

Sum Received in lieu of relinquishment of right to sue 'Coca-Cola' was capital receipt: ITAT

Summary – The Jaipur ITAT in a recent case of Satyam Food Specialities (P.) Ltd., (the Assessee) held that Relinquishment of right to sue is neither a capital asset nor taxable under section 28 and receipt of any sum against relinquishment is a capital receipt

Where searched person does not deny belonging of document found in course of search but Assessing Officer of such person records a satisfaction that documents searched belong to assessee (another person), provisions of section 153C do not get attracted

Facts

- During the course of search proceeding at premises of a company named Cabana, certain documents were seized which indicated that assessee had transferred huge funds to said company. The Assessing Officer of said company formed belief that said documents belonged to assessee and a satisfaction note under section 153C was recorded and sent to assessee. Consequently, notice under section 153C was issued to assessee.
- The Assessing Officer noticed that the assessee-company entered into a franchisee soft drink bottling agreement with CSBIPL to sell its soft drinks. Thereafter, CSBIPL transferred its soft drink brands to Coca Cola. Due to some disputes Coca Cola was not interested in encouraging the sale of cold drink sold by assessee to avoid competition to its own products. Due to this assessee suffered huge losses and therefore, in 2008 assessee filed a complaint under section 36 of Monopolies and Restrictive Trade Practices Act (MRTP) before the MRTP Commission. Thereafter, the assessee and coca cola had entered into a settlement agreement through which the assessee had transferred its bottling business assets as well as immovable property to Coco Cola against a consideration.
- The assessee submitted that the entire compensation received by the assessee was in lieu of withdrawing the right to sue against Coca Cola and was patently a capital receipt.
- The Assessing Officer held the compensation as revenue in nature under section 28(ii)(c), as the assessee had received it in consideration of terminating the agency held or modification of terms thereof.
- The Commissioner (Appeals) held that provisions of section 28(va) were applicable and not section 28(ii)(c) as applied by Assessing Officer. Consequently the part of compensation indicated by Assessing Officer was held taxable under section 28(va).
- On appeal :

Held

- Section 153C prescribes a mandatory condition that a satisfaction of the Assessing Officer that the documents seized belong or belongs to a person other than the person referred to in section 153A is

to be recorded. It presupposes determination of question whether the document belongs to other assessee or not.

- Mere use of words 'satisfaction' or 'I am satisfied' would not meet the requirements of the satisfaction in terms of section 153C. The satisfaction note must objectively demonstrate the reasons or basis for arriving at the objective satisfaction of Assessing Officer of the searched person that the seized documents belong to a person other than the searched person. This satisfaction cannot be arrived at in subjective terms. In the instant case three types of documents are mentioned in satisfaction note.
- Cabana Group has not disputed that these documents belong to them. A document can belong to one person if it is denied that the question of belonging to some other person arises; in this exigency the provisions of section 153C do not get attracted as Cabana has not denied the belonging in terms of section 132 . Thus the scheme of provisions presuppose that Assessing Officer of the searched person must first record a satisfaction that the alleged seized documents do not belong to the searched person; then only the question of satisfaction of belonging to other person arise. It is a curious situation where the searched person is not denying the belonging of document nevertheless Assessing Officer records a satisfaction that they belong to assessee in question. Mere finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who is owner of the originals. Ownership of documents and possession of photocopies of documents are two altogether separate connotations. Seized photocopies lawfully belonged to Cabana Group which they never disclaimed. It is also settled law that the satisfaction note has to be read as it is without any addition, subtraction or with the help of allied documents. It cannot be supplemented or supplanted.
- None of the purported seized documents, can be said to 'belong to' the assessee; thus the basic ingredients of section 153C have not been satisfied in the instant case. Consequently, the notices issued under section 153C and in pursuance thereto, the assessment orders passed under section 143(3) read with section 153C, deserve to be quashed.
- As regards the merits of the case, search in the premises of Cabana group was conducted on 31-7-2009 whereas the settlement agreement in question and other agreements were executed much earlier on 24-11-2008. It has not been alleged that the agreements are a subterfuge, thus the genuineness of agreements is not in question. A reading of various clauses of said settlement agreement demonstrates that the consolidate compensation was paid by Coca Cola to assessee by settlement.
- All the clauses of the agreement read together reflect that the real intent, objective and purpose of the payment of compensation as per settlement agreement was to ensure withdrawal of all the pending litigation by assessee, from various forums instituted for breach of terms or conditions. The dominant consideration for compensation being surrendering the right to sue; its neither in lieu of surrender of any agency or agreement for non-competition and thus, the compensation neither fell in the ambit of section 28(ii)(c) nor under section 28(va).

- With all these observations on record, one was unable to comprehend as to how any part of the compensation can be estimated or treated as paid for any non-compete agreement as inferred by Commissioner (Appeals).
- Assessee has vehemently denied having anywhere admitted that part of the compensation was for non-competition. The compensation in question was meant, intended and paid for withdrawal of aforesaid litigation instituted by assessee which could have resulted in many adverse consequences for the reputation of Coca Cola besides entailing huge cost and efforts of litigation. Relinquishment of right to sue is neither a capital asset nor taxable under section 28 which provides specific types of receipt to be held taxable as business income. Relinquishment of right to sue does not find any mention therein. In this eventuality there was no hesitation to hold that the impugned amount is a capital receipt not liable to income-tax. The addition is deleted.