

## **Reassessment could be made if investigation wing revealed bogus entries provided by entry operators**

**Summary – The High Court of Gujarat in a recent case of Peass Industrial Engineers (P.) Ltd., (the Assessee) held that where after scrutiny assessment Assessing Officer received information from Investigation wing that two well known entry operators of country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, Assessing Officer was justified in reopening assessment**

### **Facts**

- The assessee-company its return of income declaring certain income.
- After scrutiny undertaken by the Assessing Officer, on 3-10-2015 the assessment order was passed under section 143(3) by making certain additions.
- Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner (Appeals).
- Subsequently, assessee received a notice under section 148, stating that the Assessing Officer had specific information from DGIT (Investigation) that two entry operators had been giving entries of bogus share capital, bogus bills of expenses and bogus long term capital gains to various beneficiaries through out the country and the assessee was also a beneficiary of a sizable amount. Therefore, the Assessing Officer believed that income had escaped assessment and asked the assessee to file return of income.
- The assessee raised objections to the notice which were rejected.
- On appeal:

### **Held**

- When the Assessing Officer is armed with the tangible material in the form of specific information received by the Investigation Wing, Ahmedabad, it is thoroughly justified in issuing a notice for reassessment. It is revealed from the said additional material available on hand and a reasonable belief is formed by the Assessing Officer that income of the assessee has escaped assessment and, therefore, once the reasonable belief is formulated by the DCIT on the basis of cogent tangible material, the DCIT is not expected to conclude at this stage the issue finally or to ascertain the fact by evidence or conclusion. Function of the Assessing Officer at this stage is to administer the statute. What is required at this stage is a reason to believe and not establish fact of escapement of income and therefore, looking to the scope of section 147 as also sections 148 to 152, even if scrutiny assessment has been undertaken, if substantial new material is found in the form of information on the basis of which the Assessing Officer can form a belief that the income of the assessee has escaped assessment, it is always open for the DCIT to reopen assessment. From the reasons which are recorded, it clearly emerges that the assessee is the beneficiary of those entries by Kayan

brothers, who are well known entry operators across the country and this fact has been unearthed on account of the information received by Director General of Income-tax, Investigation Branch and therefore, it cannot be said in any way that even if four years have been passed, it is not open for the Assessing Officer to reopen the assessment. In the present case, there is independent application of mind on behalf of the Assessing Officer in arriving at the conclusion that income had escaped assessment and therefore, the contentions raised by the assessee are devoid of merits. Dealing with the contentions of the assessee that the information received from Director General of Income-tax, Investigation Branch, Ahmedabad, can never be said to be additional information. The information which has been received is on 26-3-2015 from the Director General of Income-tax, Investigation Branch, Ahmedabad, whereby it has been revealed that present assessee is also the beneficiary of those Kayan brothers, who are in the activity of entry operation throughout the country and therefore, it cannot be said that this is not justifiable material to form a reason to believe by the Assessing Officer and therefore, this being a case, the Assessing Officer is justified in issuing notice under section 148 to reopen the assessment and therefore, the challenge contained in the petition being devoid of merits, same deserves to be dismissed.

- Extraordinary jurisdiction is not required to be exercised in the background of aforesaid facts. No doubt, the High Court has power of judicial review to scrutinize the decision of Assessing Officer but, once it is found that the Assessing Officer below has acted well within the bounds of its authority and peripheral limit, it is not always to exercise and invoke extraordinary jurisdiction and to examine and substitute the finding of the reasonable belief. The scope of articles 226 and 227 of the Constitution is sufficiently analyzed by series of decisions wherein it has been propounded that what is to be seen is a decision making process and in the case of *State of U.P. v. Johri Mal* AIR 2004 SC 3800 wherein, the scope of examining the decision of authority is spelt out, and it was held that to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.
- Therefore, considering the proposition of law on the issue of exercising extraordinary jurisdiction in the decision referred to above, the contentions of the assessee to exercise the jurisdiction as contended are not accepted and therefore, in the background of aforesaid facts and circumstances no interference is called for. Hence, the petition is to be dismissed. Notice is discharged. Interim relief, if any, granted earlier stands vacated.