

Bombay High Court Quashes Reopening Notices Based on Borrowed Material from DRI and Justice M.B. Shah Commission Report

Highlights:

- The Bombay High Court held that the reasons for reopening assessments based on borrowed material from DRI authorities cannot be considered as tangible material having a live link for forming an independent opinion by the Assessing Officer (AO).
- The Court also held that the third report of the Justice M.B. Shah Commission contains merely an expression of opinion and lacks finality and authoritativeness, and cannot be the sole basis for forming a prima facie belief by the AO without any independent material.
- The Court observed that the AO failed to record independent reasons to their own satisfaction for reopening the assessments, apart from borrowing information from the Justice M.B. Shah Commission report.
- The Court also noted that the illegality of mining leases beyond 2007 was not known to the AO until the Supreme Court's decision in 2014, and claiming that the assessee failed to disclose this fact while filing returns for AY 2009-10 would not arise.
- The Court quashed the impugned reopening notices and the orders rejecting the objections, deciding in favor of the assessee.

Detailed Analysis:

1. Reopening Based on Borrowed Material from DRI:

- The Court held that the reasons for reopening assessments based on borrowed material from DRI authorities cannot be considered as tangible material having a live link for forming an independent opinion by the AO.
- The Court emphasized that such material, without the application of mind by the AO, could not have been directly borrowed and used.

2. Justice M.B. Shah Commission Report:

- The Court relied on a coordinate bench decision that held that the third report of the Justice M.B. Shah Commission contains merely an expression of opinion and lacks finality and authoritativeness.
- The Court observed that the AO, except for borrowing information from the Commission's report, failed to independently record any reason to their own satisfaction for reopening the assessments.

3. Failure to Disclose Illegality of Mining Activities:

- The Court noted that in some matters, it was claimed that the assessee failed to fully and truly disclose that mining activities beyond 22.11.2007 were illegal.
 - However, the Court pointed out that the Supreme Court's decision in Goa Foundation v. Union of India, which held that mining leases beyond 2007 were illegal, was passed only in 2014.
 - The Court distinguished between the illegality of leases and carrying out business activities assuming the leases existed, and observed that the illegality of leases beyond 2007 was not known to the AO until the Supreme Court's decision in 2014.
- 4. Twin Conditions Not Satisfied:**
- The Court held that the notices issued for reopening and assessment in all these matters failed to satisfy the twin conditions required for reopening assessments.
 - The Court opined that the AO could not have exercised jurisdiction for reopening assessments that were concluded way back.

Conclusion:

The Bombay High Court quashed the impugned reopening notices and the orders rejecting objections, holding that the reasons for reopening assessments based on borrowed material from DRI authorities and the Justice M.B. Shah Commission report cannot be considered as tangible material for forming an independent opinion by the AO. The Court also observed that the illegality of mining leases beyond 2007 was not known to the AO until the Supreme Court's decision in 2014, and claiming that the assessee failed to disclose this fact while filing returns for AY 2009-10 would not arise. The Court decided in favor of the assessee, emphasizing the need for the AO to independently record reasons for reopening assessments.

Implications/ Tax Management:

1. **Independent Reasons for Reopening:** Assesseees should note that the AO must independently record reasons to their own satisfaction for reopening assessments, and cannot solely rely on borrowed material or reports from other authorities or commissions.
2. **Tangible Material with Live Link:** The reasons for reopening assessments must be based on tangible material having a live link for forming an independent opinion by the AO. Borrowed material without the application of mind by the AO cannot be directly used.
3. **Disclosure of Facts:** Assesseees cannot be expected to disclose facts that were not known or established at the time of filing their returns. The illegality of certain activities or transactions declared by judicial decisions subsequent to the filing of returns cannot be a ground for claiming non-disclosure by the assessee.
4. **Challenging Reopening Notices:** Assesseees can challenge reopening notices if the AO fails to satisfy the twin conditions required

for reopening assessments or if the reasons for reopening are based on borrowed material without independent application of mind.

5. **Limitation Period:** Assesseees should be aware of the limitation period for reopening assessments and can contest reopening notices issued beyond the prescribed time limits, especially when the AO lacks independent reasons for reopening.

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