

No reassessment on basis of DVO's report if assessee had shown all bills for construction cost at assessment stage

Summary – The High Court of Gujarat in a recent case of Kisan Proteins (P.) Ltd., (the Assessee) held that where at time of making assessment under section 143(3), all relevant bills for construction of factory building were produced, Assessing Officer could not initiate reassessment proceedings on basis of report of DVO by taking a view that assessee had underestimated cost of construction of factory building

Facts

- The assessee-company was dealing in the manufacturing and trading activity of mustard oil and de-oiled cake (DOC). It filed return declaring certain taxable income. The assessment was framed under section 143(3). During the process of assessment, all the relevant bills for construction of factory building were produced, explained and only thereafter the assessment came to be finalized.
- Subsequently, on the basis of report of DVO, the Assessing Officer took a view that assessee had underestimated cost of construction of factory building.
- He thus issued a notice under section 148 seeking to reopen the assessment.
- The objections raised by assessee to initiation of reassessment proceedings were rejected.
- On writ:

Held

- It is found from the record that the assessee-company has produced the entire construction bills in detail and only after examining the same, the assessment order has been finalized and therefore a mere report of DVO cannot be construed as sufficient and tangible material which may permit the authority to reopen the assessment. In addition thereto, it appears that the Assessing Officer is satisfied with the correctness and complete notes of accounts of the assessee and nowhere even the method of accounting has been questioned and therefore when the entire construction account was made available to the Assessing Officer and only thereafter when the final assessment had taken place, DVO's report could not be construed as tangible material which would warrant the authority to exercise the powers of reopening of assessment.
- The Apex Court time and again has propounded that the powers of reassessment cannot be exercised just to re-ensure the correctness of material which has already been examined. Further, not to review the opinion which has already been formulated and in large number of cases it has been propounded that reopening of assessment cannot be based upon mere change of opinion.
- In over all view of the aforesaid facts and circumstances, it appears to the Court that the particulars which have been asked for have been sufficiently explained during the assessment proceedings and

the assessment proceedings have become final and therefore relying upon solitary report, the only reason which is based upon to exercise powers for reopening of the assessment would be nothing but change of opinion which is not permissible.

- Therefore the over all circumstances reflected on the record indicates that the action on the part of the revenue authority under reopening of the assessment is impermissible and therefore the petition deserves to be allowed and the impugned notice issued under section 148 is quashed