

Re-assessment notice was valid as accommodation entries to assessee were confirmed by a CA's confession

Summary – The High Court of Allahabad in a recent case of Pankaj Hospital Ltd., (the Assessee) held that where Assessing Officer had reopened assessment of assessee-company plea that it had arranged accommodation entries from four bogus companies created by a Chartered Accountant in lieu of cash deposits of equal amount plus premium which were not disclosed to department, notice for reopening assessment proceedings was valid.

Facts

- For the assessment year 2006-07, the Assessing Officer completed the assessment of the assessee-company under section 143(3) on 2-12-2008 accepting a *nil* return.
- Subsequently the Assessing Officer issued on the assessee a notice under section 147 read with section 148 on 11-3-2013 seeking to reopen the above assessment. He recorded the reasons to the effect that he received information from the Additional Commissioner by the letter dated 27-1-2010 that a search was conducted on the office premises of a Chartered Accountant, namely, 'T' on 15-9-2008. During the course of search, it was admitted by the Chartered Accountant that he had created as many as 90 bogus private limited companies and firms for providing accommodation entries to the beneficiaries. The assessee was one of the beneficiaries, which had taken the benefit of accommodation entries during the financial year 2005-06 relevant to the assessment year 2006-07 from four bogus companies created by 'T' in lieu of cash deposits of equal amount plus premium thereon. The total amount involved was Rs. 2.21 crores. Consequently the assessment was sought to be reopened on the ground that the assessee had arranged accommodation entries of a total amount of Rs. 2.21 crores from the aforesaid four bogus companies in lieu of cash deposits of equal amount plus premium which were not disclosed to the department.

Held

- The reopening of the assessment in the instant case is under the provisions of section 147(1). The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for the assessment year in question. The expression 'reason', as the Supreme Court in the case of *Asstt. CIT v. Rajesh Jhaveri Stock Broker (P.) Ltd.* [\[2007\] 291 ITR 500/161 Taxman 316](#) has held, means a cause or justification. If the Assessing Officer has a cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The Supreme Court has held that the expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. At that stage what is required is 'reason to believe' and not the establishment of escapement of income. Whether the materials would conclusively prove an escapement of income is not the concern at that stage.

- It is true that during the course of the assessment proceedings, the Assessing Officer had required the assessee to disclose information pertaining to the share applicants, the amount received and the source, the mode in which payment was made and confirmatory letters together with PAN details. For the purpose of these proceedings, the Court must proceed on the basis of the reply furnished by the assessee to the notice under section 142(1). The assessee had indicated the names of the companies, their addresses, the application money, date of payment, mode of payment and PAN details. But it is also trite law that for such cases three important aspects have to be considered by the Assessing Officer, namely, (i) the identity of the investors, (ii) the creditworthiness of the applicants, and (iii) the genuineness of the transaction.
- *Ex facie*, the order of assessment which was passed by the Assessing Officer under section 143(3) on 2-12-2008 does not indicate that the Assessing Officer had brought his mind to bear on either of these aspects. In fact, there is nothing in the reply filed by the assessee to the notice under section 142(1) that would indicate a full disclosure of facts in regard to either the creditworthiness of the companies which made the investments or the genuineness of the transaction. A cloud was cast on the genuineness of the transaction once a search took place at the premises of the Chartered Accountant, who has stated that he had set up 90 bogus companies, all within his control and in which the directors were his own employees, only for the purpose of providing accommodation entries in favour of various beneficiaries. Among the beneficiaries is the assessee to whom a payment of Rs. 2.21 crores was made through the four companies which created a conduit.
- Whether it is actually so, is a matter of fact which would have to be determined in the course of the proceedings after the assessment is reopened. At this stage, the only issue before the Court is as to whether there was reason to believe that any income chargeable to tax had escaped assessment. From the reply which was furnished by the assessee during the course of the assessment proceedings, it does not emerge that the assessee had discharged the onus of establishing the creditworthiness of the companies which had ostensibly invested the amount or in regard to the genuineness of the transaction. Hence, though the reopening of the assessment in the instant case is beyond the period of four years, but the Assessing Officer was satisfied that the condition stipulated in the first proviso to section 147 was duly fulfilled.
- In the circumstances, there was no illegality in the notice issued under section 147 read with section 148.