

Assessee needn't be unemployed while going abroad for a job; only stay in India would determine residential status.

Summary – The Delhi ITAT in a recent case of Awanindra Singh, (the Assessee) held that where cash seized from premises of assessee, belonged to company in which assessee was a director and said company had already shown to have received huge cash as share capital, matter was to be readjudicated

Where FDRs found from premises of assessee-director during search belonged to company and assessments of said company were completed under section 143(3) in which those FDRs were duly considered, those could not be treated as his unexplained investment

Where company in which assessee was a director was an authorised agent of NDMC for collecting electricity and water charges from customers but said company was remitting less amount to NDMC by resorting to fraud, addition was to be made in hands of company and not in hands of assessee director of company

Where all assets were acquired by assessee in preceding years and no asset was acquired during year under consideration, no additions on account of unexplained investments could be made

In view of section 153(2A) as amended by Finance Act, 2001, if a Commissioner (Appeals) set aside order of Assessing Officer after 1-4-2000, new assessment is to be completed within one year from end of financial year in which order was passed by Commissioner (Appeals)

Where reopening was initiated for examination of share capital which was not permissible in law and Assessing Officer never formed an opinion that there was escapement of income in hands of assessee-company, impugned reopening of assessment was not valid

Facts

- The assessee was a director in companies CIL and SCPL who were engaged in collecting electricity and water charges on behalf of the NDMC from customers. A search and seizure operation was conducted by the CBI authorities at various residential/business premises of the assessee-company as well as his bank lockers/private vaults. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the cash and other assets seized during search. With regard to cash, it was explained that the sum amounting to Rs. 1.75 crores belonged to CIL, Rs. 3.20 lakhs belonged to SCPL and Rs. 3.93 lakhs belonged to NDMC. The Assessing Officer did not accept the explanation of the assessee and completed the assessment making additions to the income of the assessee.

- On appeal, the Commissioner (Appeals) observed that the major amount of cash claimed as belonging to CIL. The company CIL had shown share application money of certain amount as receipt on various dates in 1996 which falls partly in assessment year 96-97 and partly in assessment year 97-98. The evidence filed could not be ignored merely on the ground that the cash was found in the lockers of the assessee. When the company owned up this cash, the evidence could not be completely ignored. However, the source of the cash found was claimed to be share application money received from various parties which was quite unusual. They had not made public issue for receipt of share application money and it cannot be said that the assessee would be unaware of the parties who had given the money. However, it was necessary that the source of cash was examined in case of the company and if it was not explained by the company, then the onus would be on the assessee to explain the money since the cash was found in its possession.
- In instant appeal the revenue contended that the Commissioner (Appeals) was not justified in setting aside the issue of unexplained cash to the file of the Assessing Officer. The claim of the cash seized belonged to the company CIL was a concocted story created by the assessee to explain the cash found in a search by the CBI. The cash was found from the lockers which were in the name of the assessee and his wife. If there was any cash belonging to the company, it would have been in the bank account of the company. Therefore, the claim that the company CIL was a genuine company and had received huge sums by way of share application money was unbelievable and was to be rejected. Further, the assessee had pleaded guilty before the Court of Metropolitan Magistrate and had agreed that he had siphoned off sum collected by SCPL on behalf of NDMC. Thus, the assessee was taking contradictory stand before the Tribunal than the plea before the Metropolitan Magistrate.

Held

- There is no any infirmity in the direction of the Commissioner (Appeals) in setting aside the matter to the file of the Assessing Officer. The major thrust of the revenue was that the assessee himself has pleaded guilty before the Metropolitan Magistrate, meaning thereby, he admitted that the cash was of NDMC which was siphoned off by him. It would not be out of place to mention that SCPL was appointed as an agent by NDMC to collect the tax on its behalf. In the year 2012, the assessee pleaded guilty before the Metropolitan Magistrate by admitting that he siphoned off the tax collected on behalf of NDMC. However, this admission is in the year 2012 and cannot be considered as a basis for holding the order of the Commissioner (Appeals) to be wrong which was passed in the year 2000. Moreover, if this admission by the assessee before the Metropolitan Magistrate is to be taken into account, then also the cash found from him which was seized by the CBI authorities and has been directed by the Metropolitan Magistrate to be confiscated and deposited with NDMC cannot be considered as unexplained cash of the assessee because SCPL were the collecting agent for the taxes on behalf of NDMC and now, it is established and admitted by the assessee that it was NDMC's tax collection which was siphoned off and kept in his lockers. Thus, it cannot be treated as unexplained cash for the purpose of income-tax in his hands.
- The department has also pleaded that CIL neither filed the return of income nor the relevant forms and documents with the Registrar of Companies. So far as filing of the return of income is

concerned, from the assessment order of CIL, it is found that the return for assessment year 1996-97 was filed on 24-9-1996 and for assessment year 1997-98 on 28-11-1997. Thus, the said company has filed regular returns of income tax with the concerned Assessing Officer. Therefore, the allegation that the said company did not file the return of income is factually incorrect. If there is any non-compliance under the Companies Act, it is for the Registrar of Companies to take appropriate action but it will have no bearing so far as income tax assessment is concerned. In view of the totality of facts, the order of the Commissioner (Appeals) wherein he set aside the addition for fresh consideration to the Assessing Officer could not be faulted with.