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Reassessment justified when TDS wing informed about TDS default and related records already destroyed in fire

Summary – The High Court of Punjab & Haryana in a recent case of Franchise India Holdings Ltd., (the Assessee) held that where an audit objection was raised about non-deduction of TDS and it was found that assessee's records were destroyed in fire while TDS wing informed about non-deduction of TDS, initiation of re-assessment proceeding on basis of said information was valid

Facts

- The assessee filed its return of income and it was processed under section 143(1) and selected for scrutiny. On being asked to produce records, the Assessing Officer was informed that the same was not available as it had been destroyed in a fire.
- After noticing the destruction of the record in the fire, the Assessing Officer perused the profit and loss account for the relevant year and finding expenses under certain heads like business, promotions and conveyance expenses, travelling incentives etc. to be on the higher side when compared to the previous assessment year, made a disallowance of a lump sum amount of Rs.10 lakhs.
- Audit objections were raised that no tax was deducted at source by assessee qua advertisement, rent courier and event management expenses and, thus, entire expenses were liable to be disallowed under section 40(a)(ia), thereafter the assessee was issued a notice of reassessment under section 148.
- On petition before the High Court:

Held

- The assessee deserves no relief. Before the original assessment order was passed, the relevant record of the assessee had been destroyed in fire. On perusal of the profit and loss account finding the expenses shown therein, when compared with the previous assessment year to be higher, the Assessing Officer imposed a lump sum deduction of Rs.10 lakhs. An audit objection was raised qua the above assessment which was to the effect that was required, no TDS had been deducted by the petitioner qua expenses on advertisement, rent, courier services and event expenses. Thus, as per the provisions of section 40(a)(ia) these expenses were liable to be disallowed and added back to the assessee's income.
- On the above objections the comments of the Assessing Officer were sought who recommended no further action. The Commissioner requested the Assessing Officer to spell out reasons for not recommending any action on the audit objections.

- The assessee terms the Commissioner's letter as a diktat by the Commissioner to the Assessing Officer leading to the initiation of reassessment proceedings. None would be agreed. The Commissioner by this letter merely sought reasons from the Assessing Officer. He did not direct him to initiate proceedings for reassessment. The Assessing Officer could have furnished reasons and reiterated his decision not to reopen the assessment. It is also important to note an aspect regarding the annotated reply. The audit objections were specifically with respect to the issue of TDS. The Assessing Officer's response was silent on this issue except for stating that he was informed that the record had been destroyed. He had admittedly not seen any other record pertaining to the issue. The Commissioner as a superior officer, in his administrative capacity was well within his rights to ask his subordinate to back his recommendation with reasons when the same were found lacking, especially when such recommendation was made contrary to the audit objections which contained both reasons and provisions of law.
- After the receipt of the above quoted letter, the Assessing Officer apparently now acting in a more responsible manner through a communication addressed to the TDS wing of the department sought the record pertaining to the deposit of TDS by the assessee with regard to the expenses on which the assessee was supposed to deduct TDS at the time of release of payments. The record was supplied by the TDS wing to the Assessing Officer through letter on the examination of which the Assessing Officer found that the assessee had, in fact, not deducted TDS as required by law on the expenses incurred by it towards advertisement, rent, courier services and event expenses. This information which would come under 'tangible material' was not before him at the time when the original assessment was made and on the basis whereof, on recording of reasons, which were later supplied to the assessee, the reassessment proceedings were initiated. It may be noted that at the time of framing of the original assessment, the Assessing Officer had sought record from the petitioner which was not produced on the ground that the same had been destroyed in a fire which took place in the premises of the petitioner. This fact would have also contributed towards the escapement of the above income from tax.
- The assessee placed strong reliance upon the audit report, the profit and loss account and the assessment order under section 143(3). The assessment order states that the Assessing Officer perused the profit and loss account. This, however, was in relation to items unconnected with those relating to TDS. The assessee however, submits that it must be presumed that the Assessing Officer had perused the entire profit and loss account. The profit and loss account refers to payments which required tax to be deducted at source. The assessee, therefore, submits that it must be presumed that the Assessing Officer formed the opinion that tax was not to be deducted at source.
- In answer to the query the assessee say 'N.A.' *i.e*. not applicable. This was patently incorrect and misleading. It was the assessee's *bona fide* impression that TDS was not applicable. An assessee who makes an incorrect statement in the main body of the audit report cannot turn around and say that he had stated the facts in an annexure from which the Assessing Officer could have discovered the incorrect statement. Moreover, the Assessing Officer could legitimately have thought this statement

to be correct even with respect to the payment mentioned in the annexure for instance on the basis that the payee had deposited the same and that therefore, the question of the assessee paying the same did not arise.