

## In reassessment cases it is to be discussed whether reason to believe constituted a change of opinion of AO

**Summary – The High Court of Delhi in a recent case of Central Warehousing Corporation., (the Assessee) held that where section 10(29) exemption was allowed but in view of Supreme Court's decision reassessment notice was issued, matter to be readjudicated to find whether there was change of opinion.**

### Facts

- The assessee, a statutory corporation, claimed the benefit of section 10(29) contending that its income was exempted from taxation as it carried on warehousing and storage activity. In original assessment assessee's claim was accepted in respect of part of its income.
- Subsequently, the Supreme Court in *Orissa State Warehousing Corporation v. CIT* [\[1999\] 237 ITR 589/103 Taxman 623](#) held that the question of exemption would arise and pertain to that part of income which is derived by letting out of godowns and warehouses for the purposes of section 10(29) and the other income would not be eligible for such benefits. On the basis of judgment of the Supreme Court, the Assessing Officer issued notice under section 147/148.
- On appeal, the Tribunal upheld reopening of assessment.
- On further appeal, the High Court observed that the argument of the assessee that it was a case of change of opinion has not been addressed at all by the Tribunal which should have been gone into when it was so specifically raised by the assessee. The High Court set aside the order of the Tribunal and remitted the case back to the Tribunal for fresh consideration only on that aspect.
- The Tribunal again dismissed the assessee's appeal.
- On appeal, the assessee contended that the Tribunal had not followed the direction of the Court.

### Held

- The Tribunal has misdirected itself as to the scope of remand. Though in the earlier portion of the impugned order the Tribunal extracted the Court's directions which specifically require the Tribunal to go into the question as to whether the 'reasons to believe' under section 147/148 in the instant case were based upon a mere change of opinion, no opinion has been recorded or arrived at; the order *ex facie* discloses complete non-application of mind to the directions of Court, resulting in a remand to ensure application of mind to the assessee's contention in this regard. The question whether the reasons to believe constitute a change of opinion is essentially for discussion in every case where the assessee challenges the notice under section 148.
- For the above reasons, the matter requires fresh consideration. Accordingly, the matter is remitted for fresh consideration of the Tribunal so that the directions in the previous order of the Court are duly complied with and specific findings are recorded in respect of the fact whether the reasons to believe constitute a change of opinion.