

## **No reassessment after 4 years if all material facts were disclosed by assessee during original assessment**

**Summary – The High Court of Gujarat in a recent case of Shree Sayan Vibhag Sahkari, (the Assessee) held that In absence of any failure on part of assessee to disclose all material facts necessary for assessment, Assessing Officer could not initiate reassessment proceedings after expiry of four years from end of relevant assessment year**

### **Facts**

- The assessee was a co-operative society manufacturing sugar from sugarcane supplied by its members. It had been assessed to tax under the provisions of the Act for the last several years.
- For relevant assessment year, the Assessing Officer issued notice under section 148 in response to which, assessee addressed a letter stating that the return under section 139 as originally filed be considered as a return in response to reassessment notice and also prayed for the copy of the reasons recorded. By a letter, such reasons came to be furnished to the assessee. The assessee filed its objections which came to be rejected.
- The assessee thus filed instant petition contending that on similar grounds, in case of the assessee and other similarly situated assesseees, the Assessing Officer sought to reopen the assessment by issuing notice under section 148, which came to be challenged and the Court in the case of *Shree Chalthan Vibhag Khand v. Dy. CIT* [\[2015\] 376 ITR 419/233 Taxman 469/60 taxmann.com 450 \(Guj.\)](#), had set aside the impugned notice under section 148, both on merits as well as on the ground that in the absence of any allegation in the notice under section 148 that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, the assumption of jurisdiction was wholly without jurisdiction and illegal.

### **Held**

- On a perusal of the reasons recorded for reopening the assessment as referred to in the case of *Shree Chalthan Vibhag Khand (supra)* and the reasons recorded in the present case, it is evident that the grounds for reopening the assessment in the present case are identical to the grounds for reopening the assessment in the said case. This court, in the above case, after giving detailed reasons in support of its conclusion, has set aside the impugned notice under section 148 on the ground that the formation of opinion in the case of the assessee could not be sustained as the same can be said to be a borrowed satisfaction from another officer and such borrowed satisfaction, in the absence of any application of mind and any real finding in the case of the assessee, does not constitute valid reason to believe that the income has escaped assessment.
- The Court took note of the fact that despite the fact that in certain cases, reopening was beyond a period of four years, in the reasons recorded, there was not even a whisper as regards any failure on the part of the assessee to disclose fully and truly all material facts.

- In the facts of the present case, the impugned notice under section 148 has been issued beyond a period of four years from the end of the relevant assessment year. Under the circumstances, in view of the first proviso to section 147, the Assessing Officer is required to record twin satisfaction, viz., that income chargeable to tax has escaped assessment and that such escapement is by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year under consideration.
- On a perusal of the reasons recorded it is amply clear that there was nothing stated therein to the effect that there was any failure on the part of the assessee to disclose fully and truly all material facts. Thus, the second condition precedent for exercise of powers under section 147 is clearly not satisfied. Moreover, even as regards the first condition, namely, that the Assessing Officer should record satisfaction that income chargeable to tax has escaped assessment, in the light of the reasons recorded by this Court in the case of *Shree Chalthan Vibhag Khand (supra)*, it cannot be said that on the reasons recorded for reopening the assessment, the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment. Therefore, even the first condition precedent for exercise of powers under section 147, is not satisfied. Under the circumstances, the impugned notice issued under section 148 cannot be sustained.
- In the result, the assessee's petition is allowed.