

## HC slams AO for issuing 2nd reassessment notice on reasons identical to reassessment notice dismissed earlier

**Summary – The High Court of Madras in a recent case of Gay Travels (P.) Ltd., (the Assessee) held that where reassessment notice issued on ground that land sold by assessee was not agricultural land, thus, income pertaining to tax had escaped assessment, was dismissed after examination and proper hearing, fresh reopening notice issued on basis of same documents and reasons which formed basis for first notice was unjustified**

### Facts

- The assessee had entered into an agreement for sale with one SPL, agreeing to sell agricultural lands and received a sum for same in the accounting year 1996-97 relevant to the assessment year 1997-98 and a sum in the accounting year 1997-98 relevant to the assessment year 1998-99.
- The returns filed by the assessee were accepted by the revenue and the assessment for the year 1997-98 was completed. For the assessment year 1998-99, since the sale consideration was to be assessed in the previous years, *i.e.*, 1997-98, as the assessee had entered into the agreement for 1996-97, the assessment for 1997-98 was reopened to consider the question of assessing the capital gains arising on the sale of agricultural lands. Therefore, the said consideration was not considered for taxability in the assessment year 1998-99.
- Notice was issued under section 148 dated 25-1-2001 for reassessment of the assessment made for the year 1997-98. The reopening notice was issued on the ground that the lands sold by assessee were not agricultural lands. This was on the basis that the sale consideration received by the assessee was grossly different from the amount invested by them for the purchase of the property, the location of the property and the development of the property into plots done by the purchasers. The last date for passing reassessment was 31-3-2002. While so, on 16-8-2002 for the very same assessment year 1997-98, the revenue issued notice under section 148 proposing to reassess the income for the said year and requiring the assessee to file a return of income within 30 days.
- In instant appeal the assessee contended that it was an admitted fact that the assessee had filed its returns in compliance with the notice of reassessment issued at the first instance, summons were also issued and also acted upon. In terms of section 153(2) such reassessment can be done within the period of limitation prescribed therein. Admittedly, within the said period, no action was initiated and, consequently, any fresh proceedings taken ignoring the earlier notice was without jurisdiction.

### Held

- It is seen that pursuant to the notice dated 25-1-2001 served on the assessee on 1-2-2001, the assessee sought for reasons for reopening, which were furnished and the assessee appeared for hearing and produced the books of account and case was heard and subsequently adjourned for

furnishing further details. On the adjourned date, once again the case was heard and the assessee filed the details and the file note shows, no other endorsement except say 'case heard'. While so, there is a typed note signed by an Officer stating that on technical grounds necessary approval will be obtained to issue section 148 notice afresh and treated as technically dismissed.

- Thus, if a notice is quashed after examining the material relied on by the Assessing Officer and after recording a finding that on the basis of such material the additional income could not be said to have escaped assessment, then it will be impermissible for the Assessing Officer to issue a fresh notice. However, in case some fresh material comes into the possession of the Assessing Officer suggesting escapement of income under the same head or some other head, no fetters could be imposed on his power to issue a fresh notice.
- On a careful perusal of the original file including the note file, it is evidently clear that there was no factual difference for reopening the assessment as proposed in the first notice and as presently proposed in the impugned notices. The only difference being the language, as the officers are different. The same documents which formed the basis for reasons for reopening and issuance of notice dated 25-1-2001 was identical to that of the reasons, which were set out for the issuance of the impugned notice. Further the assessee was kept completely in the dark about the closing of the proceedings on technical grounds, stated to be endorsed on 31-3-2002 and the Officers, who endorsed the same was very well aware that it would be a time barred assessment if anything was not done within the said date as already reassessment proceedings were commenced and the assessee was being heard in the matter.
- Therefore, there was no fresh material in possession of the Assessing Officer suggesting escapement of the income at the time of issuance of notice dated 25-1-2001. Thus, it is a clear case where the respondent is attempting to reopen a settled issue with no fresh materials and, therefore, the impugned notice was wholly without jurisdiction as it is a mere change of opinion.