

# ***CIT(A) cannot enhance assessment for income from a new source not considered in assessment***

June 19, 2018

## ***In brief***

In a recent ruling,<sup>1</sup> the Jaipur bench of the Income-tax Appellate Tribunal (Tribunal) has, *inter-alia*, held that while the Commissioner of Income-tax (Appeals) [CIT(A)] has the power to enhance the assessment, it has no power to go beyond the matter arising out of the proceedings before the tax officer (TO) more particularly when the separate provisions for eventuality are provided under the Income-tax Act, 1961 (the Act). Accordingly, the CIT(A) is not entitled to enhance new sources of income under section 251(1) of the Act.

## ***In detail***

### ***Facts***

- No return of income was filed by the taxpayer prior to the issue of notice under section 148 of the Act for the tax year under appeal.
- The TO while assessing the taxpayer for a different tax year had found that certain unexplained deposits were credited to the taxpayer's bank account, for which it formed a *prima facie* view that such deposits had escaped assessment.
- The taxpayer on receipt of notice under section 148 of the Act had filed a return of income disclosing income from agricultural operations. The assessment was completed by making additions in respect of unexplained deposits made in the bank account of the taxpayer. In addition, the TO had discovered sale of ancestral land by the taxpayer to a company.
- Aggrieved by the TO's order, the taxpayer preferred an appeal before the CIT(A).
- The CIT(A) found that there was long-term capital gain (LTCG) on sale of land by the taxpayer to his two daughter-in-laws for the tax year under appeal. The CIT(A) exercised its power under section 251(1)(a) of the Act and enhanced the assessed income stating that the said LTCG had escaped from tax, and accordingly, raised a demand in the hands of the taxpayer.
- Aggrieved by the action of the CIT(A), the taxpayer preferred an appeal before the Tribunal.

### ***Issue before the Tribunal***

Whether the CIT(A) was justified in bringing to tax the LTCG from sale of land by the taxpayer to his two daughter-in-laws by exercising the powers of enhancement of income under section 251(1)(a) of the Act?

### ***Taxpayer's contentions***

- It was a settled proposition<sup>2</sup> that it was not open to the CIT(A) to travel outside the record of assessment while enhancing the income. The CIT(A) had to restrict to the source of income which had been the subject matter of consideration by the TO.
- The said proposition was duly accepted by the CIT(A) in its order. However, the CIT(A) considered that the sale of land had been discussed in tax proceedings for an

<sup>1</sup> ITA No. 751/ JP/ 2015; ITA No. 752/ JP/ 2015; ITA No. 753/ JP/ 2015

<sup>2</sup> CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC)

earlier tax year, and hence made enhancement in the tax year under appeal.

- However, the TO's order did not mention the sale of impugned land for which enhancement had been made by the CIT(A). Thus, there was no discussion on the sale of the impugned land in the assessment order.
- Further, the taxpayer contended that sale deed could be persuasive evidence but for sure could not be conclusive evidence. Any persuasive evidence had to be weighed with reference to other allied/circumstantial evidences and, thereafter, could a conclusion be drawn.
- The CIT(A) could not by itself enhance the income when a separate machinery had been provided in the Act, viz. section 150 of the Act, empowering the TO to issue notice under section 148 of the Act on receipt of directions from higher authorities.

#### **Revenue's contentions**

- The CIT(A) was well within its jurisdiction to bring to tax the sale transactions for the tax year under appeal.
- The taxpayer could not expect to get scot-free and not pay tax at all in either of the years when the transaction of sale of land was evidenced by the registered sale deeds.
- The TO had discussed the transaction on sale of land but inadvertently left out making the addition of LTCG that arose from sale of land. Thus, this was not a new source of

income.

- The action under section 251(1)(a) of the Act was also strengthened by the fact that the TO could have taken remedial actions for which direction could be given under section 150(1) of the Act.
- It was not a case where enhancement was proposed on an issue not considered in the assessment order; thus, the enhancement of income of the taxpayer was justified.

#### **Tribunal's ruling**

- The Tribunal noted that there was no linkage between sale transaction, which was subject matter of enhancement by the CIT(A), and the reasons recorded in the notice issued under section 148 of the Act.
- The Tribunal observed that the impugned sale transactions were neither the subject matter of – (a) notice issued under section 148 of the Act; (b) the subsequent return filed by the taxpayer; and (c) the assessment order passed by the TO.
- It was clearly a new source of income that the CIT(A) had discovered while adjudicating the matter and not a matter that arose out of assessment proceedings.
- Relying on judicial precedents<sup>3</sup>, the Tribunal noted that even though CIT(A) had *suo motu* power to consider the questions arising thereof, but there was no provisions under the Act that the CIT(A) could go beyond matters that arose out of the proceedings before the TO, as

separate machinery provisions for such eventuality was provided in the Act.

- The Tribunal further noted that the sale transaction for land was the subject matter of reopening of assessment for the earlier tax year, whereby, the impugned transactions were identified with specific particulars in the notice issued under section 148 of the Act.
- However, it was not a case that the addition in respect of transaction of sale of land was made on substantive basis in earlier tax year and protective basis in the tax year under appeal.
- The enhancement by the CIT(A) was beyond the powers envisaged under section 251(1)(a) of the Act, and thus, was not accepted. It was also held that the TO shall be free to take action as per law.

#### **The takeaways**

- This judgement reinforces the principle that the power of the CIT(A) to enhance the income under section 251 of the Act do not entitle the CIT(A) to travel beyond matters arising out of the assessment proceedings.
- This judgment affirms that the CIT(A) cannot tax a new source of income more particularly when separate provisions for such eventuality are enshrined in the Act.

#### **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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<sup>3</sup> CIT v. Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC); CIT v. Sardari Lal & Co. [2002] 120 Taxman 595 (Delhi HC)

CIT v. Associated Garments Makers [1992] 64 Taxman 215 (Rajasthan HC)

CIT v. B.P. Sherafudin [2017] 87 taxmann.com 330 (Kerala HC)

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