

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.547/Ind/2024
Assessment Year: 2012-13

Shri Humad Jain Sakh Sahakari Sanstha Maryadit, 46-B, Sector A-Sainath Colony, Indore	<u>बनाम/</u> <u>Vs.</u>	ITO 2(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAEAS5997H		
Assessee by	Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.07.2025	
Date of Pronouncement	22.07.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 05.06.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-2, Mumbai ["CIT(A)"] which in turn arises out of assessment-order dated 22.11.2019 passed by learned ITO-2(1), Indore ["AO"] u/s 143(3) r.w.s. 147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal.

2. The background facts leading to present appeal are such that the assessee is a credit co-operative society. For AY 2012-13 under consideration, the assessee did not file any return. The AO, on the basis of information from NMS Module revealing that the assessee had made cash deposits of Rs. 11,12,725/- with State Bank of India during the previous year 2011-12 relevant to AY 2012-13, asked assessee vide letter dated 17.01.2019 to explain the sources of deposits. However, finding no response from assessee, the AO ultimately initiated proceedings u/s 147 through notice dated 22.03.2019 u/s 148. Then, the assessee filed return on 27.04.2019 declaring total income of Rs. Nil after claiming deduction of Rs. 5,13,800/- u/s 80P. Thereafter, the AO issued notices u/s 143(2)/142(1) which were complied with by assessee. Ultimately, the AO completed assessment u/s 143(3) denying deduction u/s 80P to assessee and thereby assessing total income at Rs. 5,13,800/- as against returned income of Rs. Nil. Aggrieved, the assessee carried matter in first-appeal but did not get succeed. Now, the assessee has come before us by way of next appeal.

3. The assessee has raised following grounds:

"1.The Ld. AO was not justified in passing the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2.The Ld. CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

3.The Ld. CIT(A) was not justified in confirming the disallowance of Rs. 5,13,800 /- claimed u/s 80P."

Ground No. 1 & 2:

4. By means of these grounds, the assessee is raising a legal claim that the AO's order is bad in law and illegal and must be annulled.

5. With respect to these grounds, Ld. AR for assessee submitted that in present case, the AO initiated proceeding of assessment u/s 147 to assess the cash deposit of Rs. 11,12,725/- made by assessee in bank a/c during the relevant year but ultimately in the assessment-order passed u/s 143(3), the AO has not made any addition *qua* such issue i.e. *qua* the issue of deposit. Instead, the AO rejected the deduction u/s 80P claimed by assessee. According to Ld. AR, when the AO has not made any addition *qua* the initial/original issue of 'cash deposits in bank a/c', the AO's order assessing/denying only a new issue of 'deduction u/s 80P' is not legal in terms of section 147 r.w.s. Explanation 3. In support of his contention, Ld. AR relied upon certain decisions of different high courts in favour of assessee, the most relevant being the decision of ***Hon'ble Bombay High Court in Commissioner of Income-tax-5, Mumbai Vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bombay)***, copy of order is placed before us.

6. Per contra, Ld. DR for revenue relied upon a contrary decision of ***Hon'ble Gauhati High Court in Deputy Commissioner of Income-tax Vs. Toor Finance Company Limited, ITA/9/2023, dated 30.01.2025***, which is a recent decision in favour of revenue. Ld. DR has also filed a copy of order. According to Ld. DR, the Hon'ble Gauhati High Court has not agreed

with the interpretation of section 147 r.w.s. Explanation-3 taken in **Jet Airways Ltd. (supra)**. Ld. DR requested to apply the decision relied by him and accordingly uphold the order passed by AO.

7. In rejoinder, Ld. AR for assessee submitted that there is no decision of Hon'ble jurisdictional High Court and since there are contrary decisions of non-jurisdictional High Courts, the view favourable to assessee has to be adopted as per Hon'ble Supreme Court's verdict in **CIT Vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC)**. Ld. AR also made a useful reference to the decision of **ITAT, Ahmedabad Bench in ITO Vs. Upkar Retail Pvt. Ltd., ITA No. 2237/Ahd/2014** wherein various decisions including the decision of **Vegetable Products (supra)** have been considered and ultimately the ITAT has concluded that when the decisions of Hon'ble non-jurisdictional high courts are in conflict with each other, the only objective criteria to be followed by ITAT is to take a view favourable to the assessee. Ld. AR submitted that the Indore Bench of ITAT has also taken the very same approach in numerous cases.

8. We have considered rival submissions of both sides and carefully perused the facts of case in the light of legal decisions cited by learned Representatives of both sides. There is no dispute from either side *qua* the factual position of present case that the AO initiated proceeding of section 147 on the issue of 'cash deposits in bank a/c' made by assessee but in the final assessment-order framed, the AO assessed a new issue i.e. he

disallowed the claim of 'deduction u/s 80P' made by assessee without making any addition qua the initial/original issue of 'cash deposit in bank a/c'. Hence, in this set of facts, the controversy for our adjudication is whether or not the assessment framed by AO is legal and sustainable?

9. At first, it would be worthwhile of refer the legal provision of section 147 and Explanation 3 to section 147 (as applicable to the relevant AY 2012-13 involved in present case):

***"147. Income escaping assessment.--** If the Assessing Officer has reason to believe that any income, chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [S.148](#) to [153](#), assess or reassess **such income and also any other income** chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148](#) to [153](#) referred to as the relevant assessment year):*

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***Explanation 3. (subsequently introduced through Finance (No. 2) Act, 2009 with retrospective effect from 01.04.1989)** - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under Sub-section (2) of Section 148."*

[Emphasis supplied]

10. The above noted provisions of Section 147 and Explanation-3 have become a subject matter of controversy and come up before Hon'ble High Courts for interpretation. We re-produce below the relevant paras of respective decisions relied by learned Representatives:

Decision in favour of assessee -

Commissioner of Income-tax-5, Mumbai Vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bombay):

"Admit. During the course of the hearing of these appeals by the Revenue u/s 260A of the Income Tax Act, 1961, submissions have been urged before the Court confined to the following substantial question of law:

"Where upon the issuance of a notice u/s 148 of the Income Tax Act, 1961 read with Section 147, the Assessing Officer does not assess or, as the case may be reassess the income which he has reason to believe had escaped assessment and which formed the basis of a notice u/s 148, is it open to the Assessing Officer to assess or reassess independently any other income, which does not form the subject matter of the notice?"

