

Mere allotment of PAN won't make allottee a separate entity for purpose of tax assessment

Summary – The High Court of Gujarat in a recent case of Sardar Vallabhbhai Patel Education Society, (the Assessee) held that Mere allotment of PAN under section 139A would not make allottee necessarily a separate entity for purpose of assessment of tax; hence Assessing Officer without hearing objection in this regard could not hand reopened assessment

Facts

- The assessee was an educational society and was also a trust registered under the Bombay Public Trust Act. It was running various educational institutions including one NG. According to the assessee, various educational societies were receiving sizable amounts by way of cash through fees paid by students. Thus, in order to maintain separation of fund, NG desired to open bank account for which bank insisted on separate PAN, upon which a separate account could be opened. Hence, NG applied for PAN which was duly issued to it which eventually led to opening of bank account. NG deposited cash of Rs. 2.37 crores in said bank account during relevant assessment year. The assessee society had filed return of income for said assessment year in which this receipt was reflected.
- However, Assessing Officer sought to reopen assessment of NG on ground that NG was assigned a separate PAN and it was a separate entity for purpose of payment and assessment of tax and it had not filed return despite deposit of sizable cash in its bank account.
- The assessee contended that NG did not have any independent legal existence and was merely a college run by society, hence raised detailed objections before the Assessing Officer urging him to drop notice of reopening. The assessee contended that it was a society which had maintained all audited accounts along with return, in which said amount of Rs. 2.37 crores was also reflected, hence society already having offered to tax said amount, it could not have been separately questioned in hands of NG. However, Assessing Officer without examining objections upheld order of reopening assessment.
- On appeal to the High Court:

Held

- Section 139A pertains to permanent account number. Sub-section (1) of section 139A provides various categories of persons who are required to pay tax or for some other reason required to furnish return of income, would apply to the Assessing Officer for allotment of a PAN. Under sub-section(1B), the Central Government may for the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, may by notification require any class or classes of persons who shall apply to the Assessing Officer for the allotment of the PAN. Under sub-section (2), the Assessing Officer having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person following the prescribed procedure. Sub-section (3) of section 139A

provides that any person not falling under sub-section (1) or sub-section (2), may also apply to the Assessing Officer for allotment of PAN, upon which, the Assessing Officer shall allot the same.

- It can thus be seen that mere allotment of PAN under section 139A would not make the allottee necessarily a separate entity for the purpose of assessment of tax. The statute recognizes certain eventualities where quite outside the requirement of payment of tax and for filing return of income, the Assessing Officer may allot a PAN to individual. The contention of the Assessing Officer therefore that merely because NG had obtained the PAN, it was a separate entity for the purpose of filing of the return and assessment of tax was not valid. In the order rejecting the objections, the Assessing Officer did not examine other objections and contentions raised on behalf of the assessee on his summary conclusion. When an assessee points out the correct facts and makes out a genuine case for dropping the notice for reopening of the assessment, the Assessing Officer would apply his open mind and consider the factual and legal aspects as may be presented by the assessee in such objections. The reopening of an assessment could be struck down on any of the jurisdictional facts being proved wrong on the basis of well known and well established legal principles.
- In the instant case, the Assessing Officer without appreciating the assessee's objections to the notice of reopening rejected the same. In facts of the case, the Assessing Officer was to be requested to re-examine the objections in peculiar facts pointed out in such objections as well as those urged before court.
- Till the Assessing Officer passes a fresh order disposing of the objections of the assessee, interim relief granted pending the petition directing the Assessing Officer not to pass the final order on assessment shall continue.