

## **Burden to prove that bank accounts revealed in search belonged to HUF of assessee's father wasn't on revenue**

**Summary – The High Court of Karnataka in a recent case of Naval Kumar Chhabra., (the Assessee) held that where during search at assessee's premises, certain bank accounts were found and assessee's father claimed that amount lying in said accounts belonged to his HUF business, burden of proving transactions in name of assessee could not be placed on revenue**

### **Facts**

- The assessee was running business in three units, in his own proprietary concern.
- During search at the premises of assessee's accountant some notings and vouchers were found, on the basis of which department conducted inquiries with assessee's bank. The department found 23 bank accounts of the assessee.
- The assessee's father, who admitted his own separate business during search, filed a declaration under VDIS in respect of 23 bank accounts, claiming same to be of Hindu Undivided Family.
- The Assessing Officer found that said 23 bank accounts actually belonged to the assessee and not to the HUF and, therefore, he treated the amount lying in said accounts as undisclosed income of assessee.
- The Commissioner (Appeals) cancelled the assessment order relying on the fact that assessee's father had made declaration under VDIS prior to assessment order, in which he offered entire credits in 23 bank accounts, undisclosed turnover and net profit.
- The Tribunal upheld the order of the Commissioner (Appeals).
- On revenue's appeal:

### **Held**

- In the instant case the Tribunal failed to notice that on the date of claim, that 23 bank accounts belonged to HUF, the assessee's father was aged 80 years. He has virtually stopped carrying on business. When once his father claimed after the search that the amounts found in the 23 bank accounts belong to him and filed a VDIS declaration, it is for him to establish as to whom he has supplied goods and who has made payments. Absolutely, no evidence was placed on record. Unfortunately, the Tribunal has placed the burden of proving the facts on the revenue, the fact which is not within their knowledge. The VDIS declaration subsequently came to be cancelled. The Tribunal did not note the reasons for cancellation of the certificate issued earlier. It proceeded on the assumption that it is for the revenue to establish by acceptable evidence as to whether the said money belongs to the assessee, the person to whom the assessee had supplied goods and the persons who had paid for the said goods. These are all facts which are within the knowledge of assessee or his father.

- Therefore, the Tribunal committed a serious error in placing the burden of proving the transactions in the name of the assessee on revenue erroneously and, consequently, the said order is illegal and requires to be set aside. Therefore, the proper course would be to set aside the impugned order, remit the matter back to the Tribunal to look into the matter afresh and find out the evidence adduced by the assessee and his father regarding the status as well as the source of income and then decide the case on merits.