

No reassessment after 4 years to treat slump sale otherwise if assessee had disclosed all facts during assessment

Summary – The High Court of Gujarat in a recent case of ALPS Technologies (P.) Ltd., (the Assessee) held that where assessee sold its sale and service division for a lump-sum consideration and claimed long term capital gain on slump sale basis and Assessing Officer after considering details submitted by assessee upheld it to be a slump sale, it couldn't be said that assessee didn't disclosure true facts and therefore, reopening beyond 4 years was illegal

Facts

- The assessee was initially engaged in the manufacture and sale of elevators and operated under the name of Trio Elevators Pvt. Ltd. It entered into an agreement, in terms of which, it, while retaining the manufacturing division, sold its sale and service divisions to another company, for a lump-sum consideration. Thereafter, the assessee filed return of income treating the gains on slump sales as a long term capital gain.
- The Assessing Officer passed an order and *inter alia* uploaded computation of the assessee wherein long term capital gain was paid on slump sale. Thereafter beyond the period of 4 years from the relevant assessment year, the Assessing Officer reopened assessment because on inquiry it was noticed that the transaction in fact was not a Slump Sale but sale of goodwill and trademark and profit arising on such transfer should have been taxed as short term capital gain instead of long term capital gain.
- On writ:

Held

- Number of questions were raised by the Assessing Officer during the original assessment proceedings with respect to the transaction in question, more particularly whether the sale is on slump sale basis or not. The original assessment was under section 143(3). During the course of the assessment proceedings, the assessee produced/supplied requisite documents/materials/details, including details of bank accounts, month wise sale and purchase of the petitioner, all requisite financial details, copy of the Article of Association, details *qua* stock hypothetical, details related to Slump Sale, copy of the Slump Sale Agreement, details of the payment received under the Slump Sale and documents relating to Slump Sale, etc. and during the course of hearing the assessee also submitted detailed explanation with respect to slump sale and only thereafter the Assessing Officer upheld the fact that the transaction was in fact a slump sale transaction.
- It was also specifically declared by the assessee that what was sold by the assessee was activity of manufacturing elevators. Therefore, as such it cannot be said that the assessee did not disclose true

and correct facts necessary for the assessment. It is required to be noted that even the issue as to whether the transaction can be said to be sale of goodwill and/or trademark also came to be considered in detail by the Assessing Officer and only thereafter the transaction in question was considered on slump sale basis.

- In view of the facts and circumstances of the case when it is found that the assessee disclosed all true and correct facts necessary for the assessment and it cannot be said that the assessee did not disclose true and correct facts for the purpose of assessment, assumption of jurisdiction by the Assessing Officer to reopen the assessment beyond the period of four years is absolutely bad in law, illegal and contrary to the provisions of section 147 and, therefore, the impugned reassessment proceeding deserves to be quashed and set aside.