

## **Assessment on facts later found to be false won't bar re-assessment by AO**

**Summary – The High Court of Madras in a recent case of Sword Global India (P.) Ltd., (the Assessee) held that Having wilfully made false or untrue statements at time of original assessment and when that falsity comes to notice, it is not fair on part of petitioner to turn around and say "you accepted my lie, now your hands are tied and you can do nothing"**

### **Facts**

- The Petitioner is a Private limited company and was engaged in the business of development and export of software. The Petitioner was a 100% Export Oriented Undertaking ('EOU') and registered with Software Technology Park of India ('STPI'). The petitioner filed its return of income for the Assessment Year declaring a total income of Rs.29,242 after claiming an amount of Rs.4,02,37,947 as deduction under Section 10B of Act and it was selected for scrutiny and a notice dated 22 July 2008 under Section 143(2) of the Act was issued. During the course of scrutiny proceedings.
- According to the Revenue, the petitioner/assessee had not furnished the true information regarding its status and the details regarding payment of dividend and not disclosed full and true material facts on the claim of deduction under Section 10B of the Act. It is the case of the Revenue that the petitioner company is not a domestic company, but it worked out the tax on its distributed profit as per provisions of Section 115-O of the Act, which, in fact, applicable only to a domestic company and that it has made expenses in foreign country to the extent of Rs.5,77,41,000, which is liable to be excluded from the export turnover for the purpose of calculating exemption under Section 10B of the Act and further, the petitioner company has not furnished the approval from the competent authorities for continuance of 100%. These factors, according to the department, were not considered at the time of original assessment proceedings since the petitioner has not disclosed full and true material facts, which prompted the respondents to reopen the assessment. Therefore, having regard to the facts and circumstances, the second respondent has rightly initiated the reassessment proceedings after getting necessary sanction as required under Section 151 from the designated authority.
- On writ:

### **Held**

- The income chargeable to tax for the assessment year 2007-08 has escaped assessment within the meaning of Section 147 of the Act which had formed a reason for the Assessing Officer to believe that the income has escaped assessment.
- Of course, it is true that no fresh material was available with the second respondent to proceed with the reassessment proceedings. However, it is to be noted that the second respondent had categorically mentioned the reasons as stated supra, by which, he had a reason to believe that the income chargeable to tax has escaped assessment inasmuch as the specific case of the Revenue is

that the petitioner has not disclosed fully, truly all necessary material to enable the department to assess the income correctly regarding the particulars, viz., the petitioner company is not a domestic company, tax rate applicability on dividend distributor, expenses incurred out of EEFC Fund and Board of approval to claim deduction under Section 10B. Therefore, there is a failure on the part of the petitioner to disclose the above material facts and in such circumstances, the Assessing Officer has rightly initiated the reassessment proceedings on the basis of available material on record, which was specific, relevant and considerable, and after recording the reasons for his own belief that in the original assessment proceedings, the petitioner/assessee had not disclosed the material facts truly and fully and therefore income chargeable to tax had escaped assessment. He, therefore, correctly invoked the provisions of Sections 147 and 148 of the Act.

- Having wilfully made false or untrue statements at the time of original assessment and when that falsity comes to notice, it is not fair on the part of the petitioner to turn around and say "**you accepted my lie, now your hands are tied and you can do nothing**".
- The reasons recorded for reassessment are relevant and material and have a bearing on the matters in regard to which, the Assessing Officer has formed a reason to believe that the income chargeable to tax has escaped assessment and there is, absolutely rational and intelligible nexus between the reasons and the belief entertained by the Assessing Officer.