

# SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No.  
131

**Murali Krishna Chakrala**

**vs.**

**The Deputy Director ,Directorate of Enforcement**

CA is not expected to check the genuinity of documents submitted by clients for issuing Form 15CB

**Date: 10.12.2022**

## Facts of the Case

- ❖ A Chartered Accountant, Murali Krishna Chakrala, ("CA") was approached by his VAT return client for the issuance of Form 15CB, as asked by The State Bank of Travancore in respect of overseas payment of imports. The Form 15CB was issued on client's request for transferring a sum of 3.45 Crore to various entities in Hongkong.
- ❖ Subsequently, an investigation was carried out, in which the allegations indicated, opening fictitious bank accounts, forged bills of entry, parking huge funds in the bank account and transferring funds to various overseas parties by the client.
- ❖ During the investigation, the Enforcement Directorate (ED) contended the CA's involvement in proceeds of crime, as Form 15CB was filed in his name and overseas payments were made through bank accounts using such forms.

# CA's/ Petitioner's Contention

- ❖ CA contended that he did not have any reason to suspect the genuineness of the import documents because Form 15CB requires CA to certify nature of remittance and whether TAX is deducted appropriately or not. CA has neither directly or indirectly participated in the generation of proceeds of crime in any manner whatsoever.
- ❖ CA further contended that, Form 15CB for making overseas payment towards import is not required even under the law and that is why, except the State Bank of Travancore, all the other nationalised banks had transferred the funds based on the import documents without insisting upon a Form 15CB from a Chartered Accountant. He would not have gullibly uploaded the certificates into the Income Tax Department portal on the day.

# ED's contention

- ❖ The Enforcement Directorate has filed a detailed counter affidavit dated 09.11.2022 justifying the prosecution of Murali Krishna Chakrala (CA) and contending that there are prima facie materials against him.
- ❖ The Enforcement Directorate was of the view that the CA, in this case travelled beyond the professional scope, ethics and value and in the process issued the Form - 15CB in the name of M/s.B.K.Electro Tool Products, ultimately facilitated the money mule, to operate the account in the name of M/s.B.K.Electro Tool Products through seven AD Banks to send foreign exchange without disclosing the identity of the beneficial owner and end-use.
- ❖ Directorate of Enforcement contended that the CA is deeply involved in the scam and it is no way connected within the scope of professional services as a chartered accountant .

# Legal provisions

- ❖ As per Income Tax Act 1961 Form 15CB, is not a declaration, but a certificate issued by a Chartered Accountant ensuring that the provisions of the Double Taxation Avoidance Agreement and the Income Tax Act have been complied with in respect of tax deductions while making the payments. It includes the following:
  - i. Details and nature of payment made to a Non Resident.
  - ii. Compliance with Section 195 of the Income Tax Act.
  - iii. Rate of TDS deducted
  - iv. Applicability of the Double Taxation Avoidance Agreement.

# Ruling

- ❖ It was held that if the petitioner had been part of the conspiracy, the certificates would not have been uploaded in his name. **The petitioner has only received the remuneration for issuance of such Form 15CB and nothing more.**
- ❖ Further, it was held that **Chartered Accountant** is only required to **examine the nature of remittance and nothing beyond that.** There is no requirement to dig deep into the genuineness of the documents submitted by his clients.
- ❖ Since the petitioner issued Form 15CB after scrutinising the documents furnished to him by the client, there was no reason for the petitioner to suspect the genuineness of such import transactions. He discharged his duties following the professional behaviour expected from him.
- ❖ **Therefore, the Court discharged the petitioner from the prosecution and enlisted him as a witness.**

## Our Comments

- ❖ Form 15CB requires CA to **certify nature of foreign remittance for TDS deductibility purpose based on documents submitted by client without requiring him to go into the genuineness of documents** submitted by client.
- ❖ Thus it can be said that the liability of Chartered Accountant issuing any certificate is similar to an auditor & accordingly it can be said that a CA is nearly a watchdog, not a bloodhound.
- ❖ Hence, We can say that the prosecution of CA, cannot be sustained in relation to any certificate issued by CA based on the documents received by him irrespective of the fact whether he has checked the genuinty of the documents or not.
- ❖ CA should be aware of applicability of section 271J of the Income Tax Act wherein Rs. 10000 can be charged by the AO and CIT(A) if they think that information furnished in the certificate by the professional is incorrect.

# Recommendation

- ❖ It is always recommended that the Chartered Accountant should always obtain documents for issuing Form 15CB ,through the facility given on Income tax portal while assigning Form 15CB so that there is trail of everything on the Income Tax Portal and it will become easy to trace the documents than to search on any other source.

However there are certain drawbacks which are-

- ❖ If the client forgets to upload any document for issue of Form 15CB ,then he will not be able to re upload it again on the Income Tax Portal and same will be required to be sent through any other mode.
- ❖ It will ultimately increase the burden for both client as well as for Chartered Accountant because they have to handle the documents from different modes of communication.



<b>Court</b>	Madras High Court
<b>Date of decision</b>	23.11.2022

**Note:** Case law name in **Red**- in favour of the revenue, **Green**-In favour of the Assessee, **Orange** = Partial



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