

No reassessment could be made on basis of an issue which was duly answered in favour of assessee by ITAT

Summary – The High Court of Delhi in a recent case of Avtec Ltd., (the Assessee) held that where in earlier years capitalisation of professional and legal charges for business transfer and depreciation claim on same was initially disallowed being not as per section 43(1), but ultimately said claim was allowed, revenue being aware of same, could not initiate reassessment for current year on same ground

Facts

- The assessee was engaged in the business of manufacturing and selling of automobiles, power trains and power shift transmissions along with their components. As early as on 19-2-2005, it entered into a Business Transfer Agreement ('BTA') with Hindustan Motors Ltd. ('HML') to take over the business of HML. Expenses pertaining to professional and legal charges were paid in relation to the takeover of the business from HML. These expenses were considered as capital expenses and allocated to the block of assets, and, depreciation was claimed right from assessment year 2006-07 onwards.
- For relevant years, the assessee's return was picked up for scrutiny and an assessment order was passed making various additions. The impugned notices were issued under section 148 seeking to reopen assessment for assessment years 2008-09 to 2010-11 on the ground that the HML borne all the cost and expenses including professional fees and, therefore, depreciation on professional charges capitalized to various block of assets was not allowed as per the provisions of section 43(1). Due to failure on the part of the assessee to disclose all material facts truly or fully relating to claim of depreciation. The Assessing Officer initiated proceedings under section 147 to assess the income chargeable to tax which had escaped assessment.
- On writ to the High Court, the assessee contended that for assessment year 2006-07, taken the matter up to the Tribunal and the matter had been remanded to the Assessing Officer. Further, for assessment year 2007-08, the Commissioner (Appeals) allowed the depreciation claim and, thus, the issue had attained finality.

Held

- In the present case, the Court finds that the reasons for reopening the assessment for Assessment years 2008-09 and 2009-10 proceeded on the basis that the assessee had failed to make a full and true disclosure of material facts concerning the claim for depreciation. This cannot be accepted for the simple reason that there was a history of litigation around such claim beginning in Assessment year 2006-07. The mere fact that the incumbent Assessing Officer dealing with the returns of the assessee was different from the Assessing Officer who dealt with there for the assessment years 2006-07 and 2007-08 will not excuse the Assessing Officer from examining the history of the case.

- It was not necessary for the assessee to enclose a copy of the Business Transfer Agreement ('BTA') every year and explain the basis for the claim of depreciation. In any event, the assessments for Assessment years 2008-09 and 2009-10 were completed under section 143(3). There was no fresh material to disclose. On this aspect, there was no change in the circumstances. Therefore, there was no failure by the assessee to make a full and true disclosure of all material facts relevant to the assessment.
- The revenue sought to emphasize that each Assessment year was different and, therefore, the Assessing Officer was not obliged to look into the previous records. The Court is unable to agree with this approach of the Assessing Officer. If the Assessing Officer was seeking to invoke section 148 for Assessment years 2008-09 to 2010-11 it was incumbent to him to ascertain the status of the identical claim in the earlier Assessment years. After all he was seeking to reopen an assessment only on the aspect of the claim of depreciation. On this very aspect the assessee had for Assessment year 2006-07 taken the matter upto the Tribunal and the matter had been remanded to the Assessing Officer. For Assessment year 2007-08, the Commissioner (Appeals)'s order allowing the claim had attained finality. These facts could not have escaped the attention of the Assessing Officer. In any event, there was no fresh material that the Assessing Officer came across to warrant reopening of the assessments for Assessment years 2008-09 and 2009-10. The plea that the Assessing Officer inadvertently allowed the claim for depreciation for assessment years 2008-09, 2009-10 and 2010-11 cannot in the circumstances be accepted.
- In the present case, the tangible material that the Assessing Officer came across for the Assessment Years in question that warranted the reopening of the assessments is not clear from the 'reasons to believe' recorded by the Assessing Officer. The reasons merely record the fact that HML had borne the costs and expenses including professional fee and, therefore, the capitalisation of those expenses to the various block of assets was not allowable under section 43(1). After recording the above statement, the Assessing Officer adds: "I have reason to believe that due to failure on the part of the assessee to disclose all the material facts truly or fully, income of Rs.7,16,299 have escaped assessment." This does not satisfy the requirement of law that the reasons to believe should, where the reopening is after the expiry of four years from the end of the Financial year, specifically state in what manner there was a failure by the assessee to make a full and true disclosure of material facts. That, again, will have to be preceded by spelling out the tangible fresh material that led the Assessing Officer to come to that conclusion. None of this is found in the reasons to believe recorded by the Assessing Officer in the case on hand. The necessity for tangible material to be present to trigger the reopening was emphasised in *CIT v. Orient Craft Ltd.* [\[2013\] 354 ITR 536/215 Taxman 28/29 taxmann.com 392 \(Delhi\)](#).
- The writ petitions are allowed and the notices dated 31-3-2015 and the consequential orders dated 11-1-2016 passed by the Assessing Officer are set aside.