

VALIDITY OF REASSESSMENT INITIATED ON ASSUMPTION OF FACTS

In a recent judgment passed in the case of *Grid Solutions OY (Ltd) vs ACIT*¹, the Delhi High Court has ruled on the question whether findings of survey conducted in a particular year could form the bedrock for reopening of assessment proceedings for preceding assessment years; in absence of concrete material/ evidence leading to the belief that income has escaped assessment, whether the Revenue is empowered to initiate reassessment proceedings purely on assumption of facts?

Factual background

The assessee, a Finnish company, filed income-tax returns in India wherein receipts from Indian customers towards offshore supply were not offered to tax on the ground that the same constituted business income, not chargeable to tax in India in absence of Permanent Establishment (“PE”). In assessment proceedings, the stand of the assessee regarding non-taxability of offshore supply receipts in India was accepted by the assessing officer (“AO”).

Subsequently, basis the findings recorded in survey conducted in 2019 in the premises of two Indian Associated Enterprises (“AEs”), the AO initiated reassessment proceedings in the case of the assessee for assessment years (“AY”) 2013-14 to 2017-18.

In the reasons to believe recorded prior to issuance of notice under section 148 of the Act, the AO referred to statements of employees of the AEs, e-mail correspondence of the AEs, etc., gathered in the aforesaid survey to allege that the Petitioner had Fixed Place PE and Dependent Agent PE in India in the form of its Indian AE.

The initiation of reassessment proceedings was challenged by the assessee before the Delhi High Court by way of writ petitions.

Judgment rendered by the Delhi High Court

At the outset, the High Court noted the concession made by the Revenue that reasons recorded in support of the formation of opinion that income had escaped assessment did not allude to any facts specific to the subject AYs. The approach of the AO in merely adopting and reiterating what was found in the survey undertaken in 2019, without any independent application of mind to the facts that prevailed in the subject AYs, was categorically rejected.

The contention of the Revenue that the AO was justified in proceeding on the basis of assumption that facts emanating in the subject AYs remained unchanged from the years in which survey was undertaken and that the business model had remained unaltered was not sustained by the High Court. Revenue’s reliance on *Raymond Woollen Mills Ltd vs ITO*² in

¹ WP(C) 1196/2022 (Delhi High Court)

² 1997 SCC OnLine SC

support of the proposition that reassessment could be initiated on the basis of assumption of facts was also rejected on the ground that the ratio of the said judgment was being misconstrued and read out of context; the same was rendered on its own facts.

The High Court made reference to the decision rendered in *National Petroleum Construction Co vs DCIT*³ and the *OECD Commentary on Article 5* to hold that whether PE exists in India during a given period is to be determined on the basis of circumstances applicable during that period and not those applicable during a past or future period; such determination is to be done separately for each year on the basis of scope, extent, nature and duration of activities in India.

In absence of the AO recording his *prima facie* opinion in the reasons recorded that a fundamental aspect was pervading through different AYs and that the business model remained unchanged between the year of survey and the subject AYs, the High Court held that the AO was not justified in initiating reassessment proceedings on the basis of survey findings alone. Reference in this regard was also made to the judgment in *CIT vs Gupta Abhushan (P) Ltd*⁴, wherein it was held that a survey report pertaining to a particular tax period cannot *ipso facto* be read as being relevant and binding for other AYs.

VA Comments

The judgment further cements the well-settled law that possession of tangible material giving rise to the belief that income for the subject AY has escaped assessment is a mandatory pre-condition for valid initiation of reassessment proceedings.

Categorical findings of the High Court that findings of survey conducted in a particular AY cannot be extrapolated to other AYs on the basis of assumption of facts are extremely pertinent. The same would act as a significant precedent in similar cases wherein reassessment proceedings are initiated without proper enquiry/ application of mind and only on the strength of material related to some other AY.

The judgment of the High Court insofar as it distinguishes the decision in *Raymond Woollen Mills Ltd (supra)* is also seminal; going forward, the same may be useful to dilute reliance often placed by the Revenue on the said decision to contend that reassessment initiated on assumption of facts is valid and that actual fact finding is only required to be undertaken during the course of reassessment proceedings.

³ (2022) 446 ITR 382

⁴ 2008 SCC OnLine Del 1468

.....
For any further information/ clarification, please feel free to write to:

Mr. Aditya Vohra, Associate Partner : aditya@vaishlaw.com

Mr. Shashvat Dhamija, Junior Associate : shashvat@vaishlaw.com
.....



Corporate, Tax and Business Advisory Law Firm

DELHI

1st, 9th, 11th Floor,
Mohan Dev Building, 13, Tolstoy Marg,
New Delhi, 110001 (India)

+91-11-42492525
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre,
Dr. S.S. Rao Road, Parel,
Mumbai, 400012 (India)

+91 22 42134101
mumbai@vaishlaw.com

BENGALURU

105 -106, Raheja Chambers,
#12, Museum Road,
Bengaluru, 560001 (India)

+91 80 40903588/89
bangalore@vaishlaw.com

DISCLAIMER: The material contained in this publication is solely for information and general guidance and not for advertising or soliciting. The information provided does not constitute professional advice that may be required before acting on any matter. While every care has been taken in the preparation of this publication to ensure its accuracy, Vaish Associates Advocates neither assumes responsibility for any errors, which despite all precautions, may be found herein nor accepts any liability, and disclaims all responsibility, for any kind of loss or damage arising on account of anyone acting / refraining to act by placing reliance upon the information contained in this publication.