

Reassessment rightly initiated as assessee failed to prove source of cash paid for purchase of land

Summary – The High Court of Gujarat in a recent case of Raj Jain., (the Assessee) held that where Assessing Officer issued a notice seeking to reopen assessment on ground that assessee had purchased a piece of land for which a part of purchase consideration was paid in cash not disclosed in books of account, in view of assessee failed to rebut evidence on record such as cash vouchers, summary of sale deed etc., and, moreover, original return filed by her had been accepted without scrutiny, a case for reopening of assessment was clearly made out

Facts

- For relevant year, the assessee filed her return declaring certain taxable income. The return was processed under section 143(1).
- Subsequently the Assessing Officer issued a notice under section 148 seeking to reopen the assessment. The reason recorded for reopening the assessment was that a search was carried out in case of 'V' Group engaged in transactions of purchase and sale of land and in the course of search proceedings, certain documents were seized in form of cash vouchers, cash book, day books with the sale deed of land transactions showing that assessee had purchased four parcels of land from 'V' Group. As per contents of said documents assessee had paid a part of purchase consideration in cash which was not recorded in her books of account and, thus, represented the assessee's unexplained investment.
- The assessee's objections to initiation of reassessment proceedings were rejected.
- On writ:

Held

- At the outset, one may record three settled principles of law which would have some bearing in the present set of cases. First is that in a case where the return filed by the assessee is accepted under section 143(1) without scrutiny, since the Assessing Officer had not formed any opinion, principle of change of opinion would not apply.
- Despite this position, even in a case where the return of the assessee is accepted without scrutiny under section 143(1) in order to reopen the assessment, the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment.
- The requirement, thus for reopening of assessment, is 'reasonable belief'. This expression is not synonymous with Assessing Officer having finally ascertained the fact by any legal evidence or conclusion.
- Lastly, it is well settled that the validity of the notice of reopening would be judged on the basis of reasons recorded by the Assessing Officer for issuance of such notice. It would not be permissible

for the Assessing Officer to improve upon such reasons or to rely upon some extraneous material to support his action.

- From the reasons recorded by the Assessing Officer, it is found that various premises of 'V' Group were subjected to search operations. During such search operations, various incriminating documents were seized. Number of documents relating to unaccounted cash transactions were seized from such premises. These seized documents were analyzed and co-related. It was found that unaccounted cash transactions were first recorded in the cash vouchers. On the basis of such cash vouchers, entries were recorded in the day cash-book. Further, photocopies of documents and loose papers recovered during search operations were forwarded to the Assessing Officer which contained summary-sheet; daily cash-book entries, etc.
- According to the Assessing Officer, analyzing all these documents and by co-relating them, it was found that unaccounted cash transactions were first recorded in the cash vouchers. On the basis of recording made in these cash vouchers, entries were recorded in the day cash-book. Continuity of recording of unaccounted cash transactions indicated that the entries were made to record all unaccounted cash transactions of 'V' Group and Vaswani family members [who were part of the group]. The cash book was written in coded form for names, amount, dates, etc.
- It was found that there were huge cash transactions in the land sales made by the said 'V'. To avoid detection, the dates were ante-dated by ten years and figures in cash were recorded 1/100th of the actual sum. The reasons further recorded that the assesseees were the purchasers of four parcels of land sold by the 'V' Group. The total sale consideration, as per the registered documents for these four land transactions, comes to Rs. 75.77 lakhs was recorded that as per the cash-book and the summary sheet, a total of Rs. 33.24 Crores [rounded off] was received towards sale of 'T' and 'S' lands by the said 'V' Group for sale of a total area of 84,732 sq. meters of land. The assesseees had purchased 21,651 sq. meters out of the said land area which represented approximately 25.55 per cent of the total land sold by 'V' Group during the said period. The Assessing Officer for computation, therefore, apportioned proportionate amount of cash dealings. Copies of summary sheet and cash vouchers are produced in the Court. The summary sheet which was found during the search operation shows a total amount of Rs. 33,24,89,500/- [other than EC] and an amount of Rs. 8,21,105/- [by EC]. The total of these two figures is also mentioned in the summary sheet as Rs. 41,46,000/-. The reasons recorded point out that the cash transactions are recorded in the name of different entities in the seized cash vouchers. Amount which is legally paid and which has been paid through banking channels, only such amount is mentioned in the sale deeds. This amount paid through bank channels and which is reflected in the total sale consideration in the sale deeds is also entered with a noting 'against EC' in the seized papers.
- The revenue would thus point out that the summary-sheet when indicated a figure of Rs. 8,21,105/- against EC, it reflected the total sale consideration, of course multiplied by 100, since all the figures are supposedly recorded 1/100th of the actual sum, which is received through banking channels towards the sale of lands and which is duly reflected in the sale deeds. According to the revenue,

thus, the total sale transactions reflected for sale of all these parcels of land would come to Rs. 8,21,10,500/- [approximately] which matches with the total sale consideration under different sale deeds. In this context, revenue would point out that the remaining figure of Rs. 33,24,895/- [other than EC] found in the summary-sheet reflects sale consideration of Rs. 33,34,89,000/- received by 'V' Group for sale of different lands at Sargasan and Tarapur during the same period and which was not accounted.

- It can thus be seen that the Assessing Officer had analyzed the voluminous material collected by the revenue during the search operations in connection with 'V'. This material *prima facie* suggested huge cash transactions in connection with sale of lands against the total declared sale consideration of Rs. 8.21 Crores [rounded off]. The material *prima facie* suggests that the total cash transactions of Rs. 33.24 Crores had taken place. The revenue argues that the entries in summary-sheet and Vouchers carried dates which were deliberately put 10 years backward to disguise and the figures were recorded by deleting two zeroes from the actual to avoid detection and co-relation.
- At this stage, when the Court concerned with re-opening of the assessment that too in a case where the original return filed by the assessee was accepted without scrutiny, the material at the command of the Assessing Officer is sufficient to permit the process of reopening. As held by the Supreme Court in the case of *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [2007] 161 Taxman 316/291 ITR 500 and *Raymond Woolen Mills Ltd. v. ITO* [1999] 236 ITR 34 (SC), reason to believe cannot be equated with finally established fact that the income chargeable to tax having escaped assessment additions will invariably be made and further, sufficiency of reasons enabling the Assessing Officer to form such a belief would not be gone into.
- In the result, all these writ petitions are dismissed.