

No reassessment could be made merely on basis of information received from investigation wing

Summary – The High Court of Bombay in a recent case of South Yarra Holdings., (the Assessee) held that where after expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on basis of information received from Investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries, in view of fact that there was no company by name of 'N' Ltd. which was in existence at relevant time period, impugned reassessment proceedings deserved to be quashed

Facts

- For relevant year, assessee filed its return declaring certain taxable income. The Assessing Officer completed assessment under section 143(3).
- After expiry of four years from end of relevant year, the Assessing Officer received information from investigation wing that 'N' Ltd. was a penny stock listed in BSE which used to facilitate introduction of unaccounted income of members in form of share capital and, assessee was one of those beneficiaries.
- On basis of said information, the Assessing Officer initiated reassessment proceedings in case of assessee.
- The assessee filed instant petition challenging validity of reassessment proceedings.

Held

- It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer to issue a re-opening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.
- From the reasons, it is evident that the impugned notice has been issued on the basis of information received from the Deputy Collector (Investigation) alleging that 'N' is a penny stock listed on the Bombay Stock Exchange and that the assessee had dealt with the same leading to escapement of income. On receipt of information, the least that is expected of the Assessing Officer is to examine the same in the context of the facts of this case and satisfy himself whether the information received does *prima facie* lead to a reasonable belief that income chargeable to tax has escaped assessment.
- In this case, the reasons indicate that the Assessing Officer has not carried out such exercise and accepted the report of the Deputy Collector (Investigation) to conclude that the assessee had dealt

with 'N' Ltd. during the previous year relevant to the assessment year 2011-12. Admittedly, there was no company by name 'N' Ltd. in existence during year under consideration. This clearly shows that the Assessing Officer acted on the satisfaction of the Deputy Collector (Investigation) that income chargeable to tax has escaped assessment.

- It must also be borne in mind that the impugned notice is issued beyond the period of four years from the end of the relevant assessment year in a case, where the assessment was completed under section 143 (3). Therefore, the Assessing Officer would have to examine the information received in the context of the facts on record. If such an exercise were to be done, it is likely that the Assessing Officer would have come to the conclusion that there was no failure to disclose truly and fully all material facts necessary for assessment, thus, hit by the proviso to section 147 of the Act.
- However, the Assessing Officer has not applied his mind to the information received in the context of the facts on record. The impugned notice is bad-in-law, as it has not been issued by the Assessing Officer on his satisfaction that there is reason to believe that income chargeable to tax has escaped assessment.
- In the above circumstances, the impugned notice is unsustainable in law and therefore, is quashed and set aside.