



Global Business Tax Alert Sharp Insights

Reassessment on same set of facts that were available at the time of original assessment constitutes a change of opinion and hence reassessment proceedings cannot be sustained

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Synopsis

The Bombay High Court in the case of Capgemini India (P.) Ltd, has held that where all material facts relevant for claiming deduction under section 10A were submitted before the Assessing officer during the course of original assessment proceedings, reopening of assessment on the issue relating to deduction under section 10A, constitutes revisiting the claim, which was not a permissible ground for reopening the assessment.

Facts

- The taxpayer company, Capgemini India (P.) Ltd was engaged in the business of development and export of software.
- The taxpayer filed its return of income for the assessment year 2007-08 claiming deduction under section 10A of the Income tax Act, 1961 (the Act) with respect to the profits derived from two units i.e. Units II (Pune unit) and Unit III (Hyderabad unit).
- The case of the taxpayer was selected for scrutiny and the assessment was completed. In the assessment order the Assessing officer (AO) accepted the taxpayer's claim for deduction under section 10A.
- Subsequently the AO issued reassessment notice after 4 year period, stating that the deduction under section 10A was wrongly allowed and that the income had escaped assessment. The AO reopened the assessment on the grounds that the taxpayer claimed deduction under section 10A without setting off the losses of the other units against the profits of the eligible units. The AO held that there were valid reasons to believe that assessee failed to disclose full and material facts and passed a reassessment order.
- The taxpayer filed its objection, wherein it was submitted as under:
 - The taxpayer that details of deduction claimed under section 10A were disclosed in the Form ITR filed for the assessment year 2007-08.
 - The taxpayer further submitted that during the course of assessment proceedings, the taxpayer had filed a letter in response to a specific query relating to the

deduction claimed under section 10A.

- Complete facts were available before the AO during the course of original assessment proceedings.
- The taxpayer further submitted that its objections should be disposed off by the AO by passing a speaking order.
- The AO passed an order dated 12 February 2015 rejecting the taxpayer's objections and thereafter passed an order dated 27 February 2015.
- The High Court observed that since the AO had not followed the principles laid down by the Supreme Court¹ and the Bombay High Court², vide an order dated 21 April 2015, it directed the AO that the order dated 12 February 2015 should be communicated to the taxpayer and the reassessment proceedings should not be proceeded with for a period of four weeks, as per principles laid down in the Supreme Court and Bombay High Court orders.
- Since the directions were not abided by the Department, the High Court examined the validity and legality of the reassessment notice issued under section 148 of the Act.

Issue before the High Court

Whether where all the material facts relevant to section 10A deduction were provided before the assessing officer during the course of assessment proceedings, the re-opening of assessment by the assessing officer on ground that deduction under section 10A was wrongly allowed, is permissible?

¹ GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19

² Asian Paints Ltd. v. DCIT (2008) 296 ITR 90 (Bom.), Aroni Commercials Ltd. v. DCIT (2014) 362 ITR 403.

Ruling of the High Court

- The High Court observed that details relating to the claim for deduction under section 10A were available with the AO, which was evident from the fact that such details were used as reference in the reasons recorded for reopening the assessment.
- The High Court held that from the perusal of recorded reasons, it was apparent that it was issued to revisit the claim made by the taxpayer under section 10A.
- The High Court held that the AO was not justified for issuance of notice under section 148 of the Act since the taxpayer has disclosed all the material facts during the course of original assessment proceedings.
- The High Court held that a change of opinion by the AO cannot be a permissible ground to reopen the assessment.
- The High Court held that when mandatory pre-condition as set out in the Act has not been abided by, then the notice issued under section 148 of the Act and all steps in furtherance thereof cannot be sustained.

Comments

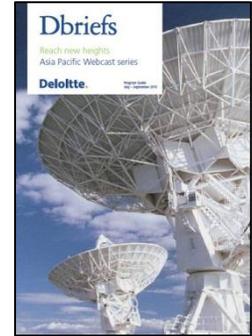
- This decision affirms the position that if the details / material basis which the issue is reopened are available on records of the tax officer, reopening is not permissible.
- The Bombay High Court has reiterated this principle in the past vide its decisions in case of NTPC Ltd v. DCIT [2013] (32 Taxmann.com 343) and Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102.

Source: Capgemini India (P.) Ltd v. Assistant Commissioner of Income-tax, Circle 14(2), Mumbai [2015] [58 taxmann.com 175] (Bombay)

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Contacts

Ahmedabad

Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

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