

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30.07.2018

+ **W.P.(C) 11324/2017, C.M. APPL.46251/2017**

SKYVIEW CONSULTANTS PVT. LTD.

..... Petitioner

Through : Dr. Rakesh Gupta, Sh. Sonil Agarwal,
Ms. Monika Ghai and Sh. Rohit Kumar Gupta,
Advocates.

versus

INCOME TAX OFFICER WARD 23(4), NEW DELHI AND ANR.

..... Respondents

Through : Sh. Zoheb Hossain, Sr. Standing
Counsel with Sh. Deepak Anand, Jr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. The writ petitioner, which is engaged in consultancy business in the segment of product promotion and sales services marketed by M/s. Seagram's India Ltd is aggrieved by the re-opening of its assessment for A.Y. 2010-11 under Section 148 of the Income Tax Act, 1961 [hereafter "the Act"]. It seeks directions for quashing of the reassessment notice.

2. The facts briefly are that for two previous years – A.Y.s 2007-08 and 2008-09, orders seeking to re-examine the original scrutiny assessments were made under Section 263 and later under Sections 147/148 of the Act, respectively. These attempts to revisit the original scrutiny assessments, (on the allegation that claims for bogus expenditures were made) were unsuccessful and the final orders for the assessment year (A.Y. 2007-08) culminated in the revisional and subsequent remand orders by the Assessing

Officer (hereafter “AO”) finally in the assessee’s favour. The order pursuant to the remand was, in fact, accepted after the appellate Commissioner endorsed that view on 08.05.2014.

3. The reassessment for A.Y. 2009-10 was through a notice dated 30.03.2016 which *inter alia* claimed that upon receipt of a Tax Evasion Petition (TEP), investigation was conducted which showed that for the year ending 31.03.2009, the contract charges claimed were unduly high – ₹24,01,79,349/-. The TEP also alleged that these amounts were distribution of illegal gratifications by the assessee. The reassessment notice proceeded to state as follows:

“5. From the above referred TEP, and report of the ITO (Inv) OSD-1, Unit-3, New Delhi, the modus operandi of the assessee in the AY 2009-10 is same as was in AY 2007-08 & 2008-09. It appears that contractor’s charges amounting to ₹2,41,79,349/- claimed as expenses by the assessee in its profit & loss account pertaining to FY 2008-09 relevant to AY 2009-10 has been used by the assessee for non-business purposes, thus concealing its true income.

6. In this case, Director General of Income Tax (Vigilance) vide their letter No.DIT(Vig)/NZ/2011-12 dated 02.11.2011 (Placed as annexure C) after their detailed enquiry in a complaint case against the then AO of Cir 8(i), New Delhi has also suggested to look into the claim of the expenses, as they are in crores in one year itself, and will have a major impact on revenue, taking into the number of years involved, as the assessee is doing the same business till date.

7. In view of the additional information/documents received from the Investigation Wing, material/documents available on record I have reason to believe that Contractor’s charges shown in its P&L Accounts are bogus and the assessee has willfully and knowingly concealed its particulars of income to

avoid tax and that income of ₹ 2,41,79,349/- chargeable to tax has escaped assessment for AY 2009-10, within the meaning of Section 147 of the Income tax Act, 1961.”

3. On 17.08.2017, the revenue sought to re-open the assessment by issuing notice under Sections 147/148 of the Act, on 27.03.2017, but for A.Y. 2010-11. In response to the assessee's request, the Revenue furnished the reasons for reopening an assessment. This *inter alia* reads as follows:

“2. In fact investigation into the affairs of the company started on receipt of TEP bearing UIN No. 090845052X (Placed as annexure B). As per the TEP received in the investigation wing of the department the said company made collections from their principals i.e. M/s Pernod Ricard India Pvt Ltd. The company further issued accounts payee cheques in the name of various sub-contractors (allegedly bogus entities) in their names and withdraw cash by self cheques from their accounts and distributed cash in Defence canteens as bribes. On the basis of said TEP and other material available on record case of the assessee for the AY 2007-08 was reopened u/s 263 of the Income Tax Act, 1961 and for AY 2008-09 proceedings u/s 147 of the Income Tax Act, 1961 were completed and therein a substantive addition of Rs. 1,60,94,586/- on account of disallowance of subcontracting expenses. Further the case of the assessee company for A.Y. 2009-10 was also reopened on the similar grounds however the matter for this year is sub-judice with the Hon'ble Delhi High Court are currently in progress.

