

Reassessment made against Diamond Merchant on basis of info of bogus purchases given by Investigation Wing

Summary – The High Court of Gujarat in a recent case of Choksi Vachharaj Makanji & Co., (the Assessee) held that Where even though Assessing Officer completed assessment under section 143(3) in case of assessee engaged in manufacturing and selling diamond ornaments, yet he could initiate reassessment proceedings on basis of information received from Investigation Wing of Department that assessee had shown fake purchases of raw diamonds from 'S' Ltd. which was involved in providing accommodation entries

Facts

- The assessee firm was engaged in manufacturing and selling gold and other ornaments. It filed return declaring certain taxable income. The Assessing Officer completed assessment under section 143(3) making certain additions.
- After expiry of four years from end of relevant year, the Assessing Officer sought to initiate reassessment proceedings on basis of report of Investigation Wing of Department that assessee had shown certain purchases of raw diamonds from firm 'S' Ltd. consisting of two directors who were engaged in providing accommodation entries and, it being a fake transaction without real trading of the diamonds, the assessee had thereby reduced its income by claiming fake purchases.
- Another reason for reopening the assessment was that assessee had taken gold loan from two persons namely 'A' and 'D' who did not have creditworthiness to give such a loan.
- The assessee filed instant writ petition challenging validity of reassessment proceedings.

Held

- Coming to second issue first, though the Assessing Officer has referred to information available to the effect that said 'A' and 'D' did not have creditworthiness to give such quantity of gold as loan, he had not referred to any source of such information. In absence of any material which was not part of the original assessment or with respect to which it could be stated that the assessee failed to disclose true and full facts, it was not permissible for the Assessing Officer to reopen the assessment on said basis.
- The fact that the assessee had taken gold loan from such person was very much part of the returns filed by the assessee. If during the scrutiny assessment, the Assessing Officer desired to examine such transactions in context of creditworthiness of those persons, it was always open for him to do so. However, scrutiny assessment cannot be reopened beyond a period of four years without there being anything to suggest that the income chargeable to tax had escaped assessment due to failure on part of the assessee to disclose truly and fully all material facts.

- This issue was examined by the Assessing Officer during the original scrutiny assessment. On this basis, therefore, reopening of assessment would not be permissible, that too, beyond a period of four years from the end of relevant assessment year.
- The first issue however, needs a closer scrutiny. Perusal of the reasons recorded show that the information was provided to the Assessing Officer by DGIT (Investigation) concerning dubious transactions of partners who were managing 'S' Ltd. These persons were subjected to search during which they had also made certain confessional statements. The assessee had made purchases of cut and polished diamonds from 'S' Ltd. On the basis of the information available at the command of the Assessing Officer, he noted that 'S' Ltd. merely provided accommodation entries without actual sale of diamonds. The assessee had thereby claimed higher expenditure and reduced the profit. It cannot be stated that the Assessing Officer did not have tangible materials to form a belief that the income chargeable to tax had escaped assessment. Such information was not available during the original assessment. Obviously the assessee would not make such disclosures. The requirement for reopening of the assessment even beyond a period of four years is therefore, satisfied. Merely because such information was supplied to the Assessing Officer by the investigation wing of the department would not mean that the Assessing Officer could not rely upon it.
- In the result, the petition is dismissed.