

Salary income declared after search proceedings would be undisclosed even if tax was deducted therefrom

Summary – The High Court of Gujarat in a recent case of Minoobhai D. Irani, (the Assessee) held that tax to be deducted at source being also computed on estimated income of an assessee for relevant financial year, such deduction can not result in disclosure of total income for relevant assessment year. Where the return was filed by the assessee after block assessment proceedings were initiated by the Assessing Officer, the intention of the assessee was not to disclose income and therefore, same is required to be treated as undisclosed income as per section 158B(b).

Facts

- The assessee was a salaried employee. During search & seizure, it was found that assessee has never filed his returns of income although he had income liable to tax during the block period.
- The assessee was also found to have investment in fixed deposit and other securities regarding to Rs. 12,25,400.
- The assessee filed regular return of income of assessment years 1996-97 and 1997-98 under section 139(4) showing salary and income from other sources considering it as normal income.
- The Assessing Officer treated non-disclosure of said income received by the assessee by way of salary as 'undisclosed income' and issued a notice under section 158BC. In response to the said notice, the assessee filed the return in Form No. 2B showing undisclosed income for the block period and paid full tax at the rate of 60 per cent on this income.
- The Assessing Officer also treated the returns of income filed under section 139(4) of assessment years 1996-97 and 1997-98 as invalid as he assessed whole income of these assessment years in the assessment of undisclosed income.
- On appeal, the Commissioner (Appeals) sustained the addition made by the Assessing Officer.
- On second appeal, Tribunal has held that as on the aforesaid income the TDS was deducted, it could not be said that there was a non-disclosure of the income by way of salary and further reduce the addition on account of unexplained investment of Rs. 1,88,884 to Rs. 35,000.

Held

- While dealing with the issue whether the tax deducted at source amounts to disclosure of income, the Supreme Court in *Asstt. CIT v. A.R. Enterprises* [\[2013\] 350 ITR 489/212 Taxman 531/29 taxmann.com 50](#) has observed and held that of 'Since the tax to be deducted at source is also computed on the estimated income of an assessee for the relevant financial year, such deduction cannot result in the disclosure of the total income for the relevant assessment year'.
- In view of above, Tribunal has committed a grave error in directing that the income earned by way of salary by the assessee cannot be treated as undisclosed income for levying tax at 60 per cent on the salary income as undisclosed income.

- One another aspect with respect to the intention of the assessee to disclose the income was also considered. Return was filed only when the block assessment proceedings are initiated by the Assessing Officer declaring the income in the said return. It indicates that there was no intention to disclose the income. In the instant case the assessee filed return of income declaring the income received by him by way of salary only after the block assessment proceedings were initiated by the Assessing Officer. Under the circumstances also, the Tribunal has materially erred in not treating the income earned by way of salary by the assessee as 'undisclosed income'.
- The Tribunal has reduced the addition made by the Assessing Officer on account of unexplained investment of Rs. 1,88,884 to Rs. 35,000. It is required to be noted that at the time of search unexplained investment of Rs. 1,88,884 was found and even after the search the assessee did not file the return of income and declared the same at the time of filing the return after the block assessment proceedings were initiated. Considering the decision of the *A.R. Enterprises (supra)* when the return was filed by the assessee after the block assessment proceedings were initiated by the Assessing Officer, the intention of the assessee is to be presumed that he was not to disclose the income and therefore, the same is required to be treated as undisclosed income within the meaning thereof in section 158B(b) under Chapter XIV-B. Even as such no specific reasons and/or evidence on record to reduce the addition on account of unexplained investment of Rs. 1,88,884 to Rs. 35,000. Under the circumstances, the Tribunal has materially erred in reducing the addition on account of unexplained investment of Rs. 1,88,884 to Rs. 35,000.