

AO couldn't make reassessment for unexplained investment merely on basis of roving inquiry

Summary – The High Court of Gujarat in a recent case of Krupesh Ghanshyambhai Thakkar., (the Assessee) held that where assessee explained that amounts transferred many times among group concerns were required for banking purposes and capital investment in shares were duly recorded in books, reopening could not be sustained when Assessing Officer had no tangible material

Facts

- The petitioner-assessee filed return. The same was processed without any scrutiny. Subsequently an information was received from another ITO that an amount of Rs. 50 lakhs was transferred among the group accounts without any economic rational and that the assessee was holding 26.26 per cent shares in a private limited company. Thus, the Assessing Officer reopened the assessment on ground of escapement of income chargeable to tax.
- In the instant writ petition, the assessee argued that the Assessing Officer did not establish as to how any transfer amongst group concerns and holding of certain shares in a private limited company could result into escapement of income. The assessee argued that it was merely for carrying out roving inquiry without any specific findings. Also, investment in shares of said company was acquired from assessee's capital and the same was recorded in its books of account.
- On the other hand the revenue argued that it was found that routing of the same amount into different accounts without any corresponding business transaction arising was against the normal action of prudent business. It was found that the total gross receipt of the assessee from business was to the tune of Rs. 11,44,050/- and against which, a single transaction of Rs. 50 lakhs was indicating some *mala fide* activity on the part of the assessee to evade tax. It was further noticed that the assessee was holding shares of huge value in a Private Limited company, however, source of investment was not verified at the time of original assessment, as the return filed by the assessee was summarily accepted and order under section 143(1) was passed.

Held

- By the impugned notice, the assessment for assessment year 2009-10 is sought to be reopened in exercise of power under section 147. The reasons recorded to reopen the assessment are already produced. Thus, as per the reasons recorded, the notice has been issued and assessment is sought to be reopened for deep verification of the claims. Even in the order disposing of the objections, it has been specifically stated that to verify whether all the criteria are met by the said transaction of Rs. 50 lakhs routed through the group and also to verify the claim of having recorded these transactions in the regular books of account, notice under section 148 has been issued. Even with respect to investment in shares of Private Limited Company, it has been submitted that whether the investment in shares of Private Limited Company were acquired from the capital of the assessee and

the same is duly recorded in the books of account, needs to be verified and for that purpose, the assessment for assessment year 2009-10 is sought to be reopened.

- Under the guise of reopening of the assessment, the Assessing Officer wants to have a roving inquiry. Even as per the Assessing Officer in the reasons recorded has specifically mentioned that for the purpose of verification/deep verification of the claim, it is necessary to reopen the assessment. Under the circumstances, it cannot be said that the Assessing Officer had any tangible material to form an opinion that the income chargeable to tax has escaped the assessment. Under the circumstances, the impugned action of reopening of the assessment in exercise of power under section 148 for the reasons recorded hereinabove cannot be sustained.