03.11.2026-SC-Reassessment on Change of Opinion Invalid Even Within Four Years: Supreme Court

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Summary: The Supreme Court upheld the Madras High Court's decision quashing reassessment proceedings initiated against Financial Software and Systems Private Limited for Assessment Year 2010-11. The dispute concerned the reopening of a completed assessment under **Sections 147 and 148 of the Income Tax Act, 1961**, despite the Assessing Officer having examined the relevant transactions during the original scrutiny assessment under Section 143(3). The Supreme Court held that the High Court had committed no error in setting aside the reassessment because the reopening was founded on a **mere change of opinion** rather than fresh material indicating escapement of income. Accordingly, the Revenue's Special Leave Petition was dismissed.

The controversy originated from the assessee's issuance of **compulsorily convertible preference shares amounting to ₹117.50 crore** during the relevant assessment year. In connection with the share issuance, the assessee had paid advisory fees to M/s Veda Corporate Advisors Private Limited and claimed the expenditure under Section 37 of the Act. During the original assessment proceedings, the Assessing Officer issued a detailed questionnaire under Section 142(1) on 10 July 2012, containing twenty questions. Questions 13 and 15 specifically sought information concerning the conversion of preference shares into equity shares and the expenditure claimed under different heads. The assessee furnished the relevant details through submissions dated 9 November 2012 and 5 December 2012. After considering the materials, the Assessing Officer completed the scrutiny assessment under Section 143(3) on 30 March 2013.

Subsequently, the Assessing Officer issued a reassessment notice under **Section 148 on 20 March 2015**. The recorded reasons stated that the advisory expenditure incurred in connection with the preference share issuance was covered by Section 35D and should have been amortised rather than allowed as a deduction under Section 37. The assessee requested the reopening reasons on 6 April 2015, which were communicated on 20 August 2015. Objecting to the reassessment, the assessee maintained that the share issuance and associated expenditure had already been fully disclosed and examined during the original proceedings. Nevertheless, the Assessing Officer rejected the objections through an order dated 26 February 2016.

The assessee challenged the reassessment proceedings before the Madras High Court through W.P. No. 9409 of 2016. Although interim protection was initially granted, the learned Single Judge dismissed the writ petition on 30 June 2021, holding that the correctness of the reopening reasons could be examined during reassessment proceedings and should not be adjudicated in a writ petition. Aggrieved by this decision, the assessee preferred a writ appeal before the Division Bench. The principal question was whether an assessee could invoke **Article 226 of the Constitution** to challenge reassessment proceedings where the jurisdictional requirements of Sections 147 and 148 were allegedly absent.

The Division Bench examined the principles established in **GKN Driveshafts (India) Ltd. Vs ITO, (2003) 259 ITR 19 (SC)**, which requires the Assessing Officer to furnish reopening reasons and dispose of objections through a speaking order. It also considered **Calcutta Discount Company Ltd. Vs ITO, (1961) 41 ITR 191 (SC)**, concerning the distinction between reassessment and impermissible review of an earlier assessment. Referring to **Whirlpool Corporation Vs Registrar of Trademarks, (1998) 8 SCC 1 (SC)**, the Court held that the availability of an alternative statutory remedy does not necessarily prevent the exercise of writ jurisdiction where an authority acts without jurisdiction or contrary to fundamental legal requirements. The Court clarified that judicial examination of the jurisdictional foundation for reopening is distinct from conducting a detailed inquiry into the merits of the proposed reassessment.

On examining the original assessment records, the Madras High Court found that the Assessing Officer had specifically called for information concerning the preference share transaction and related expenditure. The assessee had furnished the requested documents and explanations before completion of the scrutiny assessment. The subsequent reopening was based on the same transaction and the same disclosed material, without any allegation of fresh information establishing escapement of income. The Court observed that the Assessing Officer could not subsequently substitute the opinion that the expenditure was deductible under Section 37 with another opinion that it required amortisation under Section 35D. Such an exercise would amount to reviewing an earlier assessment rather than lawfully reopening it. The Court further noted that the order rejecting the assessee's objections contained references to statutory provisions and judicial decisions but failed to meaningfully address the jurisdictional challenge.

