www.pwc.com/in

Sharing insights

News Alert
19 June, 2012

pwc

Same income cannot be taxed twice

In brief

In the recent case of R Natarajan[1] (the assessee or the company), the Income-tax Appellate Tribunal, Chennai (Tribunal) held that the Income-tax department is duty bound to demand and collect only legitimate tax dues and should not take advantage of the ignorance of an assessee. The Tribunal also decided that same income cannot be taxed twice though it was offered erroneously in two different assessment years (AY).

Facts

- The assessee is an individual resident tax payer earning salary income.
- The assessee received a letter for performance incentive from his employer on 5 July, 2007 for services rendered during the financial year (FY) 2006–07.
- In the tax return for AY 2007-08, the assessee voluntarily offered the incentive income in addition to salary income under a *bona fide* belief that the incentive is taxable in the year which the services pertains to. The assessee also claimed the credit of tax withheld on that incentive, based on the incentive letter.

[1] R Natarajan *v.*. ACIT [TS-386-ITAT-2012(CHNY)]

- The employer included the incentive income and the tax withheld in the Form 16 of AY 2008-09. Based on Form 16, the assessee again offered the same income in its tax return of income for AY 2008-09.

- The assessing officer (AO) completed the regular assessment under section 143(3) of the Income-tax Act, 1961 (the Act) for AY 2007-08 accepting the returned income. However, the AO rejected the claim to allow credit for tax withheld claimed by the assessee based on the incentive letter.

- The AO also completed the assessment for AY 2008-09 accepting the returned income which included incentive income and allowed credit for tax withheld according to Form 16.

- The assessee filed an appeal before the Commissioner of Income-tax (Appeals) (CIT(A)) for AY 2007-08 contesting that the AO ought to have excluded the incentive income while disallowing the tax withheld credit having known that the said income was also offered to tax in AY 2008-09.

Proceedings before the CIT(A)

- The CIT(A) was of the view that since the AO had accepted the returned income of the assessee as it is, there cannot be any appeal against the assessment order.

- Furthermore the CIT(A) dismissed the appeal stating it to be infructuous since there was no liability as a result of the assessment and hence no scope of appeal.

Issues

Can an income erroneously offered in two different years be taxed twice?

Revenue's contentions

- The tax return of AY 2008–09 was submitted by the assessee on 15 July, 2008 and having known that the income had been offered twice in AYs 2007–08 and 2008–09, the assessee had the option to submit a revised tax return for AY 2007–08 but had not done so.

- The Supreme Court, in the case of Goetze (India) Ltd[2] had held that where the assessee forgot to claim any deduction and instead of filing a revised return, requested the AO by a letter to grant the deduction, is not allowable.

Assessee's contentions

- The assessee contended that the Income-tax department has taken advantage of an assessee's ignorance to collect more tax than what was legitimately payable by him.

- The assessee relied on CBDT Circular No. 14 dated 11 April, 1995, whereby tax officers were instructed not to take advantage of the ignorance of an assessee as to his rights.

- The assessee contended that since the letter regarding the performance incentive was received by him before the submission of the tax return for AY 2007–08, he was under the impression that the income pertained to the same year.

- The Chennai Tribunal decision in the case of Ark Investments Ltd[3], had held that an appeal to CIT (A) was maintainable, in a case where income was not taxable even though the assessee had offeredd it to tax as his income under an erroneous or mistaken view.

[2] Goetze (India) Ltd *v*.. CIT [2006] 284 ITR 323 (SC)
[3] Ark Investments Ltd *v.* ITO [1985] 13 ITD 65 (CHNY)

- The Supreme Court decision in the case of Goetze (India) Ltd would not be applicable in the instant case since the request pertained to proceedings before the CIT(A) and not before the AO.

Tribunal ruling

- The AO knew that the amount was offered to tax in AY 2008–09 and thus ought to have excluded it while completing the assessement of AY 2007-08.

- Article 265 of the Constitution of India mandates the collection of taxes which were legitimately due from the assessee.

- The principles of the Central Board of Direct Tax Circular (Circular No. 14 dated 11 April, 1955) that taxes were to be collected according to law and not a pie more or less survives for all times.

- The Income-tax department was not collecting tax for itself, it was collecting tax on behalf of the sovereign state i.e., Union of India. The Union of India as the sovereign authority would not levy tax on an amount offered to tax by mistake. It was not the policy of the Sovereign State to crave for undue enrichment.

- The authority to collect tax by the state also carried the power to rectify any proceeding which had resulted in double taxation. If not, the CIT(A) could had given a direction to the assessing authority to rectify such a mistake apparent from records.

- The Supreme Court decision in the case of Goetze India would not apply in this situation since the assessee had not requested any exemption or concession.

- In light of the above the Tribunal held that the income should not be taxed twice and thus it should be deleted from the tax return for AY 2007 – 08.

Conclusion

The Tribunal ruling (third member bench) was based on the specific facts of the case; however, it lays down the ratio that Revenue is *prima facie* responsible for taxing income legitimately and this income cannot be taxed twice if it is brought to the notice of the revenue.

Our Offices

For private circulation only

Ahmedabad President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000	**Bangalore** 6th Floor, Millenia Tower 'D' 1 & 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000	**Bhubaneswar** IDCOL House, Sardar Patel Bhawan Block III, Ground Floor, Unit 2 Bhubaneswar 751009 Phone +91-674 253 2279 / 2296	**Chennai** PwC Center, 2nd Floor 32, Khader Nawaz Khan Road Nungambakkam Chennai 600 006 Phone +91-44 4228 5000	**Hyderabad** #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600
Kolkata South City Pinnacle, 4th Floor, Plot – XI/1, Block EP, Sector V Salt Lake Electronic Complex Bidhan Nagar Kolkata 700 091 Phone +91-33 4404 6000 / 44048225	**Mumbai** PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000	**Gurgaon** Building No. 10, Tower - C 17th & 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000	**Pune** GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444	For more information contact us at, pwctrs.knowledgemanagement@in.pwc.com