

No addition in hand of co. if sum seized from bank locker of co. was admitted by director as his undisclosed income

Summary – The High Court of Gujarat in a recent case of B. Nanji Enterprise Ltd., (the Assessee) held that where sum seized from bank locker of assessee company during search was disclosed by director of company as his unaccounted income in application for settlement before Settlement Commission which was allowed by passing of final order of settlement and tax was also paid on such income, same could not be added to income of assessee-company

Facts

- A search was conducted upon assessee-company wherein huge amount of cash was seized from bank lockers of company. The Assessing Officer added a sum by way of unaccounted cash receipt which was found and seized from the bank locker of the assessee-company.
- The director of assessee company had filed a settlement application before the Settlement Commission in which he had owned up such amount as his unaccounted income and also paid the tax on such income. Thus, the Assessing Officer while making such addition, provided a rider that in case such amount was offered to tax before the Settlement Commission, the order of assessment would be modified. At the time when this order of the Assessing Officer was passed, the proceedings of the Settlement Commission were pending and not yet finalized.
- The assessee-company went in appeal before the Commissioner (Appeals). By the time the Commissioner (Appeals) decided appeal, the settlement proceedings were over. The Settlement Commission passed its order in which said amount was accepted as income of director of company. Thus, the Commissioner (Appeals) deleted the said sum from the income of the assessee.
- On revenue's appeal, the Tribunal was of the opinion that income should be taxed in hands of the assessee to whom it belonged and for purpose of income tax, it was important that correct assessee should be taxed. However, since the same amount already been offered to tax by director of company in the settlement application, the Tribunal while allowing the revenue's appeal, held that the Assessing Authority should ensure that the same amount would not be taxed twice.
- On appeal to the High Court:

Held

- From the material on record, it can be seen that sum was offered to tax by director of assessee, in his settlement application. Such application was granted by the Settlement Commission by passing order of settlement. By very statutory scheme of provisions, acceptance of such income in the hands of director of company would have to be preceded by payment to tax. Therefore, one has proceeded on the basis that the Settlement Commission accepted the said sum as income of director and department had already received the tax and interest on such income. That being the

position, it would not be possible for the department to tax the same income once again in the hands of the present assessee. This would be for multiple reasons. Firstly, there is nothing on record to suggest that before the Settlement Commission, the declaration of director in this respect was opposed by the revenue. Secondly, the Settlement Commission having accepted such settlement, with or without the opposition by the revenue, finality of the conclusions of the Settlement Commission would attached in terms of section 245-I. Thirdly, the department conceded that the order of Settlement Commission had not been challenged further. Under the circumstances, allowing the department's appeal, levying tax on the same amount from the assessee would be wholly impermissible. In fact, it also would be opposed to the observations of the Assessing Officer and those of the Tribunal that under no circumstances, the same income would be subjected to tax twice.

- If the stand of the revenue was that the income belong to the assessee and not its director and that therefore the assessee must pay tax and would also be exposed to penalty proceedings, such stand should have been taken before the Settlement Commission in the Settlement Application filed by the director of company and despite such objection if the Settlement Commission had accepted the declaration, ought to have challenged such an order.