3. On perusal of P&L for the year ending 31.03.2010 received along with above quoted letter of ITO (Inv) OSD-1, Unit-3, New Delhi the assessee is showing Consultancy Income of Rs. 3,31,14,209/- and expenses on account of Contractor's charges amounting to Rs. 3,07,95,559/- and has shown net income only at Rs. 3,10,336/-. It was alleged in the TEP that for the A Y 2007-08 & 2008-09 the contractor charges being

claimed by the assessee is the bribe amount distributed by the assessee.

4. ITO (Inv) OSD-1, Unit-3, New Delhi in his findings has stated that the assessee was provided opportunity to explain the expenses and to provide the necessary details which were called for vide summons u/s 131 (1A) dated 04.03.2015 so that independent enquiries could be conducted from the third parties. As per his report the assessee has neither provided any justification with documentary evidence nor the details of the parties to whom the contract charges were paid.

5. From the above referred TEP, and report of the ITO (Inv) OSD-1, Unit-3, New Delhi, the modus operandi of the assessee in the A Y 2010-11 was same as was in A Y 2007-08, 2008-09 & 2009-10. It appears that contractor's charges amounting to Rs. 3,07,95,559/- claimed as expenses by the assessee in its profit & loss account pertaining to FY 2009-10 relevant to A Y 2010-11 has been used by the assessee for non business purposes, thus concealing its true income.

6. In this case Director General of Income Tax (Vigilance) vide their letter No.DIT(Vig)/NZ/2011-12 dated 02.11.2011 (Placed as annexure C), after their detailed enquiry in a complain case against the then AO of Cir 8(1), New Delhi has also suggested to look into the claim of the expenses, as they are in crores in one year itself, and will have a major impact on revenue, taking into the number of years involved, as the assessee is doing the same. Business till date. Further in the letter of the office of Joint, DIT(Vigilance), North Zone-II, New Delhi has specifically give remark as under for the A.Y. 2010-11:-

"Make a proposal to the concerned CIT to take-up the case of M/s Skyview Consultants Pvt. Ltd. for A. Y. 2010-11 under scrutiny and issue directions for proper examinations of the charge in business pattern & purchases made during the year.

It may also be suggested that the reason for "NIL" closing stock as on 31.03.2010 be also examined."

7. *In view of the additional information/documents received from the Investigation Wing and O/o DGIT (Vigilance), New Delhi material/documents available on record I have reason to believe that Contractor's charges shown in its P&L Accounts are bogus and the assessee has willfully and knowingly concealed its particulars of income to avoid tax and that income of Rs.3,07,95,559/- chargeable to tax has escaped assessment for A.Y. 2010-11, within the meaning of section 147 of the Income tax Act, 1961."*

4. The petitioner assessee objected to the re-opening of its assessment for A.Y. 2010-11. It relied importantly upon the fact that its challenge to the opening of reassessment for A.Y. 2009-10 was *sub judice* and pending before this Court in W.P.(C) 10507/2016 – *Sky View Consultants Pvt. Ltd. v. Income Tax Officer*. It pointed out that on 07.09.2016, this Court had decided the cases and had allowed the petition, ruling that information relating to one A.Y. was not relevant for another A.Y. Besides quoting the decisions, it relied upon the assessee objecting to omission by the AO to refer to the previous orders for A.Y. 2007-08 which had gone into the same aspects to suspect expenditure. It was also stated that no changes were forthcoming and that revisiting sole issues did not constitute a valid ground for invoking the power of reassessment under Sections 147/148. In fact, the mechanical citing of same reasons vitiated and rendered invalid the impugned notice under Section 147. The other grounds, such as failure to mention the fact that though there was mention of substantive addition of ₹ 1,60,94,586/- for A.Y. 2008-09 that was subject matter of an appeal, that relevant facts were not intentionally considered. The assessee complained that re-opening besides

being the result of a mechanical exercise, appears to be on the basis of directions of higher authorities.

