

Reassessment couldn't be set-aside because of exempt income if assessee had shown capital loss as business loss

Summary – The High Court of Madras in a recent case of Sella Synergy India (P.) Ltd., (the Assessee) held that Where assessee while computing business income claimed loss on sale of assets which would fall under head capital gain, reassessment notice could not be quashed merely on ground that income of assessee was exempted under section 10A/10B

Facts

- The assessee was a 100 per cent Export Oriented Unit registered under STPI. The assessee claimed exemption under section 10A/10B by virtue of which 90 per cent of the profits earned from the export business was fully exempted.
- The revenue had issued notice for re-assessment proceedings against the assessee. Parallely, notice for penalty proceedings under section 271BA was also initiated with respect to non-filing of audit report along with return of income.
- The revenue had also furnished the reasons for re-opening stating that the assessee had declared business loss of certain amount and income under other sources of certain amount and while computing business income, assessee had claimed loss on sale of assets of certain amount which would come under head capital gain and, hence, such amount had to be disallowed while computing business income for purpose of section 10A/10B deduction.
- On appeal to the High Court:

Held

- As pointed out the petitioner while filing the return of income on 28-10-2005, declared business loss and income from other sources and while computing business income, the assessee had claimed the loss on sale of assets, as a capital loss. This according to the first respondent, the assessee is not entitled to do and he is of the opinion that it ought to have disallowed the same while computing the business income and such amount claimed as loss on sale of asset is chargeable to tax under escapement assessment.
- If such is the reason, this Court cannot interfere with the impugned notice on the ground that there is no loss of revenue and that the petitioner did not carry forward the loss related to the assessment year 2005-06 or set off against the income of the petitioner in the subsequent years. These issues are factual issues, which the assessee has to raise before the first respondent. More particularly, this Court will not go into the aspect as to what is the effect of not carrying forward the loss to the next year or not setting it off against the income in the subsequent years and whether the petitioner

would be entitled to file revised returns for the subject year *etc.* These being factual, it is best left to the assessing authority to decide.

- In the light of the above, this Court is not inclined to interdict the proceedings initiated by the first respondent by issuing a Writ and the prayer sought for by the petitioner to quash the notice under Section 148 is held to be not maintainable and as the petitioner had been communicated with the reasons for reopening by communication dated 03.10.2007, liberty is granted to the petitioner to submit their objections and the first respondent shall take a decision thereon on merits and in accordance.