

## An income already assessed to tax in hands of agent couldn't be taxed in hands of its principal

**Summary – The Mumbai ITAT in a recent case of Air India Ltd., (the Assessee) held that In terms of section 163, when Assessing Officer brings to tax an income in hands of assessee-representative assessee, he loses his right to tax same income in hands of principle**

### Facts

- The assessee was a public sector undertaking engaged in the business of civil aviation. It had entered into a wet lease agreement, with a company Carbijet Inc. based in West Indies.
- In terms of the agreement, Carbijet Inc. gave 3 aircrafts to assessee on wet lease. Subsequently, the said agreement was terminated and matter was subjected to litigation before the International Arbitral Tribunal London (IATL).
- The IATL passed an award as per which assessee had to pay compensation to Carbijet Inc. The Assessing Officer held that any receipt arising from the termination of wet lease contract with assessee, was revenue receipt in nature, and that it was taxable in the year in which the right to receive the said income crystallized. Accordingly, said amount was brought to tax in the hands of the assessee, as a representative assessee of Carbijet Inc. The same amount was also taxed in the hands of Carbijet Inc. as well on the very next day.
- The Commissioner (Appeals) held that same income could not be assessed in the hands of non-resident and simultaneously through its agent in the capacity of representative assessee. In view of this it was concluded that income in question was not required to be assessed.
- On revenue's appeal:

### Held

- The legal position is that the Assessing Officer can only assess one of the persons, either the principal or the agent, and once he does so, he is *functus officio* so far as assessment of that income is concerned. When he taxes the income in the hands of the assessee directly, he loses his right to tax the same income in the hands of the agent, and *vice versa*. No inherent preference can be said to be in existence of either of them, *i.e.*, agent and the principal, and when he taxes the same income in the hands of both of them, the assessment which is done at a later point of time ceases to be valid in the eyes of law.
- In the present case, the assessment has been framed on the representative assessee, *i.e.* Air India, on 27-3-2003, whereas the assessment is done directly on the principal, *i.e.*, Carbijet Inc., on 28-3-2003. On these facts, therefore, when the Assessing Officer exercised his option to bring the income to tax in the hands of assessee, as a representative assessee, he was legally *functus officio* so far as assessment of the same income in the hands of Carbijet Inc. directly was concerned. However, merely because a day later, the Assessing Officer also taxed the same income in the hands of

Carbijet Inc. as well, the assessment of that income in the hands of the representative assessee, *i.e.*, Air India, could not be faulted with.

- Therefore, it could not be held, as has been held by the Commissioner (Appeals), that the assessment in the hands of this income in the hands of Air India, in representative capacity, ceases to hold good in law because he has also taxed, though subsequently, the same income in the hands of the assessee directly. As a matter of fact, Commissioner (Appeals) has frequently used the expression 'simultaneous' to describe this dual assessment, and it is there that he apparently fell in error. While the process of assessment may be simultaneous and somewhat parallel in approach, the assessment is not simultaneous.
- As noted above, there is no inherent preference for assessment directly on the principal, and the only limitation on the assessment *vis-à-vis* these two parties, *i.e.*, agent and the principal, are concerned, that once an assessment is made on one of them, the assessment for the same income thereafter cannot be made on the other. In the present case, the assessment is on two different dates, and the date of assessment on the Air India in a representative capacity is a day earlier than the assessment on the Carbijet Inc. directly. Therefore, the assessment in the hands of assessee, in the representative capacity, cannot be said to be legally unsustainable. It is only the assessment in the hands of Carbijet Inc. which may not be sustainable in law but that aspect of the matter is wholly academic since, in view of the provisions of section 165, even though the assessment may be in the hands of a representative assessee under section 163(3), there is no bar on direct recovery, of taxes so held to be leviable, from Carbijet Inc.
- It is important to bear in mind the fact that, as section 165 categorically provides, nothing, *inter alia*, in section 163, 'shall prevent either the direct assessment of the person on whose behalf, or for whose benefit, income therein referred to is receivable, or the recovery from such person the tax payable in respect of such income'. In effect thus, it is not only direct assessment on the principal, but also direct recovery from the principal - even though the assessment may be in the name of the agent under section 163, that is permissible notwithstanding the provisions of section 163.
- In effect thus, whether the assessment is made on the agent under section 163 or on the principal himself, the right of recovery from the principal remains intact anyway. Whether the assessment is on Carbijet Inc., in its own name, or in the hands of Air India, as an agent of Carbijet Inc., the demands in respect of the taxes so levied can always be enforced against Carbijet Inc., and, to that extent, Air India Limited will stand exonerated of its tax liability in this regard.
- As regards confirmation of demands raised on the Carbijet Inc., these demands are wholly academic in effect. That has no bearing on the question, given the facts of this case, as to whether or not the demands raised on the assessee, in representative capacity, can be legally sustainable or not.
- For the reasons set out above, the conclusions arrived at by the Commissioner (Appeals) is reversed and it is concluded that the impugned income has been rightly assessed to tax in the hands of assessee *i.e.* Air India Limited, as an agent under section 163. It is, however, made clear that nothing stated hereinabove, for the detailed reasons set out above, shall either be construed as coming in

the way of direct recovery of due taxes from Carbijet Inc., and that, to the extent the income tax authorities can recover the taxes, the liability of assessee shall correspondingly stand exonerated.

- In the result, the appeal is allowed.