

No reassessment alleging TDS liability on sum paid to NR if AO failed to bring any tangible material

Summary – The High Court of Gujarat in a recent case of Transperk Industry Ltd., (the Assessee) held that where objection of assessee company that no tanker hire charge was paid by it to resident of France was not considered by Assessing Officer and revenue could not produce any tangible material to prove such payment, assessment could not be reopened beyond period of limitation of four years for non-deduction of TDS

Facts

- The assessee-company was engaged in the business of manufacturing and trading of chemicals. It filed its return for the relevant year which was accepted on scrutiny.
- After a period of four years, the Assessing Officer issued impugned notice to reopen the assessment on the ground that the assessee had not deducted TDS on the payment of tanker higher charges to a resident of France during the relevant year; thus, there was escapement of income from assessment and, the assessee was in default attracting provision of section 40(a)(i).
- On writ before the High Court:

Held

- It appears that according to the Assessing Officer by not deducting T.D.S. on the payment of tanker hire charges to the resident of France during the year under consideration, there is escapement of income from the assessment and, therefore, the assessment is sought to be reviewed beyond the period of four years. However, it is required to be noted that it was specific case on behalf of the assessee so stated in the objection that there is no payment of tanker hire charges to the resident of France during the year under consideration. The same has not been dealt with by the Assessing Officer while disposing of the objection by him. From the objections it appears that payment of tanker hire charges was made to the resident of U.K. and Singapore only. The revenue is not in a position to point out any tangible material available with the Assessing Officer in support of his belief that any payment of tanker hire charges was made to the resident of France, on which TDS was required to be deducted. Under the circumstances, there is no tangible material available with the Assessing Officer to form an opinion that the income chargeable to tax has escaped assessment within the meaning of section 147. Under the circumstances, and more particularly considering the fact that the assessment is sought to be reopened beyond the period of four years and there does not appear to be any failure on the part of the assessee in not disclosing the true and correct facts necessary for assessment and also on the ground that there was no tangible material available with the Assessing Officer with respect to any payment of Tanker Hire Charges to the resident of France, on which TDS was required to be deducted and thereby, no income chargeable to tax has assessed

the assessment, the impugned reassessment proceedings cannot be sustained and the same deserves to be quashed and set aside.

- It is required to be noted that one of the grounds on which the assessment is sought to be reopened is that the interest was paid to the banks situated in India. However, the same is factually not correct. As per the specific case on behalf of the assessee so stated even in the objections, no amount of interest was paid to any of the banks situated in India. Under the circumstances, assumption of jurisdiction to reopen the assessment on the aforesaid ground is on incorrect factual premise. Under the circumstances also the impugned reassessment proceedings deserve to be quashed and set aside.