2. The two appeals by the Revenue pertain to assessment years 1994-1995 and 1995-1996. The Tribunal has noted that an identical issue was agitated by the assessee for assessment year 1997-1998 and that the Tribunal, while allowing the claim of the assessee, held that the re-opening of the assessment was not valid in law. The Court has been informed that the appeal against the order of the Tribunal for assessment year 1997-1998 has been dismissed for non-compliance of a conditional order of removing office objections. Be that as it may, having regard to the nature of the question of interpretation involved; we have heard arguments on the question of law as framed in these appeals and proceed to answer it on merits.

3. Section 147 of the Income Tax Act, 1961 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment, year, he may, subject to the provisions of Sections 148 to 153, assess or reassess **such income "and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section"**. The proviso deals with reopening of an assessment upon the expiry of a period of four years from the end of the relevant assessment year and does not fall for interpretation in this appeal. Explanation 3 to Section 147 was inserted by the Finance (No. 2) Act of 2009, with effect from 1 April 1989. Explanation 3 provides as follows:

"Explanation 3. - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under Sub-section (2) of Section 148."

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4. Prior to its amendment with effect from 1 April 1989, Section 147 provided as follows:

"147. Income escaping assessment. - If-

(a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in Clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information, in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

5. The condition precedent to the exercise of the jurisdiction u/s 147 is the formation of a reason to believe by the Assessing Officer that any income chargeable to tax has escaped assessment. Upon the formation or a reason to believe, the Assessing Officer, before making the assessment, reassessment or re-computation u/s 147 has to serve on the assessee a notice requiring him to furnish a return of his income. Upon the formation of the reason to believe that income chargeable to tax has escaped assessment, the Assessing Officer is empowered to assess or reassess such income "and also" any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings u/s 147.

6. The effect of Explanation 3 which was inserted by the Finance (No. 2) Act of 2009 is that even though the notice that has been issued u/s 148 containing the reasons for reopening the assessment does not contain a reference to a particular issue with reference to which income has escaped assessment, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment, when such issue comes to his notice subsequently in the course of the proceedings. The reasons for the insertion of Explanation 3 are to be found in the Memorandum explaining the provisions of Finance (No. 2) Bill of 2009. The Memorandum treats the amendment to be clarificatory and contains the following explanation:

"Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no

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reasons have been recorded The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, it is proposed to insert an Explanation in Section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under Sub-section (2) of Section 148."

7. In order to appreciate the reasons for the amendment inserting Explanation 3, it would be necessary to advert to some of the judgments of the High Courts, prior to the amendment.

The Punjab & Haryana High Court, in its decision, in [Vipin Khanna Vs. Commissioner of Income Tax and Others](#), dealt with the question as to whether, after initiating proceedings; u/s 147 on the ground that the petitioner had claimed depreciation at a higher rate, the Assessing Officer would be justified in launching an inquiry into issues which were not connected with the claim of depreciation. This question was answered in the negative.

A Division Bench of the Kerala High Court held in *Travancore Cements Limited v. Assistant Commissioner of Income Tax (2008) 305 ITR 170 (Ker)* that upon the issuance of a notice u/s 148(2), when proceedings were initiated by the Assessing Officer on issues in respect of which he had formed a reason to believe that income had escaped assessment, it was not open to the Assessing Officer to carry out an assessment or reassessment in respect of other issues which were totally unconnected with the proceedings that were already initiated and which came to his knowledge during the course of the proceedings. The Division Bench held that in respect of an issue which is totally unconnected to the basis on which the Assessing Officer formed a reason to believe that income escaped assessment and issued a notice u/s 148, it was open to him to issue a fresh notice by following Sub-section 2 of Section 148 with regard to the escaped income which came to his knowledge during the course of the proceedings. The Kerala High Court held as follows:

"...The Assessing Officer gets jurisdiction u/s 148 to assess or reassess the income which has escaped assessment only after Sub-section (2) of Section 148 is complied with. The question is whether Sub-section (2) of Section 148 has to be complied with if any other income chargeable to tax has escaped assessment or which comes to his knowledge subsequently in the course of the proceedings. In other words, when proceedings are already on in respect of one item in respect of the income for which he had already recorded reasons is it necessary that he should record reasons for assessing or reassessing any of the items which are totally unconnected with the proceedings already initiated. Suppose under two heads, income has escaped assessment and those two heads are interlinked and connected, the proceedings

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initiated or notice already issued under Sub-section (2) of Section 148 would be sufficient if the escaped income on the second head comes to the knowledge of the officer in the course of the proceedings. But if both the items are unconnected and totally alien then the assessing authority has to follow Sub-section (2) of Section 148 with regard to the escaped income which comes to his knowledge during the course of the proceedings."

Hence, the view of the Punjab and Haryana High Court and the Kerala High Court was that, once the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment and proceeds to issue a notice u/s 148, it is not open to him to assess or, as the case may be, reassess the income under an independent or unconnected issue, which was not the basis of the notice for reopening the assessment.

