KPMG

Tax Flash News

13 October 2023

Even under the new reassessment regime, the tax officer is required to have a new or tangible information to justify that the income has escaped the reassessment

Executive summary

Post introduction of new reassessment regime, the Assessing Officer (AO) has been arguing that with the omission of the phrase 'reason to believe', the requirement that the AO must establish 'escapement of tax' at the stage of assumption of jurisdiction has been done away with. The Madras High Court in the case of IDFC Ltd[1] (the taxpayer) held that the new reassessment regime casts a statutory burden upon the AO to have 'information' suggesting that income chargeable to tax has escaped assessment. If the existence of such information was not established even at the initial stage, the foundation of the proceedings stands vitiated in law. In the instant case, all materials relating to issues sought to be reassessed were placed before the AO at the time of original scrutiny proceedings. There was no new or tangible information with the AO to justify the reassessment. Accordingly, the reassessment notices and proceedings were quashed.

Facts of the case

- The taxpayer filed writ petitions and challenged the reassessment proceedings for Assessment Year (AY) 2014-15 and 2017-18 initiated under the old reassessment regime. The taxpayer contended that the reassessment notices were time barred.
- During the pendency of the writ petition, the Supreme Court in the case of Ashish Agarwal[2] held that the notice issued after 1 April 2021 under the old reassessment regime shall be deemed to have been issued under the new reassessment regime. Accordingly, the tax department initiated reassessment under the new regime.
- The taxpayer filed writ petitions against the reassessment proceedings initiated under the new regime. The taxpayer contended that the time available under the old reassessment regime for AY 2014-15, would normally expire on 31 March 2019 or on 31 March 2021 assuming the maximum period of six years. Thus, the issuance of notice on 30 July 2022 was way beyond the statutory time limit.
- Further for AY 2014-15 and 2017-18, the taxpayer contended that the tax department did not have 'information' as per the risk management strategy formulated by the CBDT to reopen the assessment. All the material in regard to the issues sought to be reassessed had already been supplied to the tax department at the time of original scrutiny assessment.

[1] IDFC Limited v. DCIT (W.P. No. 23284 & 22737 of 2022) (Mad) – Taxsutra.com

[2] GKN Driveshafts (India) Ltd v. ITO [2003] 259 ITR 19 (SC)

High Court decision

- The High Court had not agreed with the tax department's arguments that the new reassessment scheme, with the omission of the phrase 'reason to believe' has done away with the requirement that the AO must establish 'escapement of tax', prima facie, at the stage of assumption of jurisdiction.

- These requirements continues with Section 148 which casts a statutory burden upon the AO to have 'information' suggesting that income chargeable to tax has escaped assessment. If the existence of such information was not established even at the initial stage, the foundation of the proceedings stands vitiated in law.

- For AY 2014-15, there was no averment in the reassessment notice that the 'information' has been received indicating escapement of income attributable to the taxpayer. There was no allegation that any new material has been found justifying a re-look into the matter.

- For AY 2014-15 and 2017-18, all materials relating to issues sought to be reassessed were placed before the AO at the time of original scrutiny proceedings.

- The reassessment proceedings were initiated based on the financial records already available with the AO and that the AO merely refers to the details filed during the original assessment proceedings, without pointing to any new or tangible information to justify the reopening of the assessment.

- The tax department had found only the books of account and material furnished by the taxpayer at the time of original assessment and there was no mention anywhere in the proceedings about an 'asset' representing the income that is alleged to have escaped which is a requirement under Section 149[3].

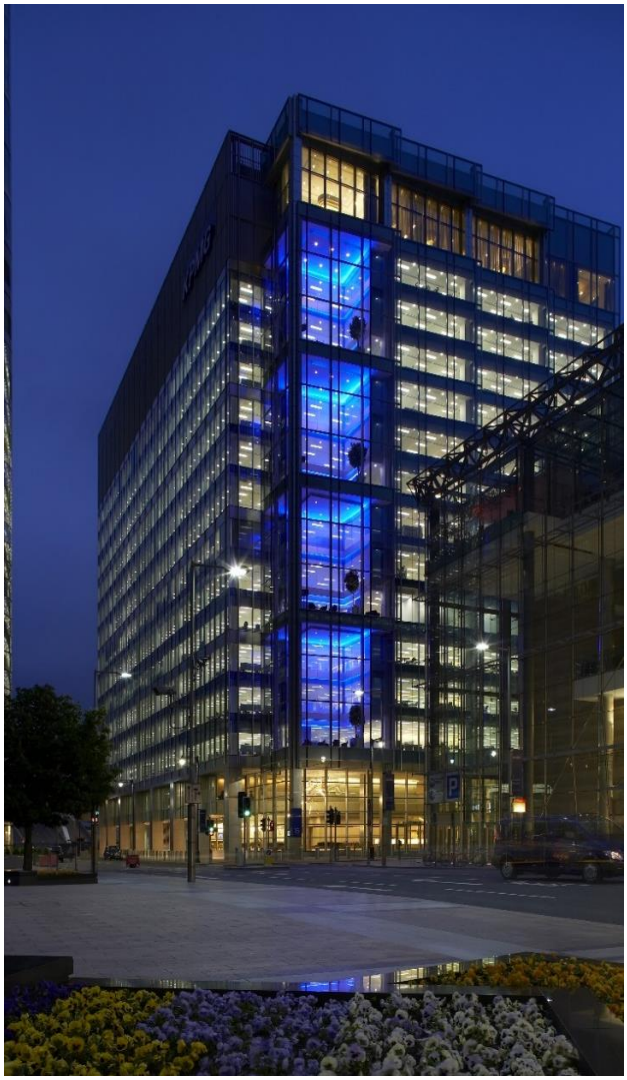
- A profit and loss account does not constitute part of the books of accounts and stated that the books of accounts or other documents held by the AO do not qualify as assets to conclude that income has escaped assessment under Section 149.

- Section 149 amended with effect from 1 April 2022 and now even entries in the books of account could be pressed into service by an officer to initiate reassessment after 3 years. However, the same could not be applied to this case retrospectively.

- Accordingly, the reassessment notices and proceedings were quashed.

Our comments

It is a well-settled principle under the old reassessment regime that the AO must have 'reason to believe' that there was escapement of income from tax to reopen the assessment. The AO was required to establish that there was escapement of income from tax. The Madras High Court, in the instant case, has reiterated this principle under the new reassessment regime and held that the AO should have a new and tangible material to reopen the assessment. The reassessment would not be valid if tax department failed to present any fresh or substantial information to justify the reopening of the assessment.



[3] No notice under Section 148 shall be issued for the relevant AY if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year.

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30 years and beyond

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