

Income couldn't be said to have escaped if ledger found during search was already examined in regular assessment

Summary – The High Court of Delhi in a recent case of ARN Infrastructure India Ltd., (the Assessee) held that where payment of commission as reflected in ledger account seized during search of third party was already disclosed in assessee's accounts which were examined while finalising regular assessment, it could not be said that any income escaped assessment

Facts

- A search under section 132 was initiated and conducted in the case of one EIL. During the course of search, a letter written by the assessee to one RGEPL was found. It contained the details of the commission payments made by the assessee to RGEPL in year 2010 with a request to RGEPL to issue bills to the assessee. A copy of the ledger account of RGEPL maintained by the assessee as proof of payments made through official channel was also seized. The aforesaid seized documents were handed over to the Assessing Officer of EIL. However, only one document, viz., the letter written by the assessee to RGEPL was handed over to the Assessing Officer of the assessee.
- The Assistant Commissioner issued a notice under section 153C to the assessee directing it to file its return of income for assessment years 2007-08 to 2012-13. Along with the said notice, a satisfaction note was also enclosed.
- Later, the petitioner replied to the notice and pointed out that the seized documents belonged to RGEPL and not the assessee. Further, apart from the fact that papers seized did not belong to the assessee, they were relevant only for the assessment year 2010-11. It was contended that the seized papers could at best constitute relevant material only for the year of search and not for the earlier years. It was further pointed out that as regards assessment years 2007-08 to 2012-13, there was no pending assessment, and in the absence of any incriminating material, the question of re-opening those assessments that already stood completed, did not arise. It was pointed out that for assessment year 2010-11, the payment of the commission as per the ledger account was part of its books of account that already stood disclosed during the regular assessment. It could not be said to be an incriminating material that pointed to concealment of income during assessment year 2010-11.
- The Assistant Commissioner responded to the assessee that documents seized did not belong to RGEPL. It appeared that what was stated in the satisfaction note had been misunderstood by the assessee. It was stated that numerous documents that belonged to the assessee were seized and only because a few of those documents had been referred to in the satisfaction note and that too for the purposes of making the satisfaction note a precise one would not exonerate the assessee from the proceedings under section 153C.
- On writ:

Held

- As regards the seized documents, what is mentioned in the satisfaction note are two documents: the ledger account maintained by the petitioner running into 3 pages showing the commission payments made by the petitioner to RGEPL and the letter written by the petitioner to RGEPL. As far as the latter document is concerned, it is a letter written by the petitioner to RGEPL and, therefore, should be treated as a document belonging to RGEPL and not to the petitioner. Whether it may or may not be related to the petitioner is not relevant since the amendment to section 153C in that regard was prospective with effect from 1-6-2015, *i.e.*, subsequent to the date of preparation of the 'satisfaction note' in the present case.
- The decision in *Pepsico India Holding (P.) Ltd. v. Asstt. CIT* [\[2015\] 370 ITR 295/228 Taxman 116 \(Mag.\)/\[2014\] 50 taxmann.com 299 \(Delhi\)](#) which interpreted section 153C, as it stood prior to its amendment, explained that the expression 'belongs to' should not be confused with the expression 'relates to'. One of the instances cited in the said decision was a registered sale deed, copies of which could be available both with the vendor and the vendee. The copy available with the vendee could not be said to 'belong' to the vendor and vice versa.
- Therefore, it cannot be said that the letter written by the petitioner to RGEPL and recovered from the premises of RGEPL was a document which belonged to the petitioner.
- As regards the other document seized, and mentioned in the satisfaction note *viz.*, the extract of the ledger account maintained by the petitioner concerning the payments of commission made by it to RGEPL, even if it is held to 'belong' to the petitioner, it could hardly be said to be an 'incriminating' document. This was a document relevant only for the assessment year 2010-11. It could not have been used for re-opening the assessments of the earlier years *i.e.* assessment years 2007-08 to 2009-10, 2011-12 and 2012-13.
- While the ledger account extract may be relevant for assessment year 2010-11, it cannot be said to be incriminating material warranting re-opening of the assessment. The return originally filed by the petitioner for the said assessment year 2010-11 was picked up for scrutiny and finalised by an assessment order under section 143(3). The payments of commission to RGEPL as reflected in the ledger account was already disclosed in the Petitioner's accounts which were examined while finalising the regular assessment. Therefore, the ledger account could not have led the Assessing Officer to be satisfied that any income had escaped assessment for the assessment year 2010-11.
- The net result is that neither of the documents mentioned in the satisfaction note could have formed a valid basis for the Assessing Officer to initiate proceedings against the petitioner under section 153C for assessment year 2010-11 or any of the other years as proposed.