

**(2006) 11 P&H CK 0135**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Rajindra Rosin and Turpentine  
Industries

RESPONDENT

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**Date of Decision:** Nov. 1, 2006

**Acts Referred:**

- Income Tax Act, 1961 - Section 147, 148

**Citation:** (2008) 305 ITR 161

**Hon'ble Judges:** Rajesh Bindal, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

1. The following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench "C", Delhi, arising out of its order dated January 30, 1990, in I.T.A. No. 1034/Delhi of 1988 in respect of the assessment year 1979-80:

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in annulling the assessment made by the Income Tax Officer?

2. Original assessment in the case of the assessee was framed on March 31, 1981. Notice for reassessment was issued on the ground that income had escaped assessment on account of the assessee having entered lesser closing stock. This view was upheld by the Commissioner of Income Tax (Appeals). The Tribunal, however, accepted the appeal of the assessee on the ground that the Assessing Officer failed to record reasons for initiating proceedings for reassessment. It was held that since reasons were not available on the file, it could not be ascertained whether reopening of the assessment was on account of reconsideration of the same material or in consequence of some information in its possession. Recording

of reasons is a condition precedent to invoke jurisdiction u/s 147/148 of the Income Tax Act, 1961. Reliance was placed on a judgment of the hon"ble Supreme Court in (1976) 102 ITR 287 (SC) .

3. We have heard learned Counsel for the Revenue and perused the record.

We are of the view that the decision taken by the Tribunal is in accordance with the law laid down by the hon"ble Supreme Court and this Court. The Tribunal has followed the judgment of the hon"ble Supreme Court in (1976) 102 ITR 287 (SC) . The same view has also been taken by the hon"ble Supreme Court, inter alia, in [Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others,](#) and [M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,](#) .

4. Considering the law on the point, this Court in [Swaraj Engine Ltd. Vs. Assistant Commissioner of Income Tax and Another,](#) observed (headnote):

An Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax had escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts.

5. The same view was also reiterated by this Court in its recent judgment dated October 18, 2006, in Punjab State Co-operative Agricultural Development Bank Ltd. v. CIT [2008] 305 ITR 156 : C.W.P. No. 398 of 2006.

6. Accordingly, the question referred to is answered against the Revenue and in favour of the assessee.