5. These objections were rejected, therefore, the assessee has approached this Court. Dr. Rakesh Gupta, the learned counsel submitted that it is settled law that the information which forms the basis for reassessment notice should have a live link or nexus to the assessment order in question. This resort to information in respect of another year was an entirely irrelevant factor. It was stressed that though Section 147 states broadly that the power can be resorted to for any assessment, it is in the context of a particular assessment year that it is always sought recourse to. Citing *CIT v. Gupta Abhushan (P) Ltd.* 2009 (312) ITR 166 (Del), it was submitted that not picking certain expenditures for one given year did not *per se* establish that such expenses were not spread over three previous years. It was emphasized that the expression “reasons to believe” have to explain only the concurred facts and do not amount to “reasons to suspect”. Citing *ITO v. Lakhmani Mewal Das* 1976 (103) ITR SC 437 (SC), it was argued that the AO should have specific information to show that particular transactions relied upon were not genuine. It was stated that merely because certain accounts of expenditure were disallowed to the extent of 5% in a given previous year *per se* did not constitute a valid reason for reopening of assessment. It cannot be a matter of surmise or guesswork, but has to be based upon specific evidence. Reliance was placed on the assessment for AY 2007-09 order made pursuant to remits after revision to say that the final order, endorsed by the CIT nowhere indicated that similar expenditure was not genuine. This constituted ‘material available’, but was deliberately avoided by invoking power of reassessment under Section 148.

6. In its counter affidavit, and during oral arguments, the revenue, through its counsel, Zoheb Hossain argued that the present controversy arose because of a TEP by the revenue contending that the assessee was engaging in claiming bogus expenditure on account of sub-contractors in its books. It was also alleged that the amount so booked was later withdrawn in cash and used for payment of bribes. Significantly, a complaint was also received against the particular assessing Officer who conducted the assessment proceedings for A.Y. 2007-08, wherein the bogus expenditure was allowed. It was emphasized that the application of mind by the revenue was at two levels- i) by the Investigation Unit on the contents of the TEP by issuing summons to the assessee and providing it an opportunity to establish the genuineness of the said expenditure; and ii) by the AO in the present case who did not blindly follow the recommendation of the investigation unit but considered the facts of the relevant period. It is highlighted that in the reasons for reassessment, the AO noted that assessee was showing consultancy income of ₹ 3,31,14,209/- from its single client Pernod Ricard and had debited an amount of ₹ 3,07,95,559/- as sub-contractor charges and returned an income of ₹ 3,10,336/- only. The counsel distinguished the reasons which persuaded this court to quash reassessment proceedings for AY 2009-10 urging that the reasons on which this Court was constrained to pass the said order do not exist in the factual matrix for the relevant period. Learned counsel emphasized that in the present case the AO did not blindly follow the investigation unit's recommendation or the assessment order for A.Y.2008-09 but rather examined that material in light of the facts of the relevant period that the assessee was showing consultancy income of ₹ 3,31,14,2091/- from its single client Pernod Ricard and has debited an

amount of ₹ 3,07,95,5591- as sub- contractor charges and returned an income of ₹ 3,10,3361- only. Therefore, the live nexus missing in A.Y. 2009-10 is present in the present case. Counsel pointed out, moreover, that the AO who had passed the assessment order for the A. Y. 2008-09 was the same person who recorded the reasons for reopening of the case for the A.Y. 2010-11. After detailed enquiry and receipts of information called for under Section 133(6), the assessment was concluded, on remand after revision, with a resultant addition of ₹ 1,60,94,586/- on account of sub-contracting expenses. Therefore, on the date of recording the reasons AO had sufficient and tangible material on the file as the assessee company was following the same pattern of business.

7. The revenue submits that there is anything on record which shows that summons were issued by the ITO (Investigation) as claimed by the assessee. The letter dated 23.03.15, ITO (Inv.), OSD-1, Unit-3, New Delhi mentioned that "*after getting approval of the Addl. DIT(Inv.), Unit-3, summon u/s 131(1A)*" was issued on 04.03.15. However, *ipso facto* this did not establish that such summons was issued. It is also urged that the revenue has sufficient material to reassess the petitioner's affairs as regards the claim of bogus expenditure. Reliance is placed on the judgment of *Phool Chand Bajrang Lal v. ITO* (1993) 203 ITR 456 (SC).

