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No reassessment merely on basis of adverse remarks made by CIT(A) while disposing of an appeal for subsequent AY

Summary – The High Court of Allahabad in a recent case of Hemkunt Timbers Ltd., (the Assessee) held that where assessee had furnished its explanation on each and every seized document and after considering same Assessing Officer completed original assessment, reopening of assessment on basis of observation of first appellate authority in subsequent assessment year that for relevant assessment year, Assessing Officer should work out exact figure of bogus purchase on basis of seized bill book, was invalid

Facts

- A search and seizure operation under section 132(1) was carried out at premises of assessee.
- During assessment proceedings, the assessee explained each and every seized document and after considering same the Assessing Officer passed assessment order making certain addition in the income of the assessee.
- Thereafter assessment for the assessment year 1992-93 was made on 31-3-1995. While disposing of the appeal filed for the assessment year 1992-93, the appellate authority made observation that for the assessment year 1991-92 the Assessing Officer should have worked out the exact quantum of credit balance and the bogus purchases which had been introduced in the books of account of the assessee by means of blank bill books found during search.
- Pursuant to the said observations, the Assessing Officer issued a notice under section 148 for assessment year 1991-92 on 10-4-2001 and a reassessment order was passed making certain additions on account of bogus purchase.
- On appeal, the appellate authority held that the Assessing Officer was justified in reopening the assessment.
- However, on second appeal, the Tribunal held that as there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for making an assessment, notice issued under section 148 beyond a period of four years from the end of the assessment year in question was invalid.
- On appeal to the High Court the revenue contended that the Tribunal erred in observing that the issue of notice under section 148 was beyond the period of four years from the end of relevant assessment year without appreciating that the notice under section 148 was issued by the Assessing Officer in consequence to the directions given by the Commissioner (Appeals) and as per the provisions of section 150(1).

Held

- The reason to believe primarily indicates that it was based on the observations made by the 1st Appellate Authority while passing the order for the assessment year 1992-93. The reasons to believe

for re-initiating assessment proceeding was primarily on the basis of the documents seized, which were contended to be bogus purchases and, consequently, there was a reason to believe that there was an omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. It is found that the original assessment order considered all the seized documents, which were observed in the reasons to believe. Explanation given by the assessee was also considered in the original assessment proceeding.

- Consequently, all the necessary explanation and information were furnished by the assessee and, therefore, there was no failure on the part of the assessee to disclose fully and truly all material facts for making assessment.
- First proviso to section 147 makes it apparently clear that the reassessment proceedings after four years could only be initiated if the assessee failed to disclose fully or truly all material facts necessary for making the assessment.
- In the instant case, the Tribunal has given a categorical finding that the assessee had disclosed all the material facts necessary for making the assessment and there was no failure on his part. This finding of the Tribunal is perfectly correct and, the Assessing Officer in his original assessment proceedings had considered each and every document and the explanation given by the assessee on the seized documents. Therefore, it was not a case where the assessee failed to disclose fully or truly all material facts necessary for making the assessment. The notice issued under section 148 was invalid.
- Insofar as the period of limitation is concerned, the present dispute relates to the assessment year 1992-93 and as per the then existing provision of limitation specified under section 149, the period of limitation was10 years. Accordingly, the reassessment notice could be issued on or before 31-5-2001 whereas in the instant case reassessment notice under section148 was issued on 11-4-2001, which was within the period of limitation. Consequently, the notice issued under section148 was issued within the period of limitation.
- In the light of the aforesaid, the question of invoking the provision of section 150(1) does not arise. However, section 150 provides that the power to issue a notice under section 148 in consequence of or giving effect to any finding or direction of the Appellate or Revisional Authority or the Court is subject to the provisions contained in section 150(2). Section 150(2) provides that the direction issued under section 150(1) cannot be given by the Appellate or Revisional Authority or by the Court if on the date on which the order in appeal or revision was passed, the reassessment proceeding had become barred by time. Under section 150(2) the Appellate or the Revisional Authority or the Court could give direction for reassessment only in respect of that assessment year. In respect of reassessment, proceedings could be initiated on the date of passing of the order in appeal. Since the notice was issued within the period of limitation, the provision of section 150(1) is not applicable in the instant case.
- In the light of the aforesaid, there is no error in the order passed by the Tribunal. The appeal fails and is dismissed.