Controversies

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When there is mismatch between income as per 26AS statement and income as per books of account whether addition can be made as undisclosed income ?

Issue:

For the A.Y. 2013/14 –As per 26AS statement income of assessee stated is Rs 1,00,000 and TDS is Rs 10,000. As per books of accounts this income is not disclosed but TDS is claimed at Rs 10,000. The A.O. is of the view that this income of Rs 1,00,000 has to be taxed as undisclosed income as assessee claimed TDS of Rs 10,000. As per assessee such income is disclosed in A.Y. 2014/15. According to assessee as the bills for services rendered in month of March 2013 are raised in the accounts of succeeding assessment year i.e. A.Y. 2014/15 the income is taxable in that year.

Proposition:

It is proposed that information as per database of the revenue authorities cannot be by itself legally sustainable as a basis for addition to the income of an assessee.

View against the proposition:

it is clear that the assessee has claimed credit for tax deducted at source in assessment year 2013/14, whereas he has offered the income relating thereto for taxation in assessment year 2014/15. The limited issue therefore, is whether the assessee can claim the credit for tax deducted at source in assessment year 2013/14 and offer the income relating thereto for taxation in assessment year 2014/15. In my humble opinion, the provision of sections 198 and 199 of the income-tax Act are quite clear. According to section 198, all sums deducted under Chapter XVII are required, for the purpose of computing the income of assessee, to be deemed to be the income received. Therefore, income in respect of tax deducted at source has to be treated as income received in assessment year 2013/2014, i.e., the year in which the assessee has claimed the credit. According to section 199, the credit for tax deducted at source is required to be given for the amount so deducted on the production of certificate furnished under section 203 in the assessment made under this act for the assessment year for which such income assessable. It is, therefore, evident on the bare perusal of the provision of the section 199 of the income-tax Act that credit for tax deducted at source is required to be given in the assessment year in which the income relating thereto is assessable. It is undisputed position in the case under consideration that the assessee has claimed and Assessing Officer has allowed the credit for tax deducted at source in assessment year 2013/14 and hence, it is equally undisputable that income relating thereto has to be brought to tax in the said assessment year. This view is quite apparent and clear, as stated above, on bare perusal of the provisions of section 199.

The undisputed position that emerges is that credit for tax deducted at source and the assessment of income relating thereto have to go together in the same assessment year and that they cannot be divorced from each other. Section 199 prohibits the credit for TDS to be given in an assessment year different from the one in which the income relating thereto is assessable. It was the case of the assessee before the departmental authorities that credit for tax deducted at source should be given to him in assessment year under consideration and hence the departmental authorities were justified in treating the income relating thereto also as his assessable income for the assessment year 2013/14, it was incumbent upon the assessee to the offer the income relating thereto to tax in assessment year 2013/14.

The submission of the assessee that he has followed mercantile system of accounting for the assessment year under appeal also supports the aforesaid view. The assessee claimed credit for the tax deducted at source in the assessment year 2013/14 and hence admitted and recognized the assessability of income relating thereto in assessment year 2013/2014. Be whatever it may, the system of accounting cannot defeat the express provisions of law contained in section 199, which mandates that credit for TDS shall be given in the assessment year in which the income relating thereto is assessable. As held by the hon'ble supreme court in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT[1997] 227 ITR 172, the income tax law does not march step to step in the divergent foot prints of the accountancy profession.

View in favour of proposition:

It is submitted that assessee is raising the bills against his claim for the services rendered in a month only in succeeding month and on that basis the bills in respect of the services rendered in March 2013 are raised in the accounts of the succeeding assessment year.

Both the sections, viz., 198 and 199, fall within chapter XVII of the income-tax Act, 1961 which are titled as "Collection and Recovery-Deduction at source". In other words, these are machinery provisions for effectuating collection and recovery of the taxes that are determined under the other provisions of the Act. In other words, these are only machinery provisions dealing with the matter of procedure and do not deal with either the computation of income or chargeability of income. The basis of charge of income to tax in the case of business income is provided in sec 28 of the Act. The computation provisions of section 28 to 43A deal with the assessment of profit and gains of business. In computing the income from business or profession, the method of accounting followed by the assessee becomes relevant. After all, the profits and gains of business or profession carried on by the assessee should be computed in accordance with the method of accounting regularly followed by the assessee asprovided in the section 145(1) of the income-tax Act, 1961. In fact, the words "Profit and Gains" referred to in section 28 and 29 of the Act deal with only commercial profits as understood in the commercial parlance as held by lord Halsbury in Gresham Life Assce. Soc. v. Styles 3 TC 185 (HL) "in its natural and proper sense – in a sense which no commercial man would misunderstand". This principle has been approved by the Privy Council in Pondicherry Railway Co. Ltd. v. CIT 5 ITC 363, and by the Supreme Court in Badridas Daga v. CIT [1958] 34 ITR 10, Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1 (SC) and CIT v. Bai Shirinbai (K) Kooka [1962] 46 ITR 86. The profits mentioned herein are the real profits and they must be ascertained on ordinary principles of commercials practice and commercial accounting. Therefore, the assessee's method of accountings becomes relevant for determining the income from the conduct of any business or exercise of any profession.

