Re-assessment cannot be made on the basis of mere 'change of opinion': SC

Summary

A tax officer can re-open a closed assessment order where he/she has 'reason to believe' that some income has escaped assessment. However, the Supreme Court (SC) in a recent decision[1] has held that 'reason to believe' should be interpreted schematically and the tax officer should not reopen a case on the basis of mere change of opinion. The SC has further held that the records should reveal 'expressly or by necessary implications' that the tax officer had expressed an opinion at the stage of original assessment on the matter which is the basis for re-assessment.

Facts of the case

- TechSpan India Pvt. Ltd. (taxpayer) was engaged in the business of development and export of computer software and human resource services. The taxpayer was eligible for a tax holiday[2] on export profits.
- During the year under consideration, the taxpayer declared its income from the two sources, i.e., software development and human resource development, claiming common expenses for both sources and declaring a loss in its return of income. However, the taxpayer claimed a tax holiday for income from software development.
- During regular assessment, the taxpayer was asked to explain, by way of a show cause notice, the reason for absence of any basis for allocating common expenses between the two different sources of income.
- The tax officer disallowed proportionate expenses and completed the assessment arriving at an income which was fully set-off against brought forward losses.
- Subsequently, a notice was served on the taxpayer for re-opening the assessment on the ground that the tax holiday had been allowed in excess and the income had escaped assessment.
- The detailed reply filed by the taxpayer objecting to the initiation of re-assessment was rejected by the tax officer.

[1] TechSpan India Private Ltd. & Anr. [TS-200-SC-2018]
[2] Under section 10A of the Income-tax Act, 1961

- Under a writ filed by the taxpayer, the High Court (HC) set aside the Revenue's order on the ground that re-assessment proceedings were illegal and not sustainable in the eyes of law.

SC ruling

- The SC relied on its ruling in the case of Kelvinator of India Ltd.[3], wherein it was held that a tax officer has no power to review but has the power to re-assess and re-assessment cannot be made on the basis of 'mere change of opinion'.
- The SC analysed the meaning of 'forming of an opinion', which means formulation of belief on a particular question as a result of understanding, experience and reflection. Therefore, it was held, a 'change in opinion' would occur only if there was an earlier formulation of an opinion.
- The SC stated that it is important to verify whether the tax officer in his/her original assessment order has expressly or by necessary implication expressed an opinion on the matter for which the re-assessment proceedings have been initiated.
- The SC further stated that where the original assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to conclude that the tax officer has formed an opinion on the issues raised during the course of re-assessment proceedings.
- The SC observed that the ground on which re-assessment notice was initiated, i.e., non-maintenance of two separate books of accounts and the quantum of deduction allowable to the taxpayer on export profits, was well considered during the original assessment proceedings and the tax officer had formed his opinion while passing the original assessment order. Therefore, the re-assessment proceedings cannot be invoked.

Our comments

Interpretation of the words 'reason to believe' in the context of re-assessment proceedings has been the subject matter of litigation. The SC in this ruling has reaffirmed its earlier decisions that merely a 'change of opinion' based on the same facts cannot be a sufficient reason to believe that income has escaped assessment. In this case, the SC laid emphasis on the evidence of formation of opinion at the stage of original assessment and held that it must be discernible, either from expressed words or by necessary implication.

[3] Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd. (2010) 320 ITR 561(SC)