

HC dismissed writ filed against sec. 263 notice due to existence of alternate remedy

Summary – The High Court of Gujarat in a recent case of Designmate India (P.) Ltd., (the Assessee) held that Efficacious remedy is available under statute in respect of revision-notice issued for imposing TDS liability on transaction charges paid for services provided by a non-resident outside India; writ petition against revision-notice was to be dismissed

Facts

- The petitioner company was engaged in the business of dealing in computer based training and software development. According to the petitioner, in the process of such business, the petitioner would prepare computer based training programmes and software. Such material often times would be translated in local languages other than English. This would incur substantial translation charges. Such charges were borne by the petitioner as part of the agreement with the customer and would be paid directly to the agency in a foreign country.
- For the relevant assessment year, the petitioner had filed return of income. Such return was taken in scrutiny by the Assessing Officer. One of the issues examined by the Assessing Officer was compliance with provisions pertaining to tax deductible at source. During the course of scrutiny assessment, the Assessing Officer called for various details. During the year under consideration, the petitioner had paid translation charges which included foreign remittances also. On this component of translation charges payment, the petitioner had not deducted tax at source. According to the petitioner, this was done under the advice of the auditor who had specifically certified that on such foreign remittance, no TDS would be deducted since the service was provided outside India by non-resident and the payment was also made outside the country.
- After detailed inquiries, the Assessing Officer passed the order of assessment in which he made no disallowance on the petitioner failing to deduct tax at source. The Commissioner seeks to take in revision for which, impugned notice came to be issued. The Commissioner by impugned notice for revision submitted that translation charges paid to non resident should be treated as technical fees which is liable to TDS under section 195(1). This being not done resulted into under assessment of income.

Held

- It is undoubtedly true that the Commissioner's *suo motu* power of revision flowing from section 263 are hedged by the satisfaction of twin conditions of the order of the Assessing Officer being erroneous and prejudicial to the interest of the revenue and in that scene, the same cannot be equated with the appellate jurisdiction. It is true that the judicial trends suggest that when the Assessing Officer has conducted proper inquiries and come to conclusion which is a plausible one, the Commissioner would not be justified in substituting such a view of the Assessing Officer by his view as if he were acting as an appellate authority.

- Thus, the mere fact that the Assessing Officer carried out inquiries with respect to a certain claim of the assessee by itself would not mean that his order cannot be taken in revision by the Commissioner if it is found that the order passed was erroneous and prejudicial to the interest of the revenue.
- In the present case, the controversy is with respect to the requirement of deducting tax at source while the petitioner made remittances of translation charges to the recipient who were non-residents.
- This is not to suggest that in a given case, the Commissioner's notice would not be amenable to scrutiny by the High Court in a writ jurisdiction if it can be demonstrated *ex facie* that the Commissioner lacks jurisdiction and it would therefore, not be proper to subject the assessee to the entire gamut of submitting to the jurisdiction of the Commissioner in exercise of his revisional powers.
- While referring to the decision of the Supreme Court in case of *CIT v. Chhabil Dass Agarwal* [2013] 357 ITR 357/217 Taxman 143/36 taxmann.com 36 in which the Court observed that barring some exceptions, the rule would be that the jurisdiction under Article 226 of the Constitution should not be invoked where there is availability of an equally efficacious alternative remedy under the statute. It was emphasized that this would be more so in taxation statute where the statute provides complete machinery for assessment, re-assessment of tax, imposition of penalty and appeals.
- In the result, keeping all contentions of the petitioner open against the notice for revision this petition is dismissed.