessment orders passed in their cases on the same date).

Hence, the AO was aware of all the facts at the time of assessment. If the AO wanted to investigate the matter further at that stage, it could have easily directed the taxpayer to furnish more facts.

- The Supreme Court upheld<sup>4</sup> that it is the duty of the taxpayer to disclose full and truly all material facts. However, the Supreme Court has clarified that true and full disclosure means disclosure of 'primary facts' (and not secondary facts). It was for the AO at this stage to decide what inference should be drawn from the facts of the case.
- Accordingly, the Supreme Court held that the taxpayer had truly and fully disclosed all material facts during the course of original assessment and thereby, quashed the re-assessment notice.

<sup>4</sup> Supreme Court relied on its earlier decision in Calcutta Discount Co. Ltd. v. ITO and Anr AIR 1961 SC 372



**Issue 3: Whether notice under section 147 of the Act and reasons to believe communicated to the taxpayer could be termed to be a notice invoking second proviso to section 147<sup>5</sup> (extending period of limitation to 16 years)?**

Revenue's Contentions	Taxpayer's contentions
<ul style="list-style-type: none"><li>• The taxpayer derived income from a foreign entity.</li><li>• Mere non-mentioning of the second proviso in the notice under section 148 does not help the taxpayer in contending that second proviso cannot be invoked.</li></ul> <p>Even if the source of power to issue notice has been wrongly mentioned, but all relevant facts were mentioned, then the notice can be said to be a notice under the provision which empowers the Revenue to issue such notice.</p>	<ul style="list-style-type: none"><li>• No income was derived from the foreign entity. A loan cannot be termed to be an asset or an income.</li><li>• Notice issued by the Revenue cannot be said to have been issued under the second proviso to section 147 of the Act.</li></ul>

***Ruling of the Supreme Court***

- There is no case set up in relation to the second proviso either in the notice or even in the reasons supplied with regard to the notice. It is only while rejecting the objections of the taxpayer that reference has been made to the second proviso of section 147 of the Act.
- On grounds of natural justice, the taxpayer must be informed of all the provisions on which the Revenue relies upon (i.e. invoking the second proviso of section 147 of the Act). This would have provided a chance to the taxpayer to show that it was not deriving any income from any foreign asset or financial interest in any foreign entity, or that the asset did not belong to it or any other ground which may be available. The taxpayer cannot be deprived of this chance while replying to the notice.
- Accordingly, at this stage the Revenue cannot be permitted to take benefit of the second proviso.

However, Supreme Court clarified that the Revenue may issue fresh notice taking benefit of the second proviso if otherwise permissible under the law.

<sup>5</sup> In terms of second proviso to section 147 r.w.s. 149(1)(c) of the Act, the limitation period to issue notice under section 148 for reassessment extends upto 16 years in a case where income escaping assessment relates to any asset (including financial interest in any entity) located outside India. The condition of failure on the part of assessee to disclose truly and fully all material facts necessary for assessment, is not relevant in such case.



## Dhruva Comments

- This decision of the Apex Court is an important one as it reiterates various legal principles laid down in the context of validity of reassessment proceedings.

The Supreme Court re-affirmed the principle laid down earlier that information which comes to the notice of the AO during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the AO under section 147 of the Act.

- This decision can prove to be an important precedent in cases where taxpayers have furnished appropriate material on record at the time of original assessment proceedings. In such cases, based on the facts of the case, the reassessment proceedings can be contended to be invalid if the same are initiated beyond 4 years.
- This decision emphasises the onus on the taxpayer to disclose all material facts of the case during the course of original assessment proceedings. As the Constitution Bench of Supreme Court held in the case of Calcutta Discount Co. Ltd. - “what facts are material, and necessary for assessment will differ from case to case”.
- Mere filing of books of account and financial statements would not tantamount to disclosure of material facts by the taxpayer, unless specific entries or documents are brought to the attention of the AO by the taxpayer.



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