

## **Reassessment on basis of disallowance in succeeding years was unjustified if there was no disclosure failure**

**Summary – The Chandigarh ITAT in a recent case of DSM Sinochem Pharmaceuticals (P.) Ltd., (the Assessee) held that where reopening after four years period was resorted to on basis of disallowance of claim of royalty made in succeeding year, but reasons did not show any failure on part of assessee to disclose fully and truly all material facts, reopening was not valid**

### **Facts**

- The Assessing Officer on the basis of subsequent year order disallowing royalty, reopened the assessment under section 147 and made addition to the income of the assessee by treating the royalty paid by the assessee as capital expenses, as against revenue claimed by the assessee.
- The Commissioner (Appeals) upheld the validity of the order passed but at the same time decided the issue in favour of the assessee on merits.
- The revenue has come in appeal before the Tribunal challenging the deletion of the addition made on merits while the assessee had filed a cross objection challenging the action of the Commissioner (Appeals) in upholding the validity of the order passed under section 147.
- The sole argument of the assessee was that the reassessment proceedings were initiated in violation of the conditions prescribed in the proviso to section 147.
- The revenue, on the other hand, supported the contention of the Commissioner (Appeals) and stated that merely because the assessee had disclosed the transaction at the time of original assessment proceedings it did not protect the assessee from reassessment under section 147 and further that the department was in the process of contesting the order of the Tribunal and, therefore, the said agreeable order of the Tribunal did not make the present proceedings invalid.

### **Held**

- Notice under section 148 was issued after the expiry of 4 years from the end of the assessment year and, the same did not satisfy the requirement provided under section 147 regarding the failure of the assessee to disclose fully and truly all material facts.
- Admittedly, it was the assessee's claim of royalty expenses as revenue, as against capital held by the Assessing Officer in subsequent year, i.e., assessment years 2009-10 and 2010-11, which lead the Assessing Officer in the impugned year to form belief of escapement of income. The said issue of royalty expenses had been examined in detail during assessment proceedings by the TPO, before whom all copies of agreement and other information relating to the said expenses had been filed by way of submissions.
- Further copy of the said agreement was also filed. The TP order passed under section 92CA(3) reveals that the royalty issue had been examined since it finds mention of the nature and purpose of the agreement entered into for the payment of royalty. These facts have not been considered by the

revenue. Therefore clearly the assessee had explained the nature, purpose and even method of quantification of royalty expenses and substantiated it with the copy of agreement also.

- Therefore, in such circumstances the assessee cannot be charged with not disclosing material facts relating to the issue of royalty expenses. Clearly all primary facts pertaining to the said expenses were filed by the assessee, and the revenue had not pointed out any suppression/misrepresentation or falsification of any fact; even the reasons recorded did not reveal what material fact was not disclosed nor do they charge the assessee with non-disclosure of the same. There is no whisper of any such allegation in the reasons recorded. This being a *sine qua non* for initiating proceeding under section 147, in the absence of the same the present proceedings are bad in law.
- There was no reason at all for reopening the case on the issue of treatment of royalty expenses, since the same had already been decided in favour of the assessee by the Tribunal, before the recording of reasons for reopening the present case. In fact, the Tribunal had decided the issue in the very same assessment year, which assessment order had formed the basis for reopening the case, *i.e.*, assessment year 2009-10. The Assessing Officer could not have any reasons to believe that income had escaped assessment when the very basis of its belief, being the assessment order of a subsequent year, had been reversed by the Tribunal before the recording of reasons by the Assessing Officer.
- In view of the above, the legal issue is decided in favour of the assessee and the order passed under section 147 was invalid. The assessment order, therefore, passed is quashed.