8. *Parliament stepped in to correct what it regarded as an incorrect interpretation of the provisions of Section 147. The Memorandum explaining the provisions of Finance (No. 2) Bill of 2009 states in this background that some courts had held that the Assessing officer has to restrict the reassessment proceedings only to issues in respect of which reasons have been recorded for reopening the assessment and that it was not open to him to touch upon any other issue for which no reasons have been recorded. This interpretation was regarded by Parliament as being contrary to legislative intent. Hence, Explanation 3 came to be inserted to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings u/s 147 though the reasons for such issue were not included in the reasons recorded in the notice u/s 148(2).*

9. *The effect of Section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows:*

- (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year;*
- (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or re-computation, the Assessing Officer has to serve on the assessee a notice under Sub-section (1) of Section 148,*
- (iii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and*
- (iv) Though the notice u/s 148(2) does not include a particular issue with respect to which income has escaped assessment, he may nonetheless, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course, of the proceedings under the section.*

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10. Now the submission of the learned Counsel appearing on behalf of the assessee in the present case is that the words "and also" in Section 147 postulate that the Assessing Officer may assess or reassess the income which he has reason to believe has escaped assessment together with any other income chargeable to tax which has escaped assessment and which comes to his notice during the course of the proceedings. In other words, unless the Assessing Officer assesses the income with reference to which he had formed a reason to believe within the meaning of Section 147, it would not be open to him to assess or reassess any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. On the other hand, it has been urged on behalf of the Revenue that even if, during the course of assessment or, as the case may be reassessment, the Assessing Officer does not assess or reassess the income which he has reason to believe has escaped assessment and which formed the subject matter of a notice u/s 148(2), it is nonetheless open to him to assess any other income which, during the course of the proceedings is brought to his notice as having escaped assessment.

11. The rival submissions which have been urged on behalf of the Revenue and the assessee can be dealt with, both as a matter of first principle, interpreting the section as it stands and on the basis of precedents on the subject. Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe u/s 147 and following the issuance of a notice u/s 148, the Assessing Officer has the power assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as well as "also" have been used together and in conjunction.

The Shorter Oxford dictionary defines the expression "also" to mean further, in addition, besides, too". The word has been treated as being relative and conjunctive. Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe u/s 147 and the issuance of a notice u/s 148(2) must assess or reassess: (i). "such income"; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words "such income" refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has fanned a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment

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must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice u/s 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of Section 147 with effect from 1 April 1989 clearly stipulated that the Assessing Officer has to assess or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax came which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter.

12. In Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., the Supreme Court dealt with the following question of law in the course of its judgment:

“Where an item unconnected with the escapement of income has been concluded finally against the assessee, how far in reassessment on an escaped item of income is it open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income.?”

The issue which arose before the Supreme Court was whether, in the course of a reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of Section 147, as they stood prior to the amendment on 1 April 1989. The Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under assessment". Income is said to have escaped assessment within the meaning of the section when it has not been charged in the hands of an assessee during the relevant assessment year. The expression "assess" refers to a situation where the assessment of the assessee for a particular year is, for the first time, made by resorting to the provisions of Section 147. The expression "reassess" refers to a situation where an assessment has already been made but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds contemplated by Explanation 1 to Section 147. The Supreme Court adverted to the judgment in V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, which held that once an assessment is validly reopened, the previous under assessment is set aside and the Income Tax Officer has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. The Court held that the object of Section 147 enures to the benefit of the Revenue

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and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

The judgment in Jaganmohan Rao's case dealt with the language of Sections 22(2) and 34 of the Act of 1922 while the judgment in Sun Engineering Works (supra) interprets the provisions of Section 147 as they stood prior to the amendment on 1 April 1989.

13. *The effect of the amended provisions came to be considered in two distinct lines of precedent on the subject. The first line of authority, to which a reference has already been made earlier, adopted the principle that where the Assessing Officer has formed a reason to believe that income has escaped assessment and has issued a notice u/s 148 on certain specific issues, it was not open to him during the course of the proceedings for assessment or reassessment to assess or reassess any other income, which may have escaped assessment but which did not form the subject matter of the notice u/s 148. This view was adopted in the judgment of the Punjab & Haryana High Court in Vipin Khanna (Supra) and in the judgment of the Kerala High Court in Travancore Cements Limited (Supra) This line of authority, would now cease to reflect the correct position in law, by virtue of the amendment which has been brought in by the insertion of Explanation 3 to Section 147 by Finance (No. 2) Act of 2009 The effect of the Explanation is that once an Assessing Officer has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice u/s 148, it is open to him to assess or reassess income in respect of any other issue though the reasons for such issue had not been included in the reasons recorded u/s 148(2).*

14. *The second line of precedent is reflected in a judgment of the Rajasthan High Court in Commissioner of Income Tax v. Shri Ram Singh (2008) 306 ITR 343 (Raj). The Rajasthan High Court construed the words used by Parliament in Section 147 particularly the words that the Assessing Officer "may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings" u/s 147. The Rajasthan High Court held as follows.*

"... it is only when, in proceedings u/s 147 the Assessing Officer, assesses or reassesses any income chargeable to tax which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings u/s 147.

To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings u/s 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape

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assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the Assessing Officer may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings u/s 147.

15. Parliament, when it enacted the Explanation (3) to Section 147 by the Finance (No. 2). Act, 2009 clearly had before it both the lines of precedent on the subject. The precedent dealt with two separate questions. When it effected the amendment by bringing in Explanation 3 to Section 147, Parliament stepped in to correct what it regarded as an interpretational error in the view which was taken by certain courts that the Assessing Officer has to restrict the assessment or reassessment proceedings only to the issues in respect of which reasons were recorded for reopening the assessment. The corrective exercise embarked upon by Parliament in the form of Explanation 3 consequently provides that the Assessing Officer may assess or reassess the income in respect of any issue which comes to his notice subsequently in the course of the proceedings though the reasons for such issue were not included in the notice u/s 148(2). The decisions of the Kerala High Court in Travancore Cements Limited (Supra) and of the Punjab & Haryana High Court in Vipan Khanna (supra) would, therefore, no longer hold the field. However, insofar as the second line of authority is concerned, which is reflected in the judgment of the Rajasthan High Court in Shri Ram Singh (supra), Explanation 3 as inserted by Parliament would not take away the basis of that decision. The view which was taken by the Rajasthan High Court was also taken in another judgment of the Punjab & Haryana High Court in [Commissioner of Income Tax Vs. Atlas Cycle Industries](#). The decision in Atlas Cycle Industries held that the Assessing Officer did not have jurisdiction to proceed with the reassessment, once he found that the two grounds mentioned in the notice u/s 148 were incorrect or non-existent. The decisions of the Punjab & Haryana High Court in Atlas Cycle Industries (supra) and of the Rajasthan High Court in Shri Ram Singh (supra) would not be affected by the amendment brought in by the insertion of Explanation 3 to Section 147.