8. The disputed reassessment notice, according to the petitioner/assessee is based upon stale material, which does not have a "live link" with the original assessment and at best only points to suspicion and conjectures with respect to bogus business expenditure, but does not point to tangible fresh material. The assessee relies on unsuccessful attempts by the revenue, for past assessment years to re-open concluded scrutiny assessments, notably

2007-08 and 2008-09, on virtually the same grounds. It is also highlighted that these unsuccessful attempts, though a matter of record, and pointedly referred to in its objections, was studiously ignored when the reassessment notice was issued. Lastly, it was argued that even the revised assessment for previous years, on the same ground, resulted in insignificant additions, thus implying that the expenses were genuine.

9. The note recommending reassessment, in this case, through a letter dated 23.03.2015 *inter alia*, the ITO (Inv) – to the Deputy Commissioner of Income tax, stated as follows (after referring to the previous assessment, revision, addition and reduction of the amounts added by the CIT, and the reassessment for A.Y. 2009-10, and that the assessee was asked to explain its position on the expenditure for A.Y. 2010-11):

“The assessee forwarded his submission vide letter dated NIL on 18-03-2015 through a messenger Sh. Pankaj Kumar which is placed on the record. In this submission it is submitted that the assessee is working for a single client M/s Pernord Ricard India P. Ltd. And the agreement with them was terminated w.e.f. 31-03-2010 and since then there is no operation in the company. The assessee has not given the details called at point no. 2-5 above. The assessee has simply stated that the company used to get some job work carried out by various contractors/sub-contractors and the entire payment has been made through account payee cheques.

It is also submitted that in assessment year 2007-08 the AO after recording the statements of 5 contractor parties made 5% disallowance and added an amount of Rs. 8,03,431/-. This case was re-opened u/s 263 of the IT Act and the assessee has filed an appeal before the ITAT against the order of the CIT u/s 263 which is pending for disposal. A fresh assessment was made u/s 143(3)/263 on 28-03-2013 in which disallowance was increased to 7% as against 5% by earlier order. The CIT(A) vide order dated 08-05-2014 has reduced the disallowance to 5% of the reimbursement expenses. The assessee has also filed copy of the

ITR and balance sheets for the AY 2008-09 to 2014-15 based on which the following chart is prepared

<i>Particulars/assessment year</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
<i>Total turnover</i>	<i>2,22,40,233</i>	<i>2,14,37,482</i>	<i>2,70,24,069</i>	<i>3,31,14,209</i>	<i>0</i>
<i>Contractor</i>	<i>2,00,99,268</i>	<i>1,89,34,807</i>	<i>2,41,79,349</i>	<i>3,07,95,559</i>	<i>20,50,130</i>
<i>Net income as per P&L account</i>	<i>6,90,424</i>	<i>10,78,485</i>	<i>13,44,742</i>	<i>3,10,336</i>	<i>(-)20,11,551</i>

From the above table it seems that from assessment year 2007-08 to 2010-11 the assessee had the same pattern of business.

FINDINGS & RECOMMENDATION

In order to verify the allegations of bogus expenses claimed under the head "contract charges" claimed in the P&L account, the assessee was asked to provide opportunity to explain the expenses and to provide the necessary details which were called for vide summons u/s 131(1A) dated 04-03-2015 so that independent enquiries could be conducted from the third parties. The assessee has neither provided any justification with documentary evidence nor the details of the parties to whom the contract charges were paid. Mere claim that the payments were made to the contractors through account payee cheque does not prove the genuineness of the transaction and also the identity of the person to whom the payments have been made as claimed under the head contract charges.

In view of the above facts of the case, the assessee did not discharge its onus to prove the genuineness of the expenses claimed under the head contract charges, therefore, I am directed to forward the TEP to you with request to take necessary remedial action u/s 147 of the IT Act for assessment year 2008-09 to 2011-12.

This issues with the approval of the Principal Director of Income Tax(lnv)-I, New Delhi."

