VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
MAY 2015

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Addition made solely on the basis of a disclosure and without any incriminating material is not sustainable if facts show that disclosure was under duress

Issue under consideration

Whether disclosure made by the assessee post consequent search proceedings is valid without being based on incriminating material, whether is was voluntary is view of the coercive circumstances of the search and whether additions can be made on the basis of such disclosure during in a search assessment u/s 153A which is meant for assessment of undisclosed income consequent to search proceedings?

The ruling of the Court

The court proceeded to infer the facts of the case, held as follows:

- The fact that the DDs belonging to the assessee were held in restrain and then released post deposit of advance tax has not been controverted by the department. Relevant restraint orders were also placed on record.
- Further, the multiple search and survey proceedings conducted on the premises of the assessee and the freezing of liquid funds of the assessee also inclines towards possibility of an involuntary disclosure to purchase peace of mind by the assessee.
- Undue pressure for disclosure was consistently built on the assessee.
- No reference to any undisclosed income of the assessee has been made by the department
- The statement of oath of the assessee is not material if obtained under coercion, pressure or harassment.
- Additions cannot be made solely on the basis of disclosures made by the assessee. There is no reference to impugned additions being based on any worthwhile incriminating material or evidence except raising some suspicions. The sole basis of additions in both cases is proposed to be the disclosure. The additions made are not as a result of any material found during the course of search, in view thereof impugned additions cannot be sustained.
- Therefore, there is a clear inference that the disclosure was involuntary.

Inference

This decision would be relevant in curbing undue pressure applied by the income tax authorities during search and survey proceedings. The decision also proves that it is highly erroneous to assume that payment of tax by way of an advance tax installment by the assessee during the survey concludes undisclosed income of the assessee. Merely because tax is paid by the assessee during the search proceedings, it is not justified to assume that undisclosed income has been earned in the absence of any material evidence to this effect.

Source:

Shri Basant Bansal vs. ACIT, Central Circle, Alwar

ITAT, Jaipur ITA No. 748/JP/2012 dated 31-05-2015

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No disallowance under section 40(a)(ia) called for when TDS not deducted but declaration in Form 15-I filed.

Issue under consideration

Whether TDS was liable to be deducted on payments made to truck owners and whether addition can be sustained when the payee in receipt of income has already paid the tax?

The ruling of the Court

- There is no doubt that the assessee in this case has made the payments as transportation charges in the nature of hiring charges for goods carried vehicles and the provisions of section 194C are clearly applicable.

- As requisite declarations have been filed in the case under review but the same have not been produced during the assessment proceedings, the assessee shall provide all the details to the AO with regard to the recipients of the income and taxes paid by them including the Forms 15-I received by him.
- The Assessing Officer shall carry out necessary verification in respect of the payments and taxes of such income and also filing the return by the recipient.
- The AO shall examine whether the same are in order, to that extent the assessee should not be treated to be in default.
- Appeal allowed on statistical grounds.

Inference

Second proviso to section 40(a)(ia) was inserted by FA 2012 to rectify the unintended consequence of disallowance in the hands of the payer even if the payee has paid tax. It is curative and retrospective in operation. When requisite declaration in Form 15-I has been obtained, addition made on non-deduction of TDS cannot be sustained.

Source:

Ballabh Das Agarwal vs. ITO

ITAT, KolkataI.T.A. No. 1278/KOL/ 2011 dated 22-05-2015

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Income from letting out of Properties chargeable under the head 'profits and gains of business or profession'

Issue under consideration

If letting out of properties was the business of the taxpayer, then its income would be chargeable to tax under the head 'profits and gains ofbusiness or profession' or 'income from house property'?

The ruling of the Court

- The SC observed that according to the taxpayer's memorandum of association,it held the stated properties and letting them out was the main objective. The entire income earned

by the taxpayer was from the letting out of the said properties. No other income was earned by the taxpayer.

- The SC placed reliance on its decision in the case of Karanputra Development Co. Limitedwherein it had held that the deciding factor was not the ownership of land or leases,but the nature of the activity of the taxpayer and the nature of the operations in relation to the same. The objectives of the company must also be kept in view to interpret the activities of the company.
- The income earned by the taxpayer byletting out of its property was taxable as business income. While arriving at the conclusion, the SC took into account the position in law held by various Courts that the dividing line was difficult determine; but in the case of a company with its professed objects and the manner of its activities and the nature of its dealings with its property, it was possible to say on which side the operations fell,and to what head the income was to be assigned.

Inference

This decision would be relevant in determining the characterization of a particular income; the SC has emphasized that for income to be characterized as 'business income', the activities actually carried out by the taxpayer need to be in line with its main object according to its constitution documents.

Going by the recent trend of judicial precedents, the judicial authorities have shown acceptance of the fact that ownership of property and leasing it out may also be done as a part of a 'business' apart from doing it as a mere 'owner'.

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Conversion of outstanding interest into a loan does not amount to an "actual payment" of the interest and so deduction for the interest cannot be claimed

Issue under consideration

Whether the funding of the interest amount by way of a term loan amounts to actual payment as contemplated by Section 43B of the Income-tax Act, 1961?

