

Re-assessment affirmed as commission paid to foreign agent was included in cost of asset to escape TDS liability

Summary – The High Court of Bombay in a recent case of Rosy Blue (India) Ltd., (the Assessee) held that where commission paid to foreign party was not shown separately but added to cost of purchase to avoid TDS liability, there had been less than full and true disclosure of all material facts during assessment proceedings and, therefore, reopening of assessment even after four years from end of relevant assessment year was justified in law.

- For relevant assessment year, assessment order in case of assessee was passed under section 143(3).
- Subsequently, the Assessing Officer initiated reassessment proceedings taking a view that assessee had made payment of commission to a foreign agent without deducting tax at source and, thus, said payment was liable to be disallowed under section 40(a)(i).
- Assessee filed instant petition contending that since there was no failure to make a full and true disclosure of all material facts necessary for assessment, initiation of reassessment proceedings after expiry of four years from end of relevant assessment year was not sustainable.
- It was noted from records that commission paid to foreign party was not shown separately but added to cost of purchase while commission paid on local purchase had been separately shown in profit and loss account and not added to costs.
- Whether in view of aforesaid, there had been less than full and true disclosure of all material facts during assessment proceedings and, therefore, reopening of assessment for assessment year in question was justified in law – On this question, the HC held that it was indeed a case where reassessment proceedings initiated even after four years were valid.