16. **Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued u/s 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance Act (No 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of Section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the**

Assessing Officer has to assessee or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice u/s 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice u/s 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in Section 147(1) and on the basis of the precedent on the subject. **We agree with the submission which has been urged on behalf of the assessee that Section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to Section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of Section 147(1) as they stood after the amendment of 1 April 1989 continue to hold the field.**

18. In that view of the matter and for the reasons that we have indicated, we do not regard the decision of the Tribunal in the present case as being in error. The question of law shall accordingly stand answered against the Revenue and in favour of the assessee. The appeal is accordingly dismissed. There shall be no order as to costs."

[Emphasis supplied]

Decision in favour of revenue -

Hon'ble Gauhati High Court in Deputy Commissioner of Income-tax Vs. Toor Finance Company Limited, ITA/9/2023, dated 30.01.2025:

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“8. Learned counsel appearing for the Revenue has submitted that the Tribunal as well as the Commissioner has erroneously held that the Assessing Officer cannot make addition to the income of the assessee, which is not specifically mentioned in the re-opening order of the case.

9. It is submitted that with the insertion of Explanation-3 of [Section 147](#) of the Income Tax Act by the [Finance \(No.2\) Act, 2009](#) retrospectively with effect from 01.04.1989, it is open for the Assessing Officer to take into consideration any other income which has escaped assessment and which has not specifically been pointed out in the reopening order.

10. In support of the above contention, learned counsel for the appellant/Revenue has placed reliance upon the Division Bench decision of the Punjab and Haryana High Court rendered in [Commissioner, Income Tax Vs. Mehak Finvest Pvt. Ltd.](#), reported in 2014 (367) ITR 769 and the decision rendered by the Division Bench of the High Court of Karnataka in [N. Govindaraju Vs. Income Tax Officer & Ors.](#), reported in 2015 0 Supreme (Kar) 441 and submitted that the Division Bench of High Court of Punjab and Haryana as well as the High Court of Karnataka have held that the Assessing Officer can assess the income chargeable to tax which has escaped assessment and which has not specifically been pointed out in the reopening order and comes to his notice subsequently in course of proceedings under [Section 147](#) of the Income Tax Act.

11. It is contended by the learned counsel for the Revenue that so far as his information is concerned, the judgments rendered by the High Court of Punjab and Haryana and the High Court of Karnataka in the above referred decisions have neither been reversed nor modified and the same still hold good.

12. Heard the learned counsel appearing for the appellant/Revenue and perused the material available on record.

13. The High Court of Punjab and Haryana in [MehakFinvest Pvt. Ltd.](#) (supra) while taking into consideration Explanation-3 inserted to [Section 147](#) of the Income Tax Act through the [Finance \(No.2\) Act, 2009](#), prospectively with effect from 01.04.1989 has held as under:

“5. After hearing learned counsel for the parties, in our view, the appeal deserves to succeed. Explanation 3 to [section 147](#) has been inserted by the Finance (No.2) Act, 2009, retrospectively with effect from April 1,1989. It reads thus:

‘147. Income escaping assessment.--... Explanation 3.--For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue

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have not been included in the reasons recorded under sub-section (2) of [section 148](#).'

6. This court in *Majinder Singh Kong*'s case (supra), considering the scope of Explanation 3 to [section 147](#) of the Act held that the Assessing Officer is empowered to make additions even on the ground on which reassessment notice might not have been issued where during the reassessment proceedings, he concludes that some other income has escaped assessment which comes to his notice during the course of the proceedings for reassessment under [section 148](#) of the Act. The provision nowhere postulates or contemplates that the Assessing Officer cannot make any additions on any other ground unless some addition is made on the ground on which reassessment had been initiated. Special Leave Petition (Civil) No.13028 of 2011 against this decision was dismissed on August 19, 2011. The reassessment proceedings, thus, in the present case, cannot be held to be vitiated.

7. Adverting to the judgments relied upon by learned counsel for the respondent, it may be noticed that the decision of the Rajasthan High Court in [Commissioner of Income Tax Vs. Shri Ram Singh](#), was held to be not applicable being prior to the insertion of Explanation 3 to [section 147](#) of the Act.

Further, Explanation 3 to [section 147](#) of the Act was not under consideration in [Empire Finvest Ltd.](#)'s case (supra). In view of the binding precedent of this court in [Majinder Singh](#)'s case (supra) against which special leave petition has been dismissed on August 19, 2011, the judgment of the Bombay High Court in *Jet Airways (I) Ltd.*'s case (supra), which has been followed by the Delhi High Court in [Ranbaxy Laboratories Ltd.](#)'s case (supra), would not come to the rescue of the assessee. In view of the above, the order dated January 20, 2009 (annexure A4) passed by the Tribunal is unsustainable and is set aside. Accordingly, the appeals are allowed. The matter is remanded to the Tribunal to adjudicate the issue afresh on the merits in accordance with law."

14. The High Court of [Karnatakain N. Govindaraju](#) (supra) while relying on earlier decision of the High Court of Punjab and Haryana rendered in [Majinder Singh Kang Vs. CIT](#), reported in (2012) [CIT 344 ITR 358 and Mehak Finvest Pvt. Ltd.](#) (supra) has come to the conclusion that the Assessing Officer can take into consideration any other income which may have escaped assessment but discovered during the re-opening process, however, was not specifically mentioned in the reopening order.

The relevant portion of the decision of the Karnataka High Court rendered in [N. Govindaraju](#) (supra) is reproduced hereunder:

"S.147: Income escaping assessment:

If the Assessing Officer has reason to believe that any income, chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [S.148](#) to [153](#), assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148](#) to [153](#) referred to as the relevant assessment year):

Provided that

Provided further that.....

Provided also that

Explanation (1)

Explanation (2).....

Explanation 3 : For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the Page No.# 8/16 reasons recorded under sub-section (2) of [S.148](#).

Prior to the amendment with effect from 1.4.1989, [section 147](#) stood as under:

[S.147: Income escaping assessment - If](#)

(a) the income tax officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under [S.139](#) for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [Ss.148](#) to [153](#), assess or reassess such income or recomputed the loss or the depreciation allowance, as the case may be, for the assessment year

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concerned (hereafter in Ss.148 to 153 referred to as the relevant assessment year).

