

Receipt of excess premium on shares by a co. having lower net-worth leads to income escaping assessment

Summary – The High Court of Gujarat in a recent case of Olwin Tiles (India) (P.) Ltd., (the Assessee) held that Assessing Officer could initiate reassessment proceedings taking a view that having regard to net worth of assessee-company, huge premium received by it on issue of share capital represented unexplained cash credit which escaped assessment to tax

Facts

- The assessee-company was engaged in the business of manufacturing of ceramic tiles. It filed return declaring *nil* income.
- The Assessing Officer processed the return under section 143(1). Subsequently, the Assessing Officer sought to reopen the assessment on the ground that even though assessee had declared *nil* income, yet it had issued shares at a huge premium which was not possible.
- According to Assessing Officer, said excess premium amount was unexplained cash credit in the hands of assessee which escaped assessment.
- The assessee's objections to initiation of reassessment proceedings were rejected.
- The assessee thus filed instant petition contending that the Assessing Officer, once having accepted the return, could not have issued notice for reopening of assessment on the basis of material which was already on record.

Held

- It is by now well settled that in case of reopening of an assessment where return was accepted under section 143(1) without scrutiny, the question of change of opinion would not arise.
- Under the circumstances, one cannot accept the contention of assessee that the Assessing Officer, when recorded his reason to believe that income chargeable to tax has escaped assessment, could not have relied on the original assessment records and he must have some material outside or extraneous to the records to enable him to form such a belief. Being a case where return was originally accepted under section 143(1) without scrutiny, the only requirement to be fulfilled for issuing notice for reopening was that the Assessing Officer must have reason to believe that income chargeable to tax had escaped assessment.
- Reverting back to the reasons recorded by the Assessing Officer, he noted that the assessee-company had issued share capital of Rs. 2.66 crores during the financial year 2010-11, the assessee had issued 60,000 shares at a face value of Rs. 10 per share with a premium of Rs. 990 per share. The Assessing Officer, on the basis of assets and liabilities furnished by the assessee-company in its balance sheet, after computing the net worth of the company, noted that the share valuation of the

assessee-company would come to Rs. 33, whereas shares have been allotted at Rs. 1,000 per share, *i.e.* at a premium of Rs. 967 per share.

- On the basis of such working out, he recorded his reason to believe that income to the extent of Rs. 5.80 crores had escaped assessment. The reasons are not perverse or so untenable as to terminate the assessment at instant stage on the ground that the Assessing Officer could not be stated to have any reason to believe that income chargeable to tax had escaped assessment. *Prima facie*, the facts appear to be glaring. Whether the assessee will be able to discharge the minimal burden of establishing identity, source and creditworthiness of the depositors is a question not possible to answer without scrutiny. Whether the assessee had started its manufacturing activity and consequently its business operations so as to earn income or not are the issues which cannot be gone into at this stage and must be made part of the reopened assessment to be judged on the basis of evidence which may be brought on record.
- It is always open for the assessee-company to contend before the assessing authority that there has not been over valuation of the allotted shares or that for any legal reasons, in any case, addition cannot be made in the hands of the assessee, despite such glaring facts. These are the issues in the realm of assessment, once it is allowed to be reopened. The assessment proceedings at this stage cannot be terminated on the grounds pressed in service by the assessee.
- In the result, the instant petition is dismissed.