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Delhi High Court lays down law on re-opening of income-tax assessments under section 147 of the Income-tax Act, 1961

In brief

In a recent case of Usha International Ltd.[1], the Delhi High Court (HC) considered the following substantial questions of law:

a) What is the meaning of the expression 'change of opinion'?

b) Can assessment proceedings be validly reopened under section 147 of the Income-tax Act, 1961 (the Act) within four years, if an assessee has furnished full and true particulars at the time of original assessment?

c) Will the bar under the principle of change of opinion apply even when the assessing officer (AO) has not asked any question with respect to an entry, but there is evidence to show that the AO had raised queries on other aspects?

d) Under what circumstances can section 114(e) of the Indian Evidence Act, 1872 (the Evidence Act) be applied and can it be held as a case of change of opinion?

Observations and ruling of the High Court

- The HC did not refer to the factual matrix of the case but restricted itself to the interpretation of section 147 of the Act as amended with effect from 1 April 1989.

- The HC clarified that the parameters it has issued are applicable in cases where regular assessment under section 143(3) of the Act has been completed and the

[1] CIT *v.* Usha International Ltd. [TS-259-HC-2012(DEL)]

reassessment notice is under challenge. In cases where there has been no regular assessment, the Supreme Court ruling in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd.[2] would apply.

- The HC observed that the expression 'change of opinion' postulates the formation of opinion and then a change thereof. It implies that the AO should have formed an opinion in the proceedings under section 143(3) of the Act and now by initiation of the reassessment proceedings, the AO proposes to take a different view.

- Furthermore, the HC observed the following:

  - Reassessment proceedings can be validly initiated in case the return of income is processed under section 143(1) of the Act and no scrutiny assessment is undertaken. In such cases, there is no change of opinion.

  - Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by the principle of change of opinion.

  - Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in the original assessment proceedings but thereafter the AO does not make any addition in the assessment order. In such situations, it should be accepted that the issue was examined but the AO did not find any ground or reason to make additions or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the AO had formed an opinion in the original assessment, though he had not recorded the reasons.

  - When at the first instance, in the original assessment proceedings, no opinion is formed, the principle of change of opinion cannot, and does not, apply. There is a difference between a change of opinion and a failure or omission on the part of the AO to form an opinion on a subject matter, entry, claim or deduction. When the AO fails to examine a subject matter, entry, claim or deduction, he forms no opinion. It is a case of no opinion.

- The HC observed that section 114 of the Indian Evidence Act, 1872 is a general provision dealing with presumption of facts, inferences drawn from facts, patterns drawn from experience and observations based upon habits of society, human action, usage and ordinary course of human affairs and conduct. The presumption is no evidence of proof. It only shows on whom the burden of proof lies. As a permissive provision, it enables the judge to support his judgement but there is no scope of presumption when the facts are known.

Conclusion

- The HC concluded that there may be cases where the AO may not raise any written query but he still, in the original proceedings, may have examined the subject matter, claim, etc. because the question may be too apparent and obvious. To hold that the AO, in the first round, did not examine the question or subject matter and form an opinion would be contrary and opposed to normal human conduct. Such cases have to be examined individually.

- Several aspects including papers filed and submitted with the return and during the original proceedings are relevant and material. Sometimes application of mind and formation of opinion can be ascertained and gathered even when no specific question or query in writing had been raised by the AO.

- The aspects and questions examined during the course of assessment proceedings itself may indicate that the AO must have applied his mind on the entry, claim, deduction, etc. It may be apparent and obvious to hold that the AO would not have gone into the said question or applied his mind. However, this would depend upon the facts and circumstances of each case.

- The given case has been referred back to the Divisional Bench for disposal, keeping in mind the elucidation of law set by the Full Bench.

[2] ACIT *v.* Rajesh Jhaveri Stock Brokers Pvt Ltd [2007] 291 ITR 500 (SC)

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