

HC slams revenue for initiating reassessment at instance of audit party without recording his own reasons

Summary – The Gujarat HC in a recent case of Shilp Gravures Ltd., (the Assessee) held where Assessing Officer allowed research & development expenses incurred by assessee in respect of in house research as revenue expenditure and subsequently, had initiated reassessment proceedings solely at instance of audit party by recording reasons for which he had no conviction, same was a colourable exercise of jurisdiction by Assessing Officer and could not be sustained.

Facts

- The assessee-company was engaged in the business of manufacturing and job work in electronically engraved copper rollers. It claimed expenses on in house research being in the nature of consumption of raw material on test production and salary/wages of personnel deployed for R&D activities as revenue expenditure.
- During scrutiny assessment, the Assessing Officer allowed the R&D expenses incurred by assessee in respect of inhouse research as revenue expenditure.
- Subsequently, the audit party raised objection that the allowance of deduction for entire expenditure on research and development resulted in an under assessment of income as according to section 35AB the assessee was eligible for a deduction of 1/3rd of R&D expenses in the previous year and the balance amount in equal instalments immediately in two succeeding previous years.
- The Assessing Officer initially replied to the audit party that these expenses were rightly claimed as revenue expenditure and the same were also correctly allowed. However, the Assessing Officer issued notice under section 148 at the instance of audit party and applied section 35AB(2) and section 32A(2B).
- On appeal, the Commissioner (Appeals) quashed the reassessment proceeding.
- On revenue's appeal, the Tribunal confirmed the order of the Commissioner (Appeals).
- On Further Appeal.

Held

- At the time of issuance of the notice under Section 148 and initiating the process under section 147 the Assessing Officer must have a reason to believe that the income chargeable to tax for any particular assessment year has escaped the assessment and as the notice is being issued by the Assessing Officer it should be his subjective satisfaction, which the law has made obligatory.
- Any reassessment proceedings initiated at the instance of the audit party objection, without the Assessing Officer himself having reason to believe that the income chargeable to tax has escaped the assessment must fail and such issue is no longer res integra and requires no further elaboration except by reproducing relevant findings of this Court, in the case of *Cadila Healthcare Ltd. v. Asstt.*

CIT [Special Civil Appln. 15566 of 2011, dated 14-12-2011] wherein it is held that any such initiation of reassessment proceedings solely at the instance of the audit objection would not be maintainable.

- The subjective satisfaction of the Assessing Officer for the purpose of reopening of the assessment is lacking in the instant case and, therefore, the Officer having the jurisdiction to issue notice on the belief that the income has escaped the assessment in fact had no belief while issuing notice and, therefore, as held in the case of *Adani Exports v. Dy. CIT* [[1999](#)] 240 ITR 224 (Guj.) it was a colourable exercise of jurisdiction by the Assessing Officer by recording the reasons for which he obviously had no conviction, had initiated the reassessment proceedings solely at the instance of the audit party which cannot be sustained.