

# Delhi High Court lays down guidelines for reopening of assessment proceedings

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## In brief

The Delhi High Court (HC) in a recent case<sup>1</sup> has laid down guidelines on the essentials for determining 'reasons to believe' in reopening an assessment. The court held that reasons to believe have to be self-explanatory and could not be thereafter supported by extraneous material. Also, the reasons could not be based on mere surmise and conjecture. There have to be reasons to believe and not reasons to suspect that income has escaped assessment.

## In detail

### Facts

- The taxpayer<sup>1</sup> was a private limited company engaged in the business of real estate and property development.
- During the course of assessment proceedings, the Tax Officer (TO) sought details of share application money received, if any, during the year.
- In response, the taxpayer disclosed the details of five companies from whom share application money was received (hereinafter referred to as the payers) and filed additional details such as confirmations from the payers along with Permanent Account Number (PAN) Income-tax Returns (ITR) and audited financial statements.
- The assessment was

completed by the TO with no further discussion in respect of share application money.

- After the expiry of four years, a notice for reopening of assessment was issued to the taxpayer on the basis of a letter received from the Investigation Wing of the Tax Department which mentioned that on the basis of information received from another Investigation jurisdiction, the payers were 'Paper Companies'.
- The taxpayers' objections (both on jurisdiction and merits) to such reasons were rejected by the TO.

### Issue before the High Court

Whether the notice issued for reopening the assessment and order disposing the objections filed by the taxpayer should be quashed?

### Taxpayer's contention

- All material facts and information, including the names and other details of the payers, number of shares and share premium received, confirmation letters were fully disclosed and filed during assessment proceedings.
- The payers were assessable to tax and hence, the TO could easily cross verify, if required. The assessment order did not mention anything in respect of the share application money, implying the satisfaction with respect to information furnished.
- The TO had merely relied on the letter from investigation unit, and had not verified any facts contained in the letter about the payers being a paper companies.

<sup>1</sup> Writ Petition Appeal No. 1357 of 2016 (Delhi High Court)

- There was neither any mention of the investigation report in the reasons to believe nor any copy of the same was provided to the taxpayer.

#### **Revenue's contention**

- The reasons recorded clearly spelt out the necessity to reopen the assessment.
- The TO, during the assessment proceedings, never had the information that the payers were 'paper companies'.
- The issuance of notice does not conclude that there was an escapement of income and the taxpayer should have been directed to participate in the proceedings.

#### **High Court's decision**

- The power to reopen the assessment after four years could be exercised only if there was a failure to disclose fully and truly all material facts and information by the taxpayer.
- The reasons to believe should have been self-explanatory and could not be supported by any extraneous material.
- The order disposing objections or any counter affidavit filed during the writ proceedings before the court could not be substituted for 'reasons to believe.'
- There was no new material which had been found or mentioned in the 'reasons to believe' which were not contained in the information provided by the taxpayer before the conclusion of

assessment proceedings.

- The reasons for reopening did not mention as to what facts or information was not disclosed by the taxpayer. This was vital information and goes to the root of the matter.
- The reopening of the assessment had to be on a strong and sound legal basis. Mere conjecture or surmise was not sufficient.
- There has to be 'reasons to believe' and not merely reasons to suspect that income has escaped assessment.
- In case the revenue had any basis to show that the 'primary facts' were incorrect, the same ought to have been set out in the reasons to believe.
- In view of the above, the notice issued for reopening the assessment along with the order disposing the objections to the notice issued was quashed.
- Further, the Delhi HC has issued the following guidelines which it like adherence to by the Revenue Authorities in matter of reopening of assessments –
  - The copy of the standard form used by the TO for obtaining the approval of the Superior Officer (which contains the comment or endorsement of the Superior) should be provided to the taxpayer.
  - The reasons to believe should contain all the reasons and grounds

available for reopening the assessment and should also paraphrase any investigation report which may form the basis of reason along with the enquiry conducted by the TO and the conclusion of such enquiry.

- Where the reasons make reference to another document such as a letter or report, such document/ relevant extract should be enclosed along with the reason.
- Disposing the objections to the reopening of the assessment is a quasi-judicial function and accordingly, the order should dispose each objection along with the proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of assessment beyond what has already been disclosed.

#### **The takeaways**

The decision of the Delhi HC is a welcome step as it lays down the information and documentation to be supplied to the taxpayer for reopening of an assessment.

These guidelines should help reduce reopening of assessments in a routine manner and consequent litigation.

#### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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