

No reassessment after 4 years to disallow sums paid to NR if assessee had already disclosed all material facts

Summary – The High Court of Bombay in a recent case of Tao Publishing (P) Ltd., (the Assessee) held that where during original assessment proceeding, Assessing Officer had accepted assessee's explanation that payment of advertisement expenses to American company was not liable to deduction of tax at source and it was not case of Assessing Officer that assessee had failed to provide all material facts, he had no jurisdiction to reopen assessment after four years to disallow such expenses for non-deduction of tax at source.

Facts

- The assessee company was engaged in the business of printing and publishing books, magazines and compact discs.
- It had appointed an American company for promotion and publicity of its website for information for those who wanted to know the details of magazines and books published by it. It stated that the American company did not have permanent establishment in India and the service provided by it was outside India and, therefore, the payment made to said company was not liable to deduction of tax at source.
- Explanation of the assessee was accepted by the Assessing Officer and he did not make any disallowance pertaining to the advertising and publishing expenses.
- Thereafter, on 28-3-2012, the Assessing Officer issued a notice under section 148 on the ground that payment made to the American company was liable to be disallowed for non-deduction of tax at source.
- The assessee filed objections to the notice which were rejected by the Assessing Officer.
- On writ:

Held

- In the instant case, the reassessment proceedings are sought to be initiated after the period of four years from the end of relevant assessment year. In view of the proviso to section 147, the Assessing Officer will not take any action for reassessment after the period of four years, unless the income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose fully and truly all material facts for assessment of that year.
- In the instant case the ground that the assessee had failed to disclose all the relevant material was not incorporated in the reasons supplied to the assessee. The object of furnishing reasons for reopening, is to put the assessee to notice as to why the Assessing Officer has reason to believe that income has escaped assessment. Apart from this position, in the instant case the reasons supplied do not state that there was any failure on the part of the assessee to provide material particulars.

That an assessee has not made a full and true disclosure of facts, is one of the jurisdictional requirement for proceeding with reassessment after a period of four years.

- Once this was not the basis for issuance of notice for reassessment, it cannot be held against the assessee that it had failed to make a true and full disclosure. It will have to be held that the assessee did not fail to make full and true disclosure of all material facts. The jurisdictional requirement for carrying out the reassessment, after the expiry of period of four years, was not fulfilled in the instant case.
- In the circumstances, the impugned notice and order are to be quashed.