An interesting feature is that the assessee had appealed the CIT's decision, under Section 263, for AY 2007-08. The ITAT, in the appeal (ITA

No.2158/Del/2012) held that the assessee did not conceal any particulars, and that

“We find that the AO has made assessment after issuing summons to five parties to whom reimbursements were made. During the assessment proceedings, the AO recorded statements of the above persons, who also filed their computation of incomes and copies of income tax returns and other relevant records to prove that they had genuinely received the payments. The above documents obtained by the AO during original assessment proceedings are placed in PB 98 to 158 and further at PB 225 to 230. All these documents highlight the existence of agreement between these persons and the assessee. The documents further prove that the payments were made to these persons and taxes were duly deducted thereon. These documents further show that the contractors had declared the income received from the assessee in their returns of income. The statements recorded by the AO of these persons clearly show that the AO had examined them sufficiently to ascertain the authenticity and genuineness of the expenses. Therefore, it is not a case where there were no enquiries. It is not a case of lack of enquiry as the AO had made sufficient enquiries. The various Courts has distinguished the cases of inadequate enquiries & lack of enquiries.”

In fact, the CIT (A) who reduced and set aside the disallowance of 7% over the previous disallowance also observed as follows:

It is observed that all the payments (both fixed as well as reimbursement) were subject to TDS and the contractors have already shown these payments as their receipts in their income tax returns. Moreover, the AO had already examined these persons u/s131 of the Act and they have admitted the services rendered by them to the appellant and the receipt of payments in lieu of their services. Considering the nature of business and the evidences/witnesses produced by the appellant before the AO, there remains no valid ground for making further

disallowance of Rs.3,21,371/- out of total payments made under the head 'Contractors Reimbursement Expenses'. A reasonable view by disallowing such expenses @ 5% taken by the AO in the original assessment order and which was acceptable to the appellant due to his personal conditions, is justified and no further disallowance is called for. The disallowance of Rs. 3,21,371/- made by the AO is directed to be deleted.”

10. In W.P.(C) 10507/2016, which was allowed by this Court on 07.09.2017, it was held that:

“11. In the present case, the fact that the assessment order passed after the re- opening of the assessment for AY 2008-09 may have found the entities to whom the Petitioner issued cheques to be fictitious cannot be looked into for the simple reason that it was an order passed 21 days after the reasons in the present case were recorded for re-opening of the assessment for AY 2009-10. In any event, this will not answer one of the principal grounds urged by Dr. Gupta that the tangible material that is required to be shown for justifying the re-opening of assessment has to be relevant to the AY in question, i.e. AY 2009-10.

12. In Commissioner of Income Tax v Gupta Abhushan (P) Ltd. [2009] 312 ITR 166 (Del), it is emphasised that information relating to one AY will not automatically become relevant for re-opening the assessment for another AY. If that would be the position, then the re-opening would be only on the basis of suspicion and not 'belief'. This decision in fact reiterated what was earlier explained by the Bombay High Court in Ramakrishna Ramnath v Income Tax Officer [1970] 77 ITR 995 (Bom).

13. There is no answer by the Revenue to the Petitioner's contention that the TEP pertained only to two FYs and therefore only corresponded to two AYs, i.e. AY 2007-08 and 2008-09. Further, it is not disputed that the original assessment

order for AY 2007-08 was passed by the AO on 11th December, 2009. It was re-opened by the CIT (A) by the order dated 28th March 2012 under Section 263 of the Act. This resulted in a further assessment order dated 28th March 2013 by the AO under Section 143 (3) read with Section 263 of the Act. Only 7% of the 'contractor's expenses' was disallowed and added back. Therefore, even for AY 2007-08, the TEP did not result in adding back the entire amount. The decision in *AGR Investments Ltd v Additional CIT* (supra) only lays down a general proposition regarding assessments being reopened on the basis of reports of investigation. It does not obviate the need to show that there is tangible material relevant to the AY in question that warrants reopening of the assessment for that particular AY.

14. More importantly, it is not understood how despite being aware of the above orders pertaining to AY 2007-08, the AO in his reasons for reopening the assessment for AY 2009-10 did not refer to them while recording his reasons on 10th March 2016. Clearly this was an instance of non-application of mind by the AO to the relevant material. Since the AO failed to justify his reasons to believe that income has escaped assessment for AY 2009-10 on the basis of the TEP pertaining to AY 2007-08, it was all the more important for the AO to refer to all the subsequent developments in relation to reopening of the assessment for AY 2007-08.

