

Mere transfer of an amount from subsidy account to partner's capital account wouldn't make it liable to tax

Summary – The High Court of Gujarat in a recent case of Raj Jain., (the Assessee) held that merely because assessee changed nature of treatment of subsidy received in year 1995 from subsidy account to partner's capital account for accounting purpose, it would not permit revenue to examine taxability of such receipt in assessment year 2004-05 by reassessment proceedings.

Facts

- The assessee was engaged in the business of texturising of yarn. The assessee had distributed the subsidy received from the Government in year 1995 among the partners instead of any utilization for business in year 2004-05.
- Assessment for year in which such subsidy was received was sought to be reopened on ground that said subsidy was required to be considered as business income and the taxable income was to be re-computed accordingly.
- On appeal, the assessee submitted that reassessment was not permissible as there was no concealment on the part of the assessee in furnishing truly and fully all material facts and that no taxing event took place during the year under consideration.

Held

- Notice for reopening having been issued beyond a period of four years from the end of relevant assessment year, the requirement that the income chargeable to tax should have escaped assessment, for the failure of the assessee to furnish truly and fully all material facts for assessment, would become relevant.
- Though, in the balance sheet, the assessee did diminish the reserve and surplus state subsidy amount by a sum of Rs. 17,33,554, it was not immediately apparent where this amount was shifted. It is true that such amount was taken into partners capital account but without any specific mention of this amount in the break up given.
- Suffice it to say either on accrued or actual receipt, the taxable event did not arise during the year under consideration. If such subsidy receipt invited tax, the assessee ought to have been taxed at the relevant time in the previous assessment year corresponding to the previous year when such subsidy was paid. In the previous year relevant to assessment year 2004-05, nothing has happened which would permit the department to collect tax on such receipt. Because the assessee changed the nature of treatment for accounting purpose to such subsidy amount received in the year 1995, it would not permit the Revenue to examine the taxability of such receipt in the assessment year 2004-05. Only on this ground, the Assessing Officer's belief that income chargeable to tax during the year under consideration had escaped assessment, lacked validity.