The ruling of the Court

- Conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of Section 43B of the Act. Explanation 3C squarely covers the issue raised in this appeal, as it negates the assessee's contention that interest which has been converted into a loan is deemed to be "actually paid".
- In light of the insertion of this explanation, which, as mentioned earlier, was not present at the time the impugned order was passed, the assessee cannot claim deduction under Section 43B of the Act.

Inference

Explanation 3C to section 43B clarifies that deduction of any sum, being interest payable under clause (d) of Section 43B of the Act, shall be allowed if such interest has been actually paid.

Any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid. Thus, there is no doubt that deduction on this account cannot be claimed by the assessee.

Source:

CIT vs. M. M. Aqua Technologies Ltd.

Delhi High Court, ITA 110/2005 dated 18-05-2015

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TDS on Payments to Transporters- Amendment to Section 194C w.e.f. June 1, 2015

Section 194C of the Income Tax Act, 1961 prescribes that any payment to a contractor is subject to a Tax Deduction at Source (TDS) at the rate of 1% in case of individual/HUF payees and 2% in the case of othersif such payment exceeds Rs. 30,000 per contract or aggregate of such payments of contracts in a financial year exceeds Rs. 75,000.

The new provision of Section 194Cw.e.f. 01-06-2015, as was informed earlier at the time of the Union Budget, restricts the cases for non-deduction of tax. Non deduction of tax will be available only for small transport operators owning not more than 10 goods carriages. Therefore, if the transporter is owning more than 10 goods carriage at any time during the year, then TDS will be liable to be deducted at the time of paying charges to goods transporter at the rate of 1% or 2% as applicable except in cases where such contractor has furnished a declaration.

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New ITAT Rules for Filing Appeals and Seeking Adjournment

ITATMumbai vide order dated 20-05-2015 has issued new rules with respect to applications for adjournment, requiring them to be filed atleast three weeks in advance, in duplicate and the copy served in advance on the opposite party. In exceptional cases where application is filed beyond such period, reasons for the delay are required to be stated in the application. Further, application is to be supported by an affidavit of the party seeking adjournment and to clearly state the grounds on which adjournment sought.Text of the order is reproduced as under:

"All applications for adjournment shall be filed atleast three weeks in advance, except in exceptional cases for which reasons for filing them beyond that period shall be clearly stated in the application. The application will be filed in duplicate and the copy served in advance on the opposite party. In case the opposite party writes "not opposed" on the application, it shall be taken up in Chamber, otherwise, all applications shall be listed before the Court along with the case. All applications shall clearly state the grounds on which adjournment is sought and shall be supported by an affidavit of the party seeking adjournment."

The rule comes to effect a week after the tribunal had required filing of an index indicating the documents filed and the paper book to be paged in continuation:

"Henceforth all appeals filed in the Tribunal by the Department or assessee shall contain:(a) Index sheet clearly indicating the documents filed.

(b) Appeal paper book shall be paged in continuation."

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Disclosure norms in Income Tax Returns revised and due date of filing of return extended

The Ministry of Finance has issued a press release dated 31-05.2015 stating that Income Tax Return Forms ITR 1, 2 and 4S have been simplified for convenience of the tax payers. A number of controversial topics such as the requirement to give details of foreign trips or expenditure thereon have been dispensed with. It is also stated that as the software for these forms is under preparation and are likely to be available for e-filing by 3rd week of June 2015, the time limit for filing these returns is also proposed to be extended up to 31st August, 2015. A separate notification will be issued in this regard.

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CBDT issues a Circular for Early and Satisfactory Resolution of Taxpayers' Grievances Relating to Verification and Correction of Tax Demand Outstanding against them.

In order to speedily and accurately resolve grievances relating to outstanding demand of an assessee', circular no. 8 of 2015 has been issued by the CBDT on 14.05.2015 wherein a comprehensive mechanism has been detailed with regards to various steps to be taken by the taxpayers to view and submit their response with regard to their outstanding tax demand.

The Circular elucidates the range of facilities available and the responsibilities of the Assessing officers to verify and take corrective actions. Demand up to Rs. 1,00,000/- for an Assessment year in case of an Individual or HUF which has already been paid but is shown as outstanding due to mismatch etc. can be rectified on the basis of evidence of tax paid as submitted by the taxpayer.

The outstanding tax demands can be viewed on the e-portal of the income tax department at www.incometaxindiaefiling.gov.in by logging into the e-filing account of the tax payer. On the dashboard, the assessee is to select 'My Pending Actions' or select 'Response to Outstanding Tax Demand' in the e-File. Thereafter, the period of demand, amount of demand outstanding, details of any previous responses submitted, status of such responses can be viewed. The assessee may either agree with or dispute the demand.

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NSDL revises PAN & TAN application fees W. e. f. June 1, 2015

NSDL has with effect from June 1, 2015, revised the fee for PAN & TAN applications as under:

1. For dispatch of PAN card in India:- Rs. 106 (inclusive of service tax).
2. For dispatch of PAN card outside India:- Rs. 985 (inclusive of service tax).
3. For TAN applications:- Rs. 63 (inclusive of service tax)

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