

No reassessment on mere allegation of bogus entries as AO failed to identify culprits for such entries

Summary – The High Court of Delhi in a recent case of Insecticides (India) Ltd., (the Assessee) held that where assessment was reopened on ground that assessee was involved in bogus entries but reasons recorded for reopening did not mention who had given bogus entries, reopening of assessment could not be sustained.

JUDGMENT OF HC

These appeals by the revenue relate to the issue of validity of the reassessment proceedings under Section 147 of the Income - tax Act, 1961 (hereinafter referred to as "the said Act").

The reasons indicated behind the re-opening of the assessments were identical in both the cases such that the above named company was involved in giving and taking bogus entries/transactions.

The respondent / assessee had filed objections against the said notices under Section 148 of the said Act. However, without disposing of those objections by reasoned order, the Assessing Officer framed reassessment orders on 15.10.2007 in respect of both the years. By virtue of the reassessment orders, the Assessing Officer made an addition of Rs. 30 lakhs in respect of the assessment year 2002-03 and an addition of Rs. 35 lakhs in respect of the assessment year 2003-04. Essentially, the Assessing Officer held that the said sums of money represented income of the assessee from undisclosed sources which had been shown as share application money. In other words, the Assessing Officer held the said sums to be bogus entries

Being aggrieved by the said orders by the Assessing Officer, the respondent / assessee preferred appeals. Those appeals were allowed by the Commissioner of Income Tax (Appeals) by a common order dated 06.01.2011. Insofar as the assessment year 2002-03 was concerned, the CIT (Appeals) held that the reassessment proceedings were bad inasmuch as it amounted to a mere change of opinion.

In respect of both the assessment years, the CIT (Appeals) held in favour of the assessee on merits also.

Being aggrieved by the deletion of the addition made by the CIT (Appeals), the revenue preferred the above mentioned appeals before the Tribunal. As mentioned above, the Tribunal rejected those appeals and that is how the revenue has filed these appeals before HC.

The Tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, in essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any material. As such, on the available

material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid.

The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. The Tribunal noted that the reasons recorded by the AO do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place.

Relying upon the decision of the Delhi HC itself in the case of *CIT v. Atul Jain* [\[2000\] 299 ITR 383](#), and the case of *Signature Hotels (P.) Ltd. (supra)*, the HC did not see any reason to differ with the view expressed by the Tribunal and dismissed the appeal.