

## Reassessment notice invalid if AO had no evidence to suggest that assessee had received accommodation entries

**Summary – The High Court of Gujarat in a recent case of Sunbarg Tradelink (P.) Ltd., (the Assessee) held that Assessing Officer had no material to suggest that assessee company had received accommodation entries against cash receipts, notice for reopening assessment based on such reasons was completely wrong and had to be set aside**

### Facts

- The assessee company had filed a return of income on 29-9-2008, declaring total income of Rs.15.94 lakhs. Such return was accepted under section 143(1) without scrutiny.
- The Assessing Officer issued impugned notice to reopen such assessment on ground that as per information, assessee-company had received share capital and share premium of Rs.20 lakhs from entities managed and controlled by PR during year under consideration which were merely accommodation entries against cash receipts from assessee company. Therefore, this amount of Rs. 20 lakhs had escaped from taxation as per Law.
- Upon being supplied with such reasons, the assessee raised objections before the Assessing Officer under a letter. Alongwith such letter, the assessee had also supplied a copy of its share capital account to demonstrate that the company had not received the amount of Rs.20 lakhs by way of share capital from any of the entities as referred to in the reasons recorded by the Assessing Officer.
- The Assessing Officer in reply stated that in absence of supporting evidencies, the share capital account and bank statement could not have been relied upon.
- Under yet another communication , the assessee requested the Assessing Officer to stay the assessment proceedings since the assessee had already filed the petition before the High Court challenging the notice for reopening.
- The Assessing Officer, however passed *ex parte* assessment order and in addition to adding the said sum of Rs.20 lakhs towards bogus share application money, he made further substantial additions as unopposed. He eventually framed the assessment, assessing total income of the assessee at Rs.8.49 crores.

### Held

- The return filed by the assessee was originally accepted without scrutiny. In that view of the matter, the Assessing Officer would have greater latitude to reopen the assessment since the principle of change of opinion would not apply. However, even in such a situation, the requirement of the Assessing Officer forming a belief that income chargeable to tax had escaped assessment, before assessment can be validly reopen, is not done away with.

- The reasons recorded by the Assessing Officer are brief and essentially convey that as per the information, the assessee company had received share capital and share premium of Rs.20 lakhs from the entities managed and controlled by PR during the year under consideration. These were merely accommodation entries against cash receipts from the assessee-company. This bogus share capital and share premium amount had therefore, in the opinion of the Assessing Officer, escaped assessment. In this respect, the stand of the assessee from the outset has been that the assessee company has not received any such share capital or share premium from any of the companies having any connection with PR. This was pointed out by the assessee to the Assessing Officer under objection letter written on or around 21-3-2016, alongwith which, the share capital account of the company was also provided. Instead of examining such an objection, the Assessing Officer conveyed under letter dated 22-3-2016 that the company had submitted only share capital account and bank statement without any supporting documents. In absence of supporting evidence, the legitimacy of the submission cannot be accepted. Thus, though the Assessing Officer had an opportunity at this stage to verify the contention of the assessee which went to the root of the matter, he skirted the issue by taking a stand that in absence of full evidences, it is not possible to accept such a contention at this stage. Had the Assessing Officer been more proactive, he would have realized that issuing notice for the assessment year 2008-09 was a sheer mistake. The department had its command material to reopen the assessment of the petitioner pertaining to the financial year 2008-09 and that therefore, notice for reopening should have been issued for the assessment year 2009-10. Instead, he adopted a rather rigid stand of not recalling a notice which was already issued, though, for the wrong year. Be that as it may, these aspects become further clear on perusal of order of assessment, in which, after referring to the background of the case, and the reasons recorded for reopening the assessment, the Assessing Officer straightaway added a sum of Rs.20 lakhs to the total income of the assessee without even once pointing out the source for such addition. The Assessing Officer noted the contention of the assessee that the company had received no such share capital or share premium amount from any of the companies managed or controlled by PR. In the order of assessment also, this aspect was not met with. The Assessing Officer instead, went on general principles of taxing unaccounted receipts.
- These aspects make it clear that the Assessing Officer had no material to suggest that the assessee company had during the period relevant to the assessment year 2008-09, received any share capital or share premium money to the tune of Rs.20 lakhs or any other sum from the companies controlled and managed by PR. In fact, the order of assessment refers to 10 such companies so managed and controlled by PR, but does not refer to any of them from whom the assessee had received any such amounts during the said period. The order of assessment itself thus, falsifies the ground on which the notice for reopening was issued.
- The revenue however, made a last desperate attempt to save the proceedings by suggesting that the notice of reopening merely carried a reference to a wrong assessment year through a typographical error. On the basis of material pertaining to the financial year 2008-09 by error notice

came to be issued for the assessment year 2008-09 instead of assessment year 2009-10. Had this been a mere typographical error so treated by the Assessing Officer, the question whether a mere typographical error could invalidate otherwise valid proceedings would have been considered. However, even the Assessing Officer has not treated the impugned notice as referring to the assessment year 2009-10 wrongly typed as assessment year 2008-09. He has all along acted as if through the impugned notice, the assessment for the assessment year 2008-09 having been reopened. Further, doubts would also disappear on reference to multiple notices that the Assessing Officer issued to the assessee for supplying documents pertaining to the said assessment year and the final order of assessment that he passed. The Assessing Officer made multiple additions in the assessment order for the assessment year 2008-09 which obviously he could not have done had he treated the notice for reopening as relating to the assessment year 2009-10.

- Under the circumstances, inescapable conclusion that one would reach is that the notice for reopening the assessment for the assessment year 2008-09, was based on completely wrong reasons. In other words, reasons lacked validity. When the notice itself was thus, defective, it would have no effect of reopening on the assessment. Any action taken by the Assessing Officer subsequent to or in pursuance of such notice would also be invalidated.
- In the result, impugned notice for reopening the assessment is set aside and as a result, the order of assessment dated 23-3-2016 framed by the Assessing Officer pursuant to such notice also stands invalidated.
- Petition is disposed of accordingly.