S.148: Issue of notice where income has escaped assessment:

(1) Before making the assessment, reassessment or recomputation under S.147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the 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 S.139:

Provided that

Provided further that

Explanation: (1)

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Section 148 of the Act requires the Assessing Officer to issue notice to the assessee where the income has escaped assessment. Subsection (2), which was inserted by Direct Tax Laws (Amendment) Act, 1989 with effect from 1.4.1989, requires the Assessing Officer to record his reasons before issuance of any such notice under sub-section (1) of section 148.

The question which first arises is with regard to the validity of the reopening proceedings, which is by issuance of notice under section 148, reasons for which are to be recorded under sub-section (2). The assessee has an opportunity to challenge the reasons given for issuance of notice and if the same are found to be vague or illegal or without any basis, the notice would become invalid.

In the case of Raymond Woollen Mills Ltd. Vs ITO (1999) 236 ITR 34, where such notice had been challenged, the Supreme Court held that what is to be seen is "whether there was prima facie some material on the basis of which the Department can reopen the case. The sufficiency of correctness of the material is not to be considered at this stage". Relying on this decision, the Apex Court, in the case of ACIT Vs Rajesh Jhaveri Stock Brokers(P) Ltd. (2007) 291 ITR 500, while considering the issuance of notice under section 147 of the Act prior to the amendment of 2009, has held that the final outcome of the proceedings is not relevant and at the initial stage, what is required is 'reason to believe' but not established fact of escapement of income. It

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Further held that "at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief whether the materials would conclusively prove the escapement is not the concern at this stage".

This would clearly mean that the issuance of notice is justiciable. If the assessee chooses not to challenge the notice or if it is challenged and found to be valid, then in either case, such notice is to be treated as valid and final. Since the validity of the notice issued under [section 148\(2\)](#) can be challenged or is subject to judicial scrutiny, in our view, the assessment or reassessment of 'any other income' in the case of a validly issued notice cannot be said to be a case of fishing and roving enquiry. The assessee has the opportunity to challenge the notice, and if it is held to be invalid for not giving adequate reasons for reopening the assessment, the entire reopening proceedings would lapse. In such a case there would be no question of assessment of either 'such income' of the first part of [section 147](#) or 'any other income' of its second part. But if the notice is either not challenged or if challenged and found to be justified, it would be a case of reopening the assessment on the basis of a valid notice.

Once the notice for reopening of a previously closed assessment is held to be valid, the assessment proceedings as well as the assessment order already passed would be deemed to have been set aside. The Assessing Officer would then have the power to pass fresh assessment order with regard to the entire income which has escaped assessment. As long as the proceedings have been initiated on the basis of a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income which may have escaped assessment during the assessment year.

The said [section 147](#) of the Act, as it now stands after 1.4.1989, may be read in a simple manner, in parts, as follows:

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, he may assess or reassess 'such income' "and also" 'any other income' chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings.....

The 'reason to believe' that any income chargeable to tax has escaped assessment, is one aspect of the matter. If such reason exists, the Assessing Officer can undoubtedly assess or reassess such income, for which there is such 'reason to believe' that income chargeable to tax has escaped assessment. This is the first part of the section and up to this extent, there is no dispute.

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It is the latter part of the section that is to be interpreted by this Court, which is as to whether the second part relating to 'any other income' is to be read in conjunction with the first part (relating to 'such income') or not. If it is to be read in conjunction, then without there being any addition made with regard to 'such income' (for which reason had been given in the notice for reopening the assessment), the second part cannot be invoked. But if it is not to be read in conjunction, the second part can be invoked independently even without the reason for the first part surviving.

From a plain reading of [section 147](#) of the Act it is clear that its latter part provides that 'any other income' chargeable to tax which has escaped assessment and which has come to the notice of the Assessing Officer subsequently in the course of the proceedings, can also be taxed. The said two parts of the section having been joined by the words 'and also', what we have to now consider is whether 'and also' would be conjunctive, or the second part has to be treated as independent of the first part. If we treat it as conjunctive, then certainly if the reason to believe is there for a particular ground or issue with regard to escaped income which has to be assessed or reassessed, and such ground is not found or does not survive, then the assessment or reassessment of 'any other income' which is chargeable to tax and has escaped assessment, cannot be made.

[Chapter XIV of the Act](#) deals with the 'Procedure for Assessment'. It provides for filing of Return of Income (s.139), Self Assessment (s.140 A), Assessment (s.143), Best Judgment Assessment (s.144) and also for Income Escaping Assessment (s.147). The purpose of these provisions is to bring to tax the entire taxable income of the assessee and in doing so, where the Assessing Officer has reason to believe that some income chargeable to tax has escaped assessment, he may assess or reassess such income. Since the purpose is to tax all such income which has escaped assessment, in our view, besides 'such income' for which he has reason to believe to have escaped assessment, it would be open to the Assessing Officer to also independently assess or reassess any other income which does not form the subject matter of notice.

Although in a different context, which was whether in the course of reassessment of an escaped item of income an assessee could seek review in respect of an item which stood concluded in the original assessment order, the Supreme Court in the case of [Sun Engineering Works Pvt. Ltd. Vs CIT](#) (1992) 198 ITR 297 has held that "the proceedings under [S.147](#) of the Act are for the benefit of the Revenue and

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not an assessee and are aimed at garnering the 'escaped income' of an assessee".

While interpreting the provisions of [section 147](#), different High Courts have held differently, i.e., some have held that the second part of [section 147](#) is to be read in conjunction with the first part, and some have held that the second part is to be read independently. To clarify the same, in the year 1989, the legislature brought in suitable amendments in [sections 147](#) and [148](#) of the Act, which was with the object to enhance the power of the Assessing Officer, and not to help the assessee. Explanation 3 was inserted in [section 147](#) by [Finance \(No.2\) Act, 2009](#) with effect from 1.4.1989. By the said Explanation, which is merely clarificatory in nature, it has been clearly provided that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings, notwithstanding that the reasons for such issue had not been included in the reasons recorded under sub-section (2) of [section 148](#). Insertion of this Explanation cannot be but for the benefit of the Revenue, and not the assessee.

