

Income in Form 26AS doesn't show that it belongs to assessee if fraudster obtained it in assessee's name

Summary – The Jabalpur ITAT in a recent case of Ravindra Pratap Thareja, (the Assessee) held that Merely because a payment was reflected in Form 26AS and was shown to have been made to assessee, it could not be brought to tax as it could not be established that assessee was actual beneficiary of said payments and thus, addition made was to be deleted

Facts

- The assessee was a retired soldier. He upon his retirement under a settlement scheme framed by the Government of India, received certain security contracts from the Government bodies such as BHEL.
- During the course of scrutiny, the Assessing Officer based on information as per Form 26AS, noted that the assessee had not disclosed certain contractual receipts.
- The Assessing Officer proceeded to bring to tax these receipts as unaccounted income.
- It was contended by the assessee that he had never received these sums. It was explained that apparently one person had fraudulently, and by misusing the power of attorney given to him in 2004 for some other work, obtained these contracts and misappropriated the receipts.
- The Commissioner (Appeals) upheld the action of the Assessing Officer but restricted the addition to 40 per cent of, what were termed as, unaccounted receipts.
- On appeal :

Held

- Merely because a payment is reflected in Form No. 26AS and is shown to have been made to the assessee, it cannot be brought to tax in his hands when the said money is not received by the assessee. The stand of the assessee is that these payments made by BPCL, AIR and IOC were never received by the assessee, and the monies, received fraudulently in the name of and on behalf of the assessee, were received by some other person. Neither this aspect of the matter is examined on merits, nor any effort is made to find out through appropriate inquiries through related banks, the actual beneficiary of these payments. It is only elementary that Income-tax proceedings are not adversarial proceedings and the powers vested in the Income tax authorities are to be used when circumstances so warrant or justify. It is a fit case in which the Assessing Officer ought to have established the trail of money and find out actual beneficiary of the payments which were admittedly made through banking channels. As a matter of fact assessee has given ample evidence that some other person had opened a bank account in assessee's name and appropriated the funds on his own, in such account. All these facts require to be properly investigated. In this view of the matter, the addition is to be deleted in respect of monies said to have been paid by BPCL, AIR and IOC.