

Info of bogus purchases given by Investigation Wing would be sufficient to initiate reassessment

Summary – The High Court of Gujarat in a recent case of Peass Industrial Engineers (P.) Ltd., (the Assessee) held that Where in case of assessee, return was processed under section 143(1), Assessing Officer could initiate reassessment proceedings subsequently on basis of information supplied by Investigation wing of department that assessee had taken bogus purchase entries from two parties

Facts

- The assessee was engaged in the business of manufacturing of textile machinery and spare parts. For relevant year, the assessee filed its return declaring certain taxable income. The return of the company was processed under section 143(1).
- Subsequently, the Assessing Officer received information from DIT (Investigation) that there were two well known parties namely 'V' and 'A' engaged in giving entries of bogus share capital, bogus bill of expenses and bogus long term capital gains to various beneficiaries throughout the country. He further informed the Assessing Officer that during relevant year, assessee was also one of beneficiaries of aforesaid bogus entries.
- On the basis of information so received, the Assessing Officer initiated reassessment proceedings in case of assessee. The objections raised to said proceedings were rejected.
- On writ:

Held

- Perusal of the reasons recorded for reopening of assessment postulates that an information has been received by DGIT (Inv.) branch about bogus purchases wherein, it has been emerged that two survey operations were carried out by the competent authority, case of 'V' and 'A' and the information which has been gathered is that these parties are well known entry operators and have been giving entires of bogus share capital, bogus billing entries pertaining and bogus long term capital gains to various beneficiaries across the country and it has been revealed in the said information that this very assessee *i.e.* is also a beneficiary of such entry operation and based upon this material, the authority has issued notice under section 148 for reopening of assessment as from the material, the authority found that there is a reasonable belief that income of the assessee has escaped assessment and therefore, it is justified to reopen the assessment.
- It is also emerging from the order passed by the authority rejecting the objections submitted by the assessee that each and every material submitted by the assessee has been extensively dealt with and a detailed order came to be passed and the said order is supported by cogent reasons, the decision arrived at to reopen the assessment appears to be just and proper. From the material available, the authority *prima facie* found that assessee is also the beneficiary of those 'V' and 'A',

who are well known entry operators across the country and to the extent of sizable amount, the assessee has also been benefited and this part of the income appears to have been escaped assessment in the belief of the authority, the said belief cannot be intercepted by exercising extraordinary jurisdiction of this Court under article 226 of the Constitution of India.

- In the background of aforesaid circumstance available and reflected on record, it appears to this Court that the authority has applied its mind and has rightly relied upon the information available before it while exercising the power to reopen the assessment.
- It is well settled that section 147 authorizes and permits the Assessing Officer to assess or re-assess the income chargeable to tax if he has reason to believe that income for any assessment year has escaped the assessment. The word 'reason' in the phrase 'reason to believe' would mean cause or justification and after considering and analyzing the provision, it has been propounded that the expression cannot be read to mean that Assessing Officer should have finally ascertained the fact of legal evidence or conclusion.
- At the initial stage what is required is reason to believe but, not established fact of escapement of income and therefore, at this stage only question whether there was relevant material to form a reasonable belief is to be seen and in the background of present facts, there is a specific information received about the 'V' and 'A' during investigation by the authority and it has been *prima facie* found that assessee is also the beneficiary of the said parties.
- At this stage of the proceeding, the factum of said aspect whether the assessee is beneficiary or not, is not to be finally adjudicated upon by the Assessing Officer and therefore, this Court is not in a position to dwell into it but, only has to examine whether there is a reasonable belief arrived at or not and from the basis of aforesaid circumstance prevailing on record, it appears that the Assessing Officer is justified *prima facie* in arriving at conclusion to reopen the assessment. A liberty is always available to the assessee to justify or to deal with the same, but this is not the stage where the process of reopening based upon aforesaid material is to be intercepted.
- Considering the aforesaid situation prevailing on record, it appears to this Court that the background of facts demand reopening of assessment and the authority is justified in issuing notice under section 148 of the Act and the reasons based upon it are sufficient enough to permit him to exercise jurisdiction to reopen the assessment. Hence, the instant petition deserves to be dismissed.