

New evidence, materials must to reopen Income-tax assessments: High Court

The Income-tax department cannot reopen an assessment on the sole basis of a change in the opinion of its officers, the Bombay High Court has said in a significant judgement. New materials and evidence are pre-requisites to reopen assessments, the court has said. The high court order was given in early July on an appeal filed by Rabo India Finance after it received a notice in March 2011 reopening earlier Income-tax assessments.

"We have come to the conclusion that the re-opening of the assessment is based only on a mere difference of opinion. It is admittedly not on the basis of any new material or the existence, or even the realisation of any provision of law or a judgement which had not been noticed earlier," said the division bench of the high court comprising Justice SJ Vazifdar and Justice M S Sanklecha.

In this case, the Income-tax department claimed that its decision was based on a 2007-08 assessment that the parent company Rabo International had not rendered any substantial services to its associated enterprise in India.

The department claimed that the 2004-05 assessment of Rabo India needs to be reopened and the expenditure incurred by the Indian company as payment to its parent company needs to be disallowed.

The court pointed out that the taxpayer company had produced all the relevant material to the assessing officer, during the 2004-05 assessments. The material relied upon by the assessing officer in 2007-08 was not different from the one submitted to him in 2004-05.

Therefore, this is a case of plain and simple change in the opinion, the division bench observed. "This is a welcome decision by the Bombay High Court, which reiterates the principle that the "reason to believe" that income has escaped assessment should not be arbitrary or irrational, but based on relevant and material reasons," KPMG, in its note on the issue, had said.

Case for Review

The HC order was given in early July on an appeal filed by Rabo India Finance after it received a notice in March 2011 reopening earlier I-T assessments.

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(Economic Times)