

AO cannot make revision to treat loan as deemed dividend if full disclosure was made during scrutiny assessment

Summary – The High Court of Gujarat in a recent case of Gujarat Mall Management Co. (P.) Ltd., (the Assessee) held that where assessee had made disclosures about borrowings from another company and had also filed necessary details thereof along with audited return, notice issued beyond a period of four years to enable Assessing Officer to examine applicability of section 2(22)(e) was to be set aside

Facts

- The assessee-company registered under the Companies Act had filed its return of income for the relevant year declaring total loss of Rs.68.28 lakhs on 30-9-2008. The return carried the audited accounts of the company. Such audit report contained a declaration that the company had taken a loan from another company to the tune of Rs.215.16 lakhs during the financial year under consideration. The return of the petitioner was taken in scrutiny.
- The Assessing Officer passed an order of assessment under section 143(3) on 2-12-2010, determining total income at loss of Rs.53.21 lakhs after making additions on various counts.
- Thereafter, notice for reopening of the assessment was issued beyond a period of four years from the end of relevant assessment year. According to the Assessing Officer, the assessee-company had received loan of Rs. 2.17 crores from another company, however, the assessee had not disclosed information regarding shareholding pattern, hence, the Assessing Officer desired to tax the said loan of Rs.2.17 crores received by the assessee as a deemed dividend under section 2(22)(e).
- On appeal to the High Court:

Held

- Notice for reopening of the assessment having been issued beyond a period of four years from the end of relevant assessment year, the failure on part of the assessee to disclose truly and fully all material facts becomes relevant. As noted, in this context, the revenue's stand is that the assessee did not disclose its share holding pattern only upon which it could have been ascertained whether section 2(22)(e) had applicability or not. Nevertheless, the onus is on the part of the assessee to disclose primary facts. What would be the effect of these primary facts is for the Assessing Officer to judge. The assessee having made disclosures about the borrowings from another company and also having filed necessary details thereof along with the audited return, did not thereafter have the onus of further disclosing its share holding pattern to enable the Assessing Officer to examine the applicability of section 2(22)(e). If the Assessing Officer desired to scrutinize this aspect of the

matter it was always open for him to call upon the assessee to provide for such details as and when necessary.

- In the result, only on this ground, the impugned notice is set aside. Petition is disposed of accordingly.