

No reassessment to disallow sec. 10A relief if all material facts for claiming relief were disclosed in assessment

Summary – The High Court of Bombay in a recent case of Capgemini India (P.) Ltd., (the Assessee) held that where all material facts relevant to section 10A deduction were before Assessing Officer during course of original assessment, reopening of assessment on ground that deduction under section 10A was wrongly allowed would be a clear case of revisiting claim which was impermissible

Facts

- The assessee was engaged in the business of development and export of software. It filed its return of income for assessment year 2007 -08 and declared income of Rs 2.76 crores. While filing return, assessee claimed deduction under section 10A with respect to profits derived from two units. The assessee pointed out that the deduction under section 10A was elaborated in Schedule 10A.
- The case of assessee was selected for scrutiny and the assessment was completed. Further, the assessee pointed out that during the course of assessment proceedings, there was a questionnaire that raised a specific query in relation to the deduction claimed under section 10A.
- The Assessing Officer framed the assessment order and allowed the deduction claimed by assessee under section 10A.
- However, the Assessing Officer issued reassessment notice in March, 2014, claiming that the income had escaped assessment and the deduction under section 10A was wrongly allowed. According to the Assessing Officer, the assessee claimed deduction under section 10A without setting off the losses of the other units from the profits derived from eligible units and, thus, there existed valid reasons to believe that assessee failed to disclose full and true material facts. The Assessing Officer, thus, framed the reassessment order in February, 2015.
- The assessee objected to the reassessment order by stating that complete facts were before the Assessing Officer during the course of the original assessment, but Assessing Officer rejected such objections.
- On writ appeal:

Held

- It is not understandable as to how the respondents justify the issuance of the notice under section 148 and by referring to such details including of the claim of deduction under section 10A. If these details and pertaining to deduction in question were not furnished and were not available with the Assessing Officer, then, it is not understandable as to from where the data and the computation has been taken and for reference by the respondents themselves. In the reasons recorded, it is clear that the Assessing Officer is aware that the assessee is engaged in the business of development and export of software. The Assessing Officer was aware of the units set up by the assessee. He has

derived the figures of profits and losses from the relevant records and the information, some of which was supplied and furnished by the assessee itself. In these circumstances and when material facts relevant to the assessment year were disclosed and were on record, then, one fails to understand as to why this notice has been issued. From the reasons itself, it is apparent that it is issued to revisit this claim of deduction under section 10A and as put forward by the assessee. If the deduction under section 10A is allowable on the net profit derived by the assessee company from eligible units, after setting off losses from other eligible units, then, it is apparent that all the particulars and profits were before the Assessing Officer at the time of the original assessment. The assessee has, while disputing the reasons recorded and raising objections thereto, pointed out in details as to how the relevant facts were before the Assessing Officer. There is no material to the contrary and which falsifies the assessee's assertions in the letter dated 12-12-2014 raising specific objections to the reasons recorded for reopening the assessment under section 147. The affidavit in reply is completely silent with regard to furnishing of these details and by the assessee. From the affidavit in reply, specific paragraphs have been taken where the assessee's version before the Assessing Officer in the original assessment though accepted by the Assessing Officer, he is faulted for not having taken into consideration certain aspects of this deduction. If the assessee allegedly did not give information regarding the losses of the Unit IV and did not adjust the losses of Unit IV with the profits of other units and, therefore, the order in that behalf is termed as erroneous, then, this is a clear case of revisiting this claim. Now, a different opinion is held by the respondents and for which they want to reopen the assessment. Such a course is clearly impermissible.

- Having referred to the undisputed factual materials on record and finding that there is no justification for reopening the assessment, instant Writ Petition is to be allowed. Once it is found that the mandatory precondition and as set out in the statute has not been abided by, then, the notice under section 148 and all steps in furtherance thereof cannot be sustained.
- The Writ Petition is accordingly allowed.