In this background, if we read [Section 147](#) it would be clear that in the phrase 'and also' which joins the first and second parts of the section, 'and' is conjunctive which is to join the first part with the second part, but 'also' is for the second part and would be disjunctive. It segregates the first part from the second. Thus, when we read the full section, the phrase 'and also' cannot be said to be conjunctive.

The Punjab & Haryana High Court, in the case of [Majinder Singh Kang Vs CIT](#) (2012) CIT 344 ITR 358 has, after noticing that the earlier judgments [of the Punjab & Haryana and Rajasthan High Courts in the cases of [CIT Vs Atlas Cycle Industries](#)(1989) 180 ITR 319 and [CIT Vs Shri Ram Singh](#) (2008) 306 ITR 343 respectively] were rendered prior to the insertion of Explanation 3 to [section 147](#) of the Act, held that "a plain reading of Explanation 3 to [S.147](#) clearly depicts that the Assessing Officer has power to make additions even on the ground that reassessment notice might not have been issued in the case during the reassessment proceedings, if he arrives at a conclusion that some other income has escaped assessment which comes to his notice during the course of proceedings for reassessment under [S.148](#) of the Act. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other grounds on which the income has escaped assessment". The same view was reiterated by the Punjab & Haryana High Page No.# 12/16 Court in the case of [CIT Vs Mehak Finvest Pvt. Ltd.](#) (2014) 367 ITR 769. In [the said judgment](#), it was also noticed that the Special Leave Petition filed against the judgment in the case of [Majinder Singh](#) (supra) had been dismissed by the Supreme Court.

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Circular No.5 of 2010 issued by the Central Board of Direct Taxes (CBDT) after the amendment of 2009, provided for the "Explanatory Notes to the Provisions of Finance (No.2) Act, 2009" by which Explanation 3 to [section 147](#) of the Act had been inserted with effect from 1.4.1989. The relevant paragraph 47 of this Circular is reproduced below:

"47: Clarificatory amendment in respect of reassessment proceeding under [S.147](#).

47.1: The existing provisions of [S.147](#) provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of [S.148](#) to [153](#), assess or reassess such income and also any other income chargeable to tax, which has escaped assessment. Further Assessing Officer may also assess or reassess such other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Assessing Officer is required to record the reasons for reopening the assessment before issuing notice under [S.148](#) with a view to reassess the income of assessee.

47.2: Some courts have held that the Assessing Officer has to restrict the reassessment proceedings only to the reasons recorded for reopening of the assessment and he is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

47.3: Therefore, to articulate the legislative intention clearly Explanation 3 has been inserted in [S.147](#) to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of [S.148](#).

47.4: Applicability - This amendment has been made applicable with retrospective effect from 1st April, 1989 and will apply accordingly in relation to assessment year 1989-90 and subsequent years."

It is thus clear that once satisfaction of reasons for the notice is found sufficient, i.e., if the notice under [section 148\(2\)](#) is found to be valid, then addition can be made on all grounds or issues (with regard to 'any other income' also) which may come to the notice of the Assessing Officer subsequently during the course of proceedings under [section](#)

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147, even though Page No.# 13/16 reason for notice for 'such income' which may have escaped assessment, may not survive.

In the case of CIT Vs Jet Airways (I) Ltd. (2011) 331 ITR 236 the Bombay High Court has held that "Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance or core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

Thus, what has been held is that 'such income' in the first part of section 147 is joined with 'any other income' of the second part of the section by the phrase "and also" which is used in a "cumulative and conjunctive sense". Following the said judgment of the Bombay High Court, same view has been taken by the Delhi High Court in the cases of Ranbaxy Laboratories Ltd. Vs CIT (2011) CIT 336 ITR 136 and CIT Vs Adhunik Niryat Ispat Ltd. (2011) 63 DTR 212 and also the Gujarat High Court in the case of CIT Vs Mohmed Juned Dadani (2013) 214 Taxman 38.

With due respect to the view taken in the aforesaid cases, we are unable to persuade ourselves to follow the same.

Insertion of 'Explanation' in a section of an Act is for a different purpose than insertion of a 'Proviso'. 'Explanation' gives a reason or justification and explains the contents of the main section, whereas 'Proviso' puts a condition on the contents of the main section or qualifies the same. 'Proviso' is generally intended to restrain the enacting clause, whereas 'Explanation' explains or clarifies the main section. Meaning thereby, 'Proviso' limits the scope of the enactment as it puts a condition, whereas 'Explanation' clarifies the enactment as it explains and is useful for settling a matter or controversy.

Orthodox function of an 'Explanation' is to explain the meaning and effect of the main provision. It is different in nature from a 'Proviso', as the latter excepts, excludes or restricts, while the former explains or clarifies and does not restrict the operation of the main provision. It is

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true that an 'Explanation' may not enlarge the scope of the section but it also does not restrict the operation of the main provision. Its purpose is to clear the cob-webs which may make the meaning of the main provision blurred. Ordinarily, the purpose of insertion of an 'Explanation' to a section is not to limit the scope of the main provision but to explain or clarify and to clear the doubt or ambiguity in it.

Explanation is also different from Rules framed under an Act. Rules are for effective implementation of the Act whereas Explanation only explains the provision of the Section. Rules cannot go beyond or against the provision of the Act as it is framed under the Act and if there is any contradiction, the Act will prevail over the Rules. Same is not the position vis-à-vis the Section and its Explanation. The latter, by its very name, is intended to explain the provision of the Section, hence there can be no contradiction. Section has to be understood and read hand-in-hand with the Explanation, which is only to support the main provision, like an example does to explain any situation.

In the present case, insertion of Explanation 3 to [section 147](#) does not in any manner override the main section and has been added with no other purpose than to explain or clarify the main section so as to also bring in 'any other income' (of the second part of [section 147](#)) within the ambit of tax, which may have escaped assessment, and comes to the notice of the Assessing Officer subsequently during the course of the proceedings. Circular 5 of 2010 issued by the CBDT (already reproduced above) also makes this position clear. In our view, there is no conflict between the main [section 147](#) and its Explanation 3. This Explanation has been inserted only to clarify the main section and not curtail its scope. Insertion of Explanation 3 is thus clarificatory and is for the benefit of the Revenue and not the assessee.

