

AO was justified in reopening assessment as assessee allegedly received accommodation entries from shell Co.

Summary – The High Court of Gujarat in a recent case of MSK Real Estates (P.) Ltd., (the Assessee) held that where AO initiated reassessment proceedings on basis of information supplied by Investigation Wing that assessee received accommodation entries in form of share capital and share premium from paper/shell companies, validity of said proceedings deserved to be upheld

Facts

- For the relevant year, the assessee-company did not file its return. Subsequently, a search was carried out in case of 'M' group of companies. In course of search, certain documents were seized showing that assessee had received share application money and share premium from various companies.
- The Investigation wing of department provided information that those companies were paper/shell companies involved in providing accommodation entries in form of share capital, share premium, unsecured loans etc.
- On basis of aforesaid information, the Assessing Officer initiated reassessment proceedings in case of assessee. The main objection raised by assessee was that entire share application and share premium money was received by the assessee on or before 31-3-2009. No amount having been received after 1-4-2009, no taxing event fell within the period relevant to the assessment year 2010-11. The Assessing Officer rejected assessee's objection.
- On writ:

Held

- From the record, it emerges that the assessee had not filed return for the relevant assessment year. Further, the reasons cited by the Assessing Officer for issuing the notice of reopening are quite serious. In such reasons, he had pointed out that the material collected by the department during search operation in case of 'M' Group of cases which led to further information that the assessee had allotted 1 lac shares to different investor companies by charging Rs. 90/- by way of premium over and above the nominal value of Rs. 10/- per share. The Investigating Wing of the department had collected material to suggest that these were shell companies engaged in providing accommodation entries having dummy directors. Statement of the director of the assessee-company was also recorded. He could not provide genuineness of these transactions. He would also confront with the report of the Investigation Wing of the department.
- As the reason stand therefore, reopening of the assessment would be ordinarily permissible. The assessee, however, strongly urged that whatever be the facts, no taxing event having been occurred

during the period relevant to the assessment year 2010-11, impugned notice should be quashed. Elaborating this ground, he contended that the entire share application and share premium money was received by the assessee on or before 31-03-2009. No amount having been received after 01-04-2009, no taxing event fell within the period relevant to the assessment year 2010-11. This ground, the Assessing Officer repealed citing two fold reasons. According to him, mere receipt of the share application money was not enough. Unless shares are allotted, such amount would remain with the company and cannot be appropriated. In case of over subscription of shares, it may happen that the amount may have to be returned. In short, the transaction would be completed only upon allotment of shares. The second ground was that, in any case, part of the amount of Rs. 1 crore was actually received by the assessee-company on 02-04-2009. He pointed out that two cheques of Rs. 10 lacs and 15 lacs respectively were deposited with the bank on 31-03-2009 and encashed on 02-04-2009. According to him, therefore, the company received the money actually on 02-04-2009 and not earlier.

- As recorded, two facts are undisputable (1) that the assessee had not filed any return for the said assessment year and; (2) as per the reasons recorded by the Assessing Officer, there is every case for permitting assessment of the assessee for the said year. As per the reasons recorded, the assessee had received bogus share premium money from shell companies who were indulging in providing bogus accommodation of the entries. There were series of transactions of this nature. The question that, when precisely the taxing event occurred would have to be kept open to be decided at the first instance by the Assessing Officer during the course of assessment. In the present case, at the very threshold, it is not necessary to decide this issue finally. The reasons recorded by the Assessing Officer can be challenged on the ground of their validity. If therefore there is a clear conclusion possible that such reasons lacked validity, it would always be open for the Court to strike down the notice based on such reasons. However, at the stage when the notice for reopening was under challenge, it was not possible without further detailed inquiry to arrive at a final conclusion, the Court would be well advised in keeping such a question open and permitting further proceedings in connection with the notice of reopening.
- Under the circumstances, the petition is dismissed.