

Reassessment justified when assessee found to be involved in bogus share purchases: Madras HC

Summary – The High Court of Madras in a recent case of Nitesh Chajjed, (the Assessee) held that where pursuant to survey conducted on premises of a share sub broker, it was found that assessee had purchased shares from said broker out of his unaccounted cash and obtained back dated bogus contract note for said purchase, reassessment was justified

Facts

- A survey under section 133A was conducted at business premises of one LS, a share sub-broker. It was found that few assessee had purchased shares from her out of their unaccounted cash. From the documents impounded, it was seen that the assessee had made cash payments during the Financial Year 2008-09 to LS for purchase of shares. Subsequently, LS had issued bogus contract notes as if the shares were purchased during Financial Year 2007-08. However, no transactions in the contract notes had effected and that those things were done to help the individuals to convert the unaccounted money to accounted money. The assessee had not filed the return of income for the Assessment Year 2009-10.
- As the income chargeable to tax had escaped assessment, notice under section 148 was issued to the assessee. In response to notice, the assessee filed his return of income. Eventually, a reassessment order was passed making an additional income under the head 'Income from other sources'.
- On appeal, the Commissioner (Appeals) held that the assessee had not produced any explanation for source of cash paid by him to LS for purchase of shares. From this, it was evident that the cash paid by the assessee was nothing but the unexplained income of the assessee.
- On further appeal, the Tribunal held that the Assessing Officer had rightly invoked the provisions of sections 147 and 148 and, accordingly, upheld the order of the revenue on this issue. However, with respect to disallowing the sum of income, it found that the trial balance of the assessee showed that the assessee had invested in the purchase of shares to establish that the assessee had invested in the shares during the assessment year 2008-09 and the assessee had also produced the contract note issued by LS, to support the same. However, there was no reference about the statement of accounts submitted before the Tribunal by both the revenue authorities in their respective orders. Therefore, the matter was remitted back to the file of the Assessing Officer to examine the veracity of the statement of accounts furnished before the Tribunal and the genuineness of the same and thereafter, pass appropriate order.
- On appeal to the High Court:

Held

- The contention of the appellant is that the re-opening of assessment against the assessee on the basis of an information gathered from a third party by way of sworn statement do not satisfy the

ingredients of the Act viz., 'reason to believe'. However, reasons recorded by the Assessing Officer was considered by the appellate authority for re-opening of the assessment and found that there are evidences apart from the sworn statement of LS a share broker, for escapement of assessment. It is an admitted fact that re-opening of assessment against the assessee was within the period of four years from the end of the relevant assessment year. Therefore, the first proviso of section 147 will not be applicable to the case of the assessee. In such circumstances, the Assessing Officer is empowered to re-open the assessment if he has reasons to believe that the income has escaped from the assessment. It is not required by the revenue to show that income which has escaped assessment was due to the failure on the part of the appellant to disclose fully and truly all the materials relevant to the assessment. Both the appellate authority and the Income Tax Tribunal has found that the Assessing Officer was empowered to re-open the assessment in the instant case. It is an admitted fact that the assessee had failed to file his return of income for the assessment year 2009-10. Pursuant to the survey conducted under section 133A in the business premises of LS, a Share Sub-Broker, it came to light that the assessee had made cash payments of certain amount to LS for purchase of shares and had obtained 'back dated' contract note for the purchase of shares of 'SS'. Subsequently, the assessee had sold these shares for consideration of certain amount and remitted the sale proceeds to his bank account. Therefore, the Assessing Officer had the reasons to re-open the assessment of the assessee. Hence, the Tribunal was justified in assessing the correctness of the notice for reopening the assessment under section 148 on the basis of the reasons which were disclosed by the Assessing Officer.