

Failure to file Form 3CEB won't invite reassessment when transactions with AE were disclosed during assessment

Summary – The Delhi ITAT in a recent case of Baba Global Ltd., (the Assessee) held that When all transactions entered into by assessee company with its AE supported with books of account and audited balance sheets had been brought on record during assessment proceedings completed under section 143(3), interference by T.P.O. in completed assessment under section 143(3) under section 153A was not tenable in eyes of law merely because assessee had failed to file Form 3 CEB in assessment proceeding

Facts

- The assessee company was engaged in manufacturing of flavoured chewing tobacco, kiwam, scented elaichi and tulsi mix under the brand name 'BABA' and 'TULSI' and exported its 100 per cent production.
- Return of income was filed by the assessee *qua* assessment year 2006-07 declaring loss which was processed under section 143(1) and thereafter assessment was completed under section 143(3). Thereafter search and seizure operation was conducted under section 132 in case of assessee-company and in response to the notice issued under section 153A, assessee filed return declaring loss. During assessment proceedings, the assessee was found to be engaged in international transactions with its Associated Enterprises (AEs), for which it was called upon to produce copy of Form No. 3 CEB for the previous year 2004-05. It was found that assessee entered into two international transactions with its AE during the period under assessment and had lent foreign currency loans to its subsidiaries.
- Consequent upon the reference made under section 92CA(1), the TPO passed order proposing an adjustment on account of Arms Length Price (ALP) by determining interest income in respect of interest free deemed loan advanced by the assessee company to its AE.
- DRP confirmed order passed by TPO.
- The assessee challenged the impugned order passed by Assessing Officer/on ground that the assessment order as well as reference made to TPO by Assessing Officer was not sustainable as no incriminating material had come on record during search and seizure operation. On the other hand, the department raised the contention that since the assessee has not filed the Form 3CEB during the first round of assessment proceedings, the assessee company is barred from raising plea of non-availability of incriminating materials.

Held

- First of all, the first contention raised by department that "the issue as to the absence of incriminating material during the search and seizure operation was never raised before the DRP nor before Assessing Officer" is not tenable in the face of the fact that assessee-company filed

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submission before Assessing Officer categorically raising the issue that no incriminating documents/loose papers suggesting any undisclosed income for the year under assessment has been found during the search and seizure operation and as such, reassessment is bad.

- When undisputedly complete details of income along with books of account and audited balance sheet had been filed by the assessee company during the assessment proceedings completed under section 143 (3), no addition can be made in the absence of incriminating material, if any, unearthed during the search only. The contention of the department that non-furnishing of Form 3CEB was not found by the assessee company during normal assessment proceedings is enough for reassessment of the case is not tenable because when all the transactions entered into by the assessee-company with its AE supported with books of account and audited balance sheets had been brought on record during assessment proceedings completed under section 143(3) it was for Assessing Officer/TPO to apply their mind to make assessment accordingly. More so, it is not case of the revenue that the assessee has suppressed the international transaction with its AE during the assessment proceedings concluded under section 143(3).
- Even otherwise, the issue in controversy has already been decided in favour of the assessee for assessment years 2006-07 and 2007-08 wherein reassessment was made under section 153A consequent upon the search and seizure operation conducted on 21-01-2011. *Vide* order dated 14-12-2016, jurisdictional High Court held, in assessee's own case that completed assessment under section 143(3) interfered with by Assessing Officer/TPO under section 153A is not tenable in the eyes of law.
- In view of what has been discussed above, the addition made in this case under section 153A/144C is not sustainable in the eyes of law, hence deleted.