

## **No reassessment after 4 years alleging wrong allowance of exp. if assessee had disclosed all material facts**

**Summary – The High Court of Gujarat in a recent case of SKY Diamonds, (the Assessee) held that where assessment in case of assessee was completed under section 143(3) wherein assessee's claim for salary paid to partners was allowed, in absence of assessee's failure to disclose all material facts necessary for assessment, Assessing Officer could not initiate reassessment proceedings on basis of change of opinion that claim for payment of salary was wrongly allowed**

### **Facts**

- The assessment in case of assessee was completed under section 143(3) wherein assessee's claim for payment of salary to partners was allowed.
- After expiry of four years from end of relevant assessment year, the Assessing Officer initiated reassessment proceedings taking a view that assessee's claim for payment of salary was wrongly allowed.
- The assessee filed instant writ petition contending that since there was no failure on its part to disclose fully and truly all material facts necessary for assessment, impugned reassessment proceedings deserved to be quashed.

### **Held**

- Section 147 enables the Assessing Officer to reopen the assessment subject to the provisions of sections 148 to 153, but the first proviso to the very section 147 provides that no action shall be taken under this section 147 after the expiry of the period of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by the reason of failure on the part of assessee to disclose full and truly all material facts necessary for assessment for the respective assessment year.
- The aforesaid shows that unless the case falls in the exceptional category of 'failure to disclose fully and truly all material facts necessary for the assessment,' the action after the expiry of four years for reopening of the assessment is not permissible.
- The assessee's case was that full and true disclosure of all material facts relevant to the reasons which is the ground for reassessment were disclosed before the Assessing Officer at the time when the scrutiny of the assessment had taken place. It was submitted that not only that but the audit report was also produced which included the remuneration to the partners and during the course of the assessment, this aspect is deemed to have been considered and the assessment order was passed.
- Whereas the revenue is not in a position to dispute the factual aspect that the true disclosure was made by the assessee for the remuneration paid to the partners and computed while computing the

business income, the revenue is also unable to dispute that the audit report showing the aforesaid details were produced.

- In view of the above, there was no reason to believe that true and full disclosure was not made by the assessee to come out from the bar of four years as provided by first proviso to section 147. Once the bar operates upon the power by express statutory provision, the action can be said as without jurisdiction. If the action of issuance of notice is without jurisdiction, it would be a case for interference under article 226 of the Constitution.
- In view of the above, the impugned action under section 147 and consequently issuance of notice under section 148 may not stand in the eye of law. Hence, they are quashed and set aside.
- The petition is accordingly allowed.