

No reassessment to tax slump sale as ITAT upheld that transfer of undertaking in lieu of shares wasn't slump sale

Summary – The High Court of Mumbai in a recent case of Bharat Bijlee Ltd., (the Assessee) held that reassessment on ground that transfer of undertaking by assessee was slump sale was unjustified since Tribunal had clearly recorded that transfer in lieu of shares was not a slump sale.

Facts

- An agreement was entered into between the assessee and a company, (TEPL), whereby the assessee had transferred its lift field operations business to TEPL for a consideration.
- The assessee filed its return and stated that the transfer was by way of exchange and not sale and was, therefore, not within the purview of the definition of 'slump sale' under section 2(42C) and that the cost of undertaking was not ascertainable. He calculated the indexed cost of acquisition of the undertaking, and deposited a sum in section 54EC bonds within six months from the transfer of the undertaking and claimed that the long-term capital gains were therefore, to be treated as exempt from tax.
- There followed a series of queries raised and requisitions made by the Assessing Officer, which were replied to and complied with by the assessee.
- The Assessing Officer came to conclusion that the transaction fell under the definition of 'slump sale' and was taxable as per the provisions of section 50B and taxed the same accordingly. He computed taxable long-term capital gains.
- On appeal, the Commissioner (Appeals) confirmed said order.
- The Tribunal held that the scheme of arrangement resulted in transfer of undertaking in exchange for preference shares and bonds and it was a case of exchange and not sale. Consequently, neither provisions of section 2(42C) nor section 50B were applicable.
- Thereafter, notice under section 148 was issued by the Assessing Officer stating that there was reason to believe that the assessee's income had escaped assessment within the meaning of section 147.
- The assessee challenged validity of the re-assessment notice contending that reopening was based on the same set of facts/material available on record for the year under consideration and that the reasons reflected a mere change of opinion.

Held

- The correspondence between the assessee and department indicates that every aspect of the transaction was not only disclosed but was specifically noticed by the Assessing Officer. More important is the fact that every relevant aspect had been brought to the notice of the Assessing Officer not merely in the return filed by the assessee but in answer to the specific queries and in

response to the requisitions of the Assessing Officer during the assessment proceedings. No aspect of the matter remained to be disclosed. No aspect of the matter remained to be even sought by the Assessing Officer.

- The assessee had not withheld or failed to disclose any material relevant to the assessment of its income for the assessment year in question, viz., 2005-2006.
- In the reasons recorded for reopening the assessment, there was nothing that was not considered during the assessment proceedings. Every single aspect referred to therein was considered in the assessment proceedings. One of the reasons stated was that as per the valuation report of the transferee's chartered accountants the fair market value of the division was determined at Rs.36.50 crores. The department contended that this report had not been disclosed and therefore, reopening of the assessment was permissible.
- The submission is unsustainable. Firstly, the valuation report was prepared by the transferee's chartered accountants. Even assuming that the assessee was aware of the same and had a copy of it, it would make no difference. It was not suggested that the report contains any material relevant to the assessment, which was not disclosed during the assessment proceedings. A mere failure to furnish a document would not justify reopening an assessment. It must be established by the department that the contents of the documents relevant to the assessment were not disclosed by the assessee. There may be several documents which may not have been disclosed during the assessment proceedings. If however, the contents of the documents relevant to the assessment had been disclosed and had been considered by the Assessing Officer, it would not justify reopening of the assessment. Several documents may contain the same information. It would not be necessary for the assessee to disclose every such document unless the existence of such documents themselves would be material to the assessment.
- The queries raised and the information sought by the Assessing Officer and the assessee's response thereto indicates beyond doubt that all the material facts were not only disclosed but were brought to the notice of the Assessing Officer and the Assessing Officer considered the same. The department was unable to indicate any of the other facts that were not disclosed or taken into consideration in the assessment proceedings. Even if the assessment order does not by itself indicate that the Assessing Officer considered the same, it would make no difference.
- There is nothing on record that indicates that the Assessing Officer did not consider the material before him. Indeed the nature of the queries raised and the information sought by him indicates that he not only noticed but considered the information supplied by the assessee. In the facts and circumstances of this case, it cannot by any stretch of imagination be held that the assessee had failed to disclose fully and truly all material facts necessary for its assessment for the assessment year 2005-2006.