

AO rightly made reassessment as he had info that group entities of assessee were providing accommodation entries

Summary – The High Court of Bombay in a recent case of Bright Star Syntex (P.) Ltd., (the Assessee) held that where on basis of evidences collected and statement recorded during course of search of entry provider, Assessing Officer had reason to believe that unsecured loans received by assessee from certain persons escaped assessment, it could not be said that there was change of opinion

Facts

- A search and seizure operation was conducted in the case of one P. The Assessing Officer on the basis of information received from DGIT-Inv. that certain unsecured loan transactions had been carried out by the assessee, the investor parties were entities being operated by P. who was leading entry provider. The Assessing Officer concluded that the credits as unsecured loans had to be taxed and he thus, issued notice under section 148 stating that he had 'reason to believe' that above stated credits had escaped assessment for relevant assessment year.
- The assessee filed petition under article 226 before the High Court challenging impugned notice. The assessee contended that impugned notice was without jurisdiction as evident from the reasons recorded in support of the notice for the reasons that mere confession/statement by a person that he controlled companies which were providing accommodation entries is not sufficient to give the Assessing Officer reason to believe that income chargeable to tax had escaped assessment. It was further contended that the Assessing Officer had during the assessment proceedings leading to order under section 143(3) for the subject assessment year had raised issues with regard to genuineness and creditworthiness of the very same eight loan providers mentioned in the reasons in support of the impugned notice. The assessee responded to the same by providing loan confirmation statements, which on examination were accepted; thus, this was a case of mere change of opinion. It was further contended that reliance was also placed upon a document where detailed reasons for doing scrutiny assessment for the assessment year 2013-14 have been recorded. This document *inter alia* stated that a search was carried out in the case of P and his group on 1-12-2013. This formed the basis for scrutiny assessment of the returns of income for assessment year 2013-14. It is, therefore, contended that all these facts were within the knowledge of the Assessing Officer while passing the assessment order dated 19-12-2014 for the assessment year 2012-13. Consequently, this is another indication of a clear Case of change of opinion.

Held

- It is settled position in law that while considering a challenge to a reopening notice on the ground that it is without jurisdiction, the Court has to keep in mind that a settled position in law is not being disturbed as evident from the orders passed earlier, without any justification. However, the Court will certainly interfere where the reason to believe that income has escaped assessment, is a clear

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case of change of opinion *i.e.* the same material was subject to consideration in regular assessment proceedings or where the reopening is being done only on suspicion and/or to carry out investigation or where the assessment is sought to be reopened after a period of more than four years from the end of the relevant assessment year and there has been no failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment. However, in all other cases of reopening of assessment, the Court will examine whether there is material available with the Assessing Officer to form a reasonable belief that income chargeable to tax has escaped assessment and for that purpose ensure that the material is not vague and/or irrelevant. However at this stage *i.e.* on issue of reopening notice, the Assessing Officer is not required to have conclusive evidence that income chargeable to tax has escaped assessment but is only required to have reasonable belief of the same. The reasons recorded must on the basis of the material available establish a link between the material available and the conclusion. This should lead to *prima facie* view that income chargeable to tax has escaped assessment. At this stage, merits of the case nor the sufficiency or correctness of the material are to be considered but only whether the Assessing Officer had reason to believe on the material available that income chargeable to tax has escaped assessment.

- The reasons in support of the impugned notice indicates that the Assessing Officer has received definite information that one Mr. P. and the companies controlled by him was in the business of providing accommodation entries. On receipt of the aforesaid information, the Assessing Officer called for the necessary information in regard to the accommodation entries made in respect of the assessee in his jurisdiction. Consequent thereto, the Assessing Officer found that the information received indicated that the eight companies mentioned in the reasons belonged to P. group and formed the basis of his reasonable belief. At this stage the Assessing Officer has merely to establish that there is justification for him to form a reasonable belief that income chargeable to tax had escaped assessment and not conclusively prove the same. In the instant case the statement of P is relevant tangible material with the Assessing Officer to form a reasonable belief that income chargeable to tax has escaped assessment.
- The statement of of P *prima facie* completely negatives the stand taken by the petitioner during the regular assessment proceedings. The exact nature of the transaction is only privy to the parties to the transaction and when one of the parties to the transaction states that what appears is not factually so, then the Assessing officer certainly has tangible material to form a reasonable belief that income chargeable to tax has escaped assessment.
- Thereafter, the assessee sought to place reliance upon the reasons recorded by the Assessing Officer for selection of assessee's return of income for scrutiny assessment for assessment year 2013-14. This statement although undated also makes reference to the statement of P. dated 1-10-2013. According to the petitioner, this material was available with the Assessing Officer when the order dated 19-12-2014 was passed. On being questioned, counsel for the assessee states that this issue was not taken in its objections to the reasons in support of the impugned notice as the

aforesaid communication was only received after the objection has been disposed of. However, the petition itself does not specifically mention the date when this document was received by the assessee and, therefore, could not be the basis of the objections. Where an objection is not taken before the Assessing Officer while responding to the reasons in support of a notice seeking reopen an assessment, then it is not open to assessee to raise such objection for the first time before this Court. The exception of course being if the impugned notice is *ex facie* without jurisdiction and no determination of facts are required to establish it is without jurisdiction.

- In these facts, there is no reason to exercise extraordinary writ jurisdiction and interdict the revenue from proceeding further with the reassessment proceedings. Needless to state that during the reassessment proceedings, the petitioner would have occasion to establish that the loans taken from the eight entities referred to in the reasons were genuine loans before the Assessing Officer and also before the appellate authorities under the Act.
- Therefore, the petition is dismissed.