

I-T Assessment: Surrender Under Coercion Untenable

THE FINANCIAL WORLD

Chandigarh, Wednesday, May 7, 2003

ONE of the common problems one comes across in assessment proceedings relates to additions on account of surrender of income or agreed additions. It happens quite often that an assessee feels so harassed with the longdrawn assessment proceedings or coercion or threats, exercised in the course thereof, freely interspersed with threats of prosecution, alternately with promises of amnesty on surrender of suggested figures, that he succumbs to suggestions of surrender or agreed additions, which in reality, do not at all represent his income.

Quite often, an assessee has to compromise with injustice, merely for the sake of buying peace; in weaker moments, when they have already been subjected to the harrowing experience of search, seizure, recording of statements and late night cross-examination, no wonder many of them agree to whatever wild suggestions and impositions about their so called concealed incomes are made.

It is well known that under third degree, methods, totally innocent persons have confessed even to murder, not to speak of concealment. The tragedy of the matter is that the pressure often works on the innocent and it elicits hardly any response from the hardened criminal.

Right of appeal

The right of appeal is a substantive right and it is not merely a matter of procedure, vide *Hoosen Kasam Dada (India) Ltd vs State of MP (1953) 4 STC 114 (SC)*. Further, an appeal is only a continuation of assessment proceedings vide *Siemens India Ltd vs State of Maharashtra (1986) 62 STC 40 (Born)* and *Hasmatrai vs Raghunath Prasad AIR 1981 SC 1711*. Appeal. Commissioner of Income-tax (Appeals)- has been constituted as a revising authority not in the narrow sense of revising. He can revise not only the ultimate computation but also each decision, which led to the said computation or assessment. He can thus revise various decisions given by the Assessing Officer culminating in the assessment. It is not only a right but also the duty of the appellate authority to consider and admit various objections raised by the appellant against the processes and various stages which finally led to the impugned assessment.

The appellant is, therefore, within his right to question the validity and implications of the so caned surrender and Assessing Officer's action in acting thereon without affording reasonable opportunity to the assessee to examine the account books and tender a proper explanation for the so called discrepancy.

It is well settled that the effect of an admission depends on the circumstances in which it is made vide *Ex-Servicemen Cooperative Tenant Farming Society limited vs. State of Haryana AIR 1974 SC 1121*.

It is trite law that an admission made in the course of criminal proceedings, has no binding force at all and the prosecution is called upon to establish the charge beyond reasonable doubt even when the accused pleads guilty. An admission or surrender made by the assessee in such circumstances is, therefore, not conclusive and at best, it has only persuasive value, the worth of which has to be judged in accordance with the rules of evidence.

Surrender not conclusive

Regarding admissions made during the course of assessment proceedings and other proceedings, the Hon'ble Supreme Court has laid down that such admissions, are not conclusive, and they would be

decisive only if the same are not subsequently withdrawn or proved to be erroneous vide *Narayanan vs. Gopal* AIR 1960 SC 235. An amount cannot be assessed merely on admission. The worth of an admission has to be considered along with other material and its effect depends to a large extent upon the circumstances in which it is made.

In any event, it cannot form the basis of liability to assessment under the Income-tax Act and, therefore, the assessment of a person for an amount of income, to which he is a stranger, cannot be based on a ground that he himself wanted to be assessed on it-*Asit Kumar Ghosh vs. CIT* (1953) 24 ITR 576 (Cal). This is so because no amount of admission contrary to law can create an estoppel against law- *Mathra Prasad & Sons vs State of Punjab* (1962) 13 STC 180 (SC).

In *CIT vs. Bharat General Insurance Co.* (supra), it was held that it is incumbent upon the Income-tax Department to itself determine whether a particular income is in reality assessable in the hands of a particular assessee in a specified year or not. Merely because an assessee wrongly includes an income in his return, it cannot furnish a justification to the Assessing Officer to assess it without determining its correct assessability. A blind acceptance of a return would amount to abdicating his duty by the Assessing Officer.

An assessing officer's job is to determine the income of the assessee, after considering the facts and in accordance with law. He cannot be guided merely by admissions/assertions made by the assessee, in regard to the assessability of an amount or otherwise as held in *CIT vs. V.M. RP Firm* (1965) 56ITR67 (SC)

Conclusion

It is clear that an assessee who has agreed to certain additions or has surrendered certain amounts for inclusion in his income, can certainly object to the said inclusion or assessment later on, if he can point out that the said surrender or inclusion was agreed to by him erroneously either on an account of misappreciation of facts or of law. A mere admission or surrender by an assessee in regard to an income cannot operate as an estoppel and the income-tax authorities are bound to consider and allow whatever relief is permissible to such an assessee under the law.