If there is ambiguity in the main provision of the enactment, it can be clarified by insertion of an Explanation to the said section of the Act. Same has been done in the present case. [Section 147](#) of the Act was interpreted differently by different High Courts, i.e., whether the second part of the section was independent of the first part, or not. To clarify the same, Explanation 3 was inserted by which it has been clarified that the Assessing Officer can assess the income in respect of any issue which has escaped assessment and also 'any other income' (of the second part of [section 147](#)) which comes to his notice subsequently during the course of the proceedings under the section. After the insertion of Explanation 3 to [section 147](#) it is clear that the use of the phrase "and also" between the first and the second parts of the section is not conjunctive and assessment of 'any other income' (of the second part) can be made independent of the first part (relating to 'such income' for which reasons are given in notice under [section 148](#)), notwithstanding that the reasons for such issue ('any other income') have not been given in the reasons recorded under [section 148\(2\)](#) of the Act. We are thus in agreement with the view taken by the Punjab

& Haryana High Court in the cases of [Majinder Singh Kang and Mehak Finvest](#) (supra).

Considering the provision of [section 147](#) as well as its Explanation 3, and also keeping in view that [section 147](#) is for the benefit of the Revenue and not the assessee and is aimed at garnering the escaped income of the assessee [viz. [Sun Engineering](#) (supra)] and also keeping in view that it is the constitutional obligation of every assessee to disclose his total income on which it is to pay tax, we are of the clear opinion that the two parts of [section 147](#) (one relating to 'such income' and the other to 'any other income') are to be read independently. The phrase 'such income' used in the first part of [section 147](#) is with regard to which reasons have been recorded under [section 148\(2\)](#) of the Act, and the phrase 'any other income' used in the second part of the section is with regard to where no reasons have been recorded before issuing notice and has come to the notice of the Assessing Officer subsequently during the course of the proceedings, which can be assessed independent of the first part, even when no addition can be made with regard to 'such income', but the notice on the basis of which proceedings have commenced, is found to be valid.

In the end it was vehemently argued by the learned counsel for the appellant that the reason to be given under sub-section (2) of [section 148](#) would be the very foundation of the issuance of notice and if it is false or baseless, then everything goes and the structure erected on such foundation would crumble.

It is true that if the foundation goes, then the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. But the same can be checked at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then in either case it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can go on. **We may only reiterate here that once the proceedings have been initiated on a valid notice, it becomes the duty of the Assessing Officer to levy tax on the entire income (including 'any other income') which may have escaped assessment and comes to his notice during the course of the proceedings initiated under [section 147](#) of the Act."**

15. Having given a thoughtful consideration on the above referred decisions and the provisions of [Sections 147](#) as well as [Section 148](#) of the Income Tax Act, we are in perfect agreement with the view taken by the High Court of Punjab and Haryana in [Mehak Finvest Pvt. Ltd.](#) (supra) as well as the decision rendered by the High Court of Karnataka in [N. Govindraju](#)(supra).

16. Resultantly, the question of law framed in this appeal for appropriate answer is answered in favour of the appellant/Revenue."

[Emphasis supplied]

11. Thus, there are divergent views expressed by Hon'ble High Courts and there is no decision of Hon'ble Jurisdictional High Court. While the Hon'ble Bombay High Court in **Jet Airways (supra)** held that the words "such income" and "also any other income" occurring in section 147 are used in a "cumulative and conjunctive sense" and not alternative and the AO has to assess "such income" (i.e. original income) and only then he has authority to assess "any other income", the Hon'ble Gauhati High Court has interpreted these words as "alternative and interdependent" and held that the AO can assess "any other income" even without assessing "such income (i.e. original income)". In such a situation, at first we refer the decision of Hon'ble Supreme Court in **Vegetable Products (supra)** wherein it was held thus:

"There is no doubt that the acceptance of one or the other interpretation sought to be placed on [S. 271\(1\)\(a\)\(i\)](#) by the parties would lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. This is a well 'accepted rule of construction' recognised by this Court in several of its decisions."

[Emphasis supplied]

12. The **ITAT, Ahmedabad Bench in Upkar Retail Pvt. Ltd. (supra)** has dealt a similar situation of divergence and after considering the judicial

precedents including **Vegetable Products (supra)**, reached a conclusion that the view favourable to assessee has to be adopted. We extract below the order passed by ITAT in this regard:

"2. When this appeal was called out for hearing learned representatives fairly agree that the issue in appeal is covered, in favour of the assessee, by Hon'ble Calcutta High Court's judgement in the case of [Asian Financial Services Ltd. vs. CIT](#) [(2017) 293 CTR 240 (Cal)] wherein it is held that the loss incurred on account of derivatives would be deemed business loss under proviso to [section 43\(5\)](#) and not speculation loss and, accordingly Explanation to [section 73](#) could not be applied. Their Lordships have further held that that the "loss (on account of sale of derivatives) would be allowed to be set off against income arising out of proper business because derivatives were treated differently within meaning of Explanation to [section 73\(4\)](#) and not at par with the shares". The very foundation of the grievance raised by the appellant Assessing Officer thus ceases to have a legally sustainable basis. There is no contrary decision, or any other binding judicial precedent, from Hon'ble jurisdictional High Court.

3. In all fairness, however, it is also noticed, from the text of Hon'ble Calcutta High Court's judgment in the case of [Asian Financial Services](#) (supra) itself, that Hon'ble Delhi High Court had taken a different view on this matter and decided the same, in principle, against the assessee. There are thus conflicting legal views of Hon'ble non- jurisdictional High Court and that, beyond any dispute or controversy, there is no judicial precedents are available from Hon'ble jurisdictional High Court. We have noted that Hon'ble Supreme Court has admitted SLP against the Asian Financial Services decision [referred to above](#), vide judgment reported in [2016] 75 taxmann.com 68 (SC)/[2016] 243 Taxman 147 (SC), but, as is the settled legal position, mere pendency of appeal in a higher judicial forum does not dilute the binding nature of a judicial precedent. There is also no request from the revenue authorities to keep the matter pending till adjudication on the aforesaid appeal by Hon'ble Supreme Court.