15. As already pointed out hereinabove, the Revenue has no answer to the submission that the entire exercise undertaken by the ITO (Inv.) was without jurisdiction. Which is why in the counter affidavit filed in the present writ petition, the stand taken by the Revenue is that it is not the only reason for re-opening the assessment. The fact remains that it could not form tangible material for re-opening the assessment. The fact remains that the power under Section 131 (1A) can be exercised only by officers named therein and they are all officers in the Department superior to the ITO. If the ITO had to exercise the powers under that provision, he had to be duly authorized to do so. He clearly was not and, therefore, the

reports submitted by him could not have formed the valid basis for re-opening the assessment.

16. The third material referred to in the reasons for reopening the assessment, is the investigation undertaken by the DGIT (Vigilance) into the conduct of the erstwhile AO of the Petitioner. A perusal of the letter dated 2nd November 2011 written by the Director (Vigilance) to the DGIT (Vigilance) does not throw any light on any material relevant to AY 2009-10. In fact, the concluding paragraph of the said letter a request is made for reopening of the assessment for the AY 2007-08 by invoking Section 263 of the Act. This explains why that route was resorted to for AY 2007-08.

17. This Court is therefore satisfied that the jurisdictional requirement for reopening of the assessment for AY 2009-10 has not been fulfilled in the present case. Consequently, the notice dated 29th March 2016 issued by the AO under Section 148 of the Act as well as the consequent order dated 4th July 2016 of the AO rejecting the Petitioner's objections, are hereby quashed”

11. The revenue’s explanation to distinguish the facts of the present case, from those in A.Y. 2009-10 which was dealt with in the earlier proceeding, in this Court’s opinion, is specious and unconvincing. The AO has mechanically followed the investigation unit's recommendation for A.Y.2008-09. The examination was of material in light of the facts of the relevant period that Petitioner is showing consultancy income of ₹ 3,31,14,2091- from its single client Pernod Ricard and has debited an amount of ₹ 3,07,95,5591- as sub-contractor charges and returned an income of ₹ 3,10,3361/- only. However, though the letter from the Investigation unit mentioned that the suspicion of bogus expenditure was later dealt with in revision and the addition was revised to only 5% disallowance, the notice

recording reasons to justify the reopening of assessment for AY 2010-11 willfully omits to note that. Furthermore, the order of ITAT in the assessee's appeal, for the previous year, which had been reassessed, in fact found that the AO had called the concerned sub-contractors, who had disclosed the amounts received from the present assessee, in their returns.

12. No doubt, each assessment year is to be seen differently; however, the note from the investigation unit talks of a *pattern of expenditure claims over a five-year period*. Three of those years were dealt with; the assessee emerged unscathed. Given these circumstances, this is clearly a case where the revenue is attempting to fish from the same stale pond, when it dipped into the TEP as the basis for the investigation, to suddenly discern a *pattern of suspect or bogus expenditure*.

13. The decision in *Phoolchand Bajrangi* (supra) pertinently stated that:

"From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under Section 147 (a) read with Section 148 of the Income-tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information."

In *Gupta Abhushan (supra)*, in respect of a similar reassessment notice, which relied on a survey conducted after the concerned assessment period, the reopening of assessment under Sections 147/148 was quashed; the Court observed that:

“Here too, we note that the survey was conducted on 07.03.2002, which falls in the year subsequent to the three years in question in these appeals. The fact that the renovation expenses had not been booked in that year, i.e., financial year ending on 31.03.2002 does not by itself indicate that renovation work had been carried on in the earlier three years and, if so, the expenses in respect of the same had not been booked. The conclusion of the Assessing Officer, based on what was noticed in the course of the survey, cannot be extrapolated to other years. The purported belief of the Assessing Officer, on this aspect of the matter, was not a belief at all but was merely a suspicion. Such suspicion cannot take the place of a belief and that too a belief which is based on reasons.”

14. In this case, the trigger for all the reassessment attempts by the revenue was the same TEP, which led to previous attempts to re-open completed assessments. The material on record show that the AO had conducted inquiries at the time of completion of the original assessments. There is nothing to show that the entities to whom payments were made (by the assessee) were fictitious; in fact TDS amounts were apparently deducted. There was no fresh evidence supporting the reassessment. Consequently, there was no tangible, specific material to justify the impugned reassessment notice.

15. For the above reasons, this petition has to succeed. The impugned reassessment notice dated 30.03.2016 and all further proceedings are hereby quashed. The petition is allowed in these terms; without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JULY 30, 2018

सत्यमेव जयते