Sections 198 and 199 of the Act nowhere provide for an exception either to the determination of the income under the aforesaid provisions of sections 28, 29 or as to the method of accounting employed under section 145 of the Act, which alone could be the basis for computation of income under the provisions of sections 28 to 43A of the Act. Section 198 has a limited intention. It only declares the amount deducted at source under sections 192 to 194, section 194A, section 194B, Section 194BB, section 194C, section 194D, Section 194E, section 194EE, Section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 195, section 196A, section 196B, section 196C, and section 196D to be treated as an income received. The purpose of the section 198 is not to carve out an exception to section 145 of the Act. Section 199 of the Act has two objectives – one to declare the tax deducted at source as payment of tax on behalf of the person on whose behalf the deduction was made and to give credit for the amount so deducted on the production of certificate in the assessment year for which such income is assessable. The second objective mentioned in section 199 is only to answer the question as to the year in which the credit for tax deducted at source shall be given. It links up the credit with assessment year in which such income is assessable. In other words, the Assessing officer is bound to give credit in the year in which the income is offered to tax. Thus section 199 does not empower the Assessing Officer to determine the year of assessability of the income itself but it only mandates the year in which the credit is to be given on the basis of the certificate furnished. In the other words, when the assessee produces the certificates of of TDS, the Assessing Officer is required to verify whether the assessee has offered the income pertained to the certificate before giving credit. If he finds that the income of the certificate is not shown, the Assessing Officer has only not to give credit for TDS in that assessment year and has to defer the credit being given to the year in which the income is to be assessee. At the cost of repetition, it may be mentioned that sections 198 and 199 do not in any way change the year of assessability of income, which depends upon the method of accounting regularly employed by the assessee. They only deal with the year in which the credit has to be given by the Assessing Officer. It cannot be disputed that according to the method of accounting employed by the assessee the income of in respect of TDS Certificate, which are mentioned in paragraph above, does not pertain to the assessment year in the question, but it pertains to the next assessment year and, in fact, in that year the assessee has offered same to the tax. Therefore, the credit in respect of TDS Certificates shall not be given in the assessment year under consideration, but the credit for the same shall be given in the next assessment year in which the income is shown to have been assessed.

Summation

I am in complete agreement with the views in favour of the assessee, Let me at the outset refer to the decision of Delhi "A" Bench, New Delhi, I.T. A. No. 4679/Del/2012, Assessment Year 2009-10. In the case of Income Tax Officer Vs. Sh. Basant Kumar S/o Sh. Sheo Narayan, it was held by the Hon. Tribunal that it is only elementary that information as per database of the revenue authorities cannot be, by itself, a legally sustainable basis for addition being made to the income of an assessee and that such inputs are at best starting points for appropriate inquiries.

We professionals who follow cash system of accounting have been facing lots of problems regarding the situation where the client is following mercantile system of accounting and makes provision for Audit Fees and TDS is also made while the professionals who follow cash system of accounting credits the income in the next year when Audit Fees are received. Thus, the statement of 26AS discloses TDS in one year while the income is offered in the next year. I think the issue arises only on account of misconception and misunderstanding of the Income Tax Department.

Let me refer to decision of third member Smt. Varsha G. Salunke v. DCIT, Circle 31(1) reported in 98 ITD 147. The Hon. Tribunal in brief held:-

"Whether since according to the method of accounting employed by assessee, income in respect of three TDS certificates did not pertain to relevant assessment year but it pertained to next assessment year and in fact, in year-Held, whether credit in respect of said three TDS certificates also would not be given in relevant assessment year but in next assessment year in which income would have been assessed-Held, Yes"

Thus, the third member decision cited above is very clear and there should not be any doubt that just because TDS is claimed the income referable to such TDS is taxable in year in which TDS has been claimed.

I would also like to refer to the decision of Jurisdictional ITAT Ahmedabad Bench, in the case of Shri Pannalal Hiralal vs. DCIT, ITA No. 327/Ahd/2010 A. Y. 2004-05 where the Hon. Tribunal has held as under:

"Further, a decision in respect of third member in the case of Smt. Varsha G. Salunke Vs. Dy. CIT(ITAT Mumbai Bench "F" Third Member) reported at (2006) 98 ITD 147 (Mumbai). Order dates 27/09/2005 has also been cited before us, wherein it was held that the credit of the TDS is to be given in the relevant assessment year in which income has been shown by the assessee. Respectfully following these decisions we, hereby direct that since the assessee has shown the income in the next assessment year, i.e. A.Y. 2005-06, therefore there is no occasion to assess the same income for the year consideration, i.e, 2004-05 and we further direct that the corresponding TDS credit should not be given in the Assessment year 2004-05.

Thus, in my opinion the issue raised in this controversy should be treated as settled in favour of the assessee. The income as per the method of accounting employed by the assessee is taxable in year in which such income is credited and TDS will be also be allowed in that year. The TDS and the relevant income cannot be divorced from each other.

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