4. As to what should be the view to be taken in these circumstances, i.e. when there are conflicting decisions of Hon'ble Courts above and when we do not have the benefit of the guidance by Hon'ble jurisdictional High Court, we find guidance from the decision of a co-ordinate bench in the case of [Tej International Pvt Ltd Vs DCIT](#) [(2000) 69 TTJ 650 (Del)] wherein the coordinate bench has, inter alia, observed as follows:-

"6. We have considered the rival submissions and perused the records. It is not in dispute that two High Courts, namely, Gauhati High Court and Karnataka High Court, have expressed conflicting views regarding levy of interest under [sections 234B](#) and [234C](#) on deemed income under [section 115J](#). Hon'ble Gauhati High Court has opined that when

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legal fiction is to be created for an obvious purpose, full effect to it should be given. Quoting Lord Asquith who said, "the statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to inevitable corollaries of that state of affairs", Hon'ble Gauhati High Court has held that there is no statutory exception excluding the operations of [section 115J](#) of the Act. Hon'ble Karnataka High Court, on the other hand, has held that the words 'for the purposes of this section' in Explanation to [section 115J\(1A\)](#) are relevant and cannot be construed to extend beyond the computation of liability to tax. In the opinion of the Hon'ble Karnataka High Court, when a deeming fiction is brought under the statute, it is to be carried to its logical conclusions but without creating further deeming fiction so as to include other provisions of the Act which are not made specifically applicable. It is thus evident that views of these two High Courts are in direct conflict with each other. Clearly, therefore, there is no meeting ground between these two judgments and we are also unable to accept the suggestion that we can follow earlier decisions of this Tribunal, or such views, whichever seem more reasonable of one of these High Courts.

7. It may be mentioned that some Benches of the Tribunal have either taken independent view on the issue in this appeal or have later on followed Hon'ble Gauhati High Court, [referred to above](#). However, with the latest judgment of Hon'ble Karnataka High Court in [Kwality Biscuits Ltd.](#)'s case (supra) the situation is materially different. In the hierarchical judicial system that we have, better wisdom of the Court below has to yield to higher wisdom of the Court above and, therefore, one authority higher than this Tribunal has expressed an opinion on that issue, we are no longer at liberty to rely upon earlier decisions of this Tribunal even if we were a party to them. Such a High Court being a non-jurisdictional High Court does not alter the position as [laid down by](#) Hon'ble Bombay High Court in the matter of [CIT v. Godavari Devi Saraf](#) [1978] 113 ITR 589 (Bom.). Therefore, we do not consider it permissible to rely upon the earlier decisions of this Tribunal even if one of them is by a Special Bench. It will be wholly inappropriate to choose views of one of the High Courts based on our perceptions about reasonableness of the respective viewpoints as such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of hierarchical judicial system. We have to, with our highest respect of both the Hon'ble High Courts, adopt an objective criterion for deciding as to which of the Hon'ble High Court should be followed by us.

8. We find guidance from the judgment of Hon'ble Supreme Court in the matter of [CIT v. Vegetable Products Ltd.](#) [1973] CTR (SC) 177 : [1972] 88 ITR 192 (SC) Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This principle has been consistently followed by the various authorities as

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also by the Hon'ble Supreme Court itself. In another Supreme Court judgment, *Petron Engg. Construction (P.) Ltd. & Anr. v. CBDT & Ors.* [1988] 75 CTR (SC) 20 : [1989] 175 ITR 523 (SC), it has been reiterated that the above principle of law is well established and there is no adopt about that. Hon'ble Supreme Court had, however, some occasion to deviate from this general principle of interpretation of taking statute which can be construed as exception to this general rule. It has been held that the rule of resolving ambiguities in favour of tax payer does not apply to deductions, exemptions and exceptions which are allowable only when plainly authorised. This exception, laid down in *Littman v. Barron* 1952 (2) AIR 393 and followed by apex Court in *Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commr. of CCT* [1992] Suppl. (1) SCC 21 and *Novopa India Ltd. v. CCE & C* 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, "in case of ambiguity, a taxing statute should be construed in favour of a tax-payer does not apply to a provision giving tax-payer relied in certain cases from a section clearly imposing liability". This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of *State of M.P. v. Dadabhoy's New Chirmiry Ponri Hill Colliery Co. Ltd.* AIR 1972 (SC) 614. Therefore, what follows is that in the peculiar circumstances of the case and looking to the nature of the provisions with which we are presently concerned, the view expressed by the Hon'ble Karnataka High Court in the case of *Kwality Biscuits Ltd.* case (supra), which is in favour of assessee, deserves to be followed by us. We, therefore, order the deletion of interest under sections 234B and 234C in this case."

5. In view of the above discussion, quite clearly, even when the decision of Hon'ble non-jurisdictional High Courts are in conflict with each other, the only objective criteria which followed by us is to take a view favourable to the assessee. Hon'ble Calcutta High Court's decision in the case of *Asian Financial Services Ltd* (supra), therefore, is required to be followed by us. Respectfully following the same, we uphold the conclusions arrived at by the learned CIT(A) and reject the grounds raised by the Revenue."

[Emphasis supplied]

13. In view of above discussions and for the reasoning stated therein, we are inclined to follow the view taken in ***Jet Airways (supra)*** in favour of assessee and applying the same to facts of present appeal, we hold that the AO's order denying the deduction u/s 80P to assessee is bad and illegal.

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Therefore, we direct the AO to allow the deduction as claimed by assessee.

The assessee succeeds in these grounds No. 1 & 2.

Ground No. 3:

14. Since we have allowed Ground No. 1 & 2 in above paras, there is no need to go into Ground No. 3; the same is not taken up and kept open.

15. In the final result, this appeal is allowed.

Order pronounced in open court on 22/07/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 22/07/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore