

Reassessment on basis of info. from investigation wing that assessee received accommodation entries was justified

Summary – The High Court of Gujarat in a recent case of Khatu Shyam Processors (P.) Ltd., (the Assessee) held that where AO, on basis of information supplied by Investigation Wing of department, initiated reassessment proceedings on ground that a company provided accommodation entries to assessee in form of share capital and premium, there being a prima facie case to believe that income chargeable to tax had escaped assessment, validity of reassessment proceedings was to be upheld

Facts

- The assessee-company was engaged in the business of dying of cloth on job-work basis. It filed return declaring certain taxable income. The Assessing Officer passed an order of assessment under section 143(3).
- Subsequently, the Investigation wing of the Department supplied a list of paper companies which had provided accommodation entries in form of share Capital and share Premium.
- The Assessing Officer found that some of the companies out of the said list had provided accommodation entries to the assessee during the year under consideration.
- The Assessing Officer, thus, issued notice under section 148 seeking to reopen the assessment. The assessee objections to initiation of reassessment proceedings were rejected.
- On writ:

Held

- A perusal of the reasons recorded show that the same come into two parts. First portion refers to information provided to the Assessing Officer by the Investigation Wing and the processing of such information by the Assessing Officer. This portion shows that the Investigating Wing had, under a letter dated 27-3-2017, provided list of as many as 396 companies which were mere paper companies indulging in providing accommodation entries. The Assessing Officer found that some of the companies out of the said list had provided accommodation entries to the assessee during the year under consideration. He recorded that on perusal of the assessment record and the list of the companies supplied by the Investigation Wing, it was found that the assessee-company had received accommodation entries in the form of share capital and share premium from five different companies. He recorded that these Kolkata based companies were paper companies and were not having any business activities. The sole purpose of creating those companies was to provide accommodation entries to the beneficiary parties. It was on the basis of such material, he concluded that the source of investment in the assessee-company were unexplained, as investing companies have no creditworthiness to make such investment.

- Three things immediately emerge from the reasons recorded by the Assessing Officer *viz.*, [i] that the issue whether these investments were genuine or not, and whether investing companies had wherewithal to make investment or not is the central question presently, which was not an issue during the original assessment proceeding. [ii] the question of true and full disclosure and the scrutinized issue in fact in the present case closely overlap and [iii] the present is not a case where the Assessing Officer has acted mechanically without any mental input on his part or acted on borrowed satisfaction. What was provided to him was a list of 396 companies by the Investigating Wing pointing out that these were mere shell companies, their creation was for the purpose of providing accommodation entries. The Assessing Officer on perusal of the assessment record and list supplied by the Investigating Wing correlated the different material on record and *prima facie* came to the conclusion that the investment of Rs. 51.15 lakhs made by five of those companies in the form of share-capital or share premium of the assessee-company was not genuine.
- This discussion still leave open, the assessee's last contention regarding the attempt made by Assessing Officer to verify these facts through discreet inquiries. In the last portion of the reasons recorded by the Assessing Officer, he has stated that after verifying the facts, as recorded above, the Inspector was directed to make discreet inquiries in respect of the assessee-company to inquire whether the company was indulged in receiving accommodation entries from the paper companies or not. He further recorded that Inspector having made local inquiries in the nearby area where the company is working, recorded that the company used to take accommodation entries from various Kolkata based paper companies.
- This appears to be usual attempt on the part of the Assessing Officer to make 'discreet inquiries' in order to ascertain whether the company was indulging in such illegal activities. The manner or method of such discreet inquiry is not revealed and therefore, it is not clear as to how exactly inquiry was made. However, the Assessing Officer seems to be suggesting that the Inspector deputed by him on the basis of unrecorded statements appears to have made such a report. Whether on the basis of unrecorded or even on the basis of statements of unrelated persons which may have been recorded, there is doubt about the efficacy thereof. Proper information at the command of the Assessing Officer can come only through reliable sources. Statements of those who ought to know may be one such source.
- At any rate, the Assessing Officer cannot bank on unrecorded statements or statements from the sources which can at best be described as relying on rumours or gossips. Had this been the foundational reason one would have been prompted to quash the notice. However, this clearly is separate and severable part of the reasons and at the best can be seen as an over enthusiastic approach on the part of the Assessing officer to buttress an already arrived at conclusion that income chargeable to tax has escaped assessment on the basis of information on record.
- In the result, petition is dismissed.