The Revenue argued that the original assessment order had not expressly discussed the compulsory convertible preference shares or the applicability of Section 35D. However, the High Court rejected the contention that the absence of an express discussion in the assessment order justified reopening. It held that the assessee's obligation was to

disclose all material facts fully and truly, while the responsibility for examining those materials and determining the correct tax treatment rested with the Assessing Officer. Once the relevant facts had been disclosed and examined, the Assessing Officer could not reopen the assessment merely because a different interpretation subsequently appeared preferable. The Court also rejected the Revenue's request to remand the matter for fresh consideration of the objections, observing that an inherently jurisdictionally defective reopening should not be revived by granting the Assessing Officer another opportunity.

Consequently, the Madras High Court allowed the writ appeal, set aside the Single Judge's order dated 30 June 2021, and quashed both the reassessment notice dated 20 March 2015 and the order rejecting objections dated 26 February 2016. The Revenue challenged this decision before the Supreme Court. After examining the High Court's reasoning, the Supreme Court expressly recognised that specific queries had been raised and answered during the original assessment and that reopening on the same grounds amounted to a change of opinion. Finding no error in the High Court's decision, the Supreme Court dismissed the Special Leave Petition. **The combined effect of the decisions is that reassessment cannot be used as a mechanism to review a concluded scrutiny assessment merely because the Assessing Officer subsequently adopts a different opinion on facts already disclosed and examined, even where the reopening notice is issued within four years.**

Related Madras High Court Judgment: The Supreme Court's decision arose from the Madras High Court ruling that reassessment based merely on a change of opinion was without jurisdiction, even when initiated within four years. Read the Madras High Court judgment in Financial Software and Systems Private Limited Vs Deputy/ACIT.

Cases Discussed

1. GKN Driveshafts (India) Ltd. Vs Income Tax Officer (Supreme Court); (2003) 259 ITR 19. The Madras High Court relied upon this judgment to explain that an assessee is entitled to obtain the reasons recorded for reopening an assessment and submit objections. The Assessing Officer must dispose of those objections through a speaking order before proceeding with reassessment.

2. Calcutta Discount Company Ltd. Vs Income Tax Officer (Supreme Court); (1961) 41 ITR 191. The Constitution Bench decision was considered regarding the limits of reassessment jurisdiction. The High Court reiterated that reassessment powers cannot be exercised merely to review an earlier assessment or substitute a different opinion on the same material.

3. **Whirlpool Corporation Vs Registrar of Trademarks (Supreme Court); (1998) 8 SCC 1.** The High Court relied upon this judgment concerning the maintainability of writ petitions under Article 226 of the Constitution, particularly where jurisdictional defects, violations of natural justice or manifest illegality are alleged.

4. **Commissioner of Income Tax Vs Kelvinator of India Ltd. (Delhi High Court, Full Bench); (2002) 256 ITR 1.** The assessee relied upon this decision to establish that completion of a scrutiny assessment under Section 143(3) ordinarily supports a presumption of application of mind. Reassessment based merely on a change of opinion is impermissible.

FULL TEXT OF THE SUPREME COURT JUDGMENT/ORDER

The re-opening of the assessment has been set aside by the High Court by specifically observing that the re- assessment proceedings were on change of opinion and after taking into consideration the fact that at the time of original assessment under Section 143 of the Income-tax Act, 1961, specific queries were raised which were answered by the Assessee and, therefore, thereafter it was not open for the Revenue to re-open the assessment proceedings on the same ground and thereafter when the re-assessment proceedings have been set aside, it cannot be said that the High Court has committed any error. The Special Leave Petition stands dismissed.

Pending application(s) shall stand disposed of.