

SATURDAY INTERNATIONAL TAX GYAN !!!

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**SITG No.
180**

Cricket South Africa (NPC) v. ACIT (International Taxation)

**Assumption of 'jurisdiction' to be decided
at the outset in case of non-resident entity**

**18.11.2023
Jain Shrimal & Co.**

Facts of the Case

- The assessee, is a **non- resident corporate entity, tax resident of South Africa** entered into an agreement with TAJ Television Ltd., another non-resident entity.
- As per AIR information available in AIMS module of ITBA, it was found that the assessee had entered into certain transactions resulting in generation of income in India.
- It was related to certain rights pertaining to live transmission of certain matches played in South Africa as well as transmission of recorded programs.
- Based on the above details AO reopened Assessment proceedings, assessee filed return of income against such notice but objected the reopening.
- **Assessee believes** that since neither the assessee nor the TAJ Television Ltd. are Indian residents, the taxability for the license fee received does not arise in India.
- AO reopened the proceedings as he was of the view that the license fee received of Rs.53,40,00,000 from TAJ Television Ltd. is in the nature of royalty, hence, taxable in India.

Assessee's Contention

- The Id. Counsel argues that the **assumption of jurisdiction u/s 147 is invalid** as the A.O. has considered non-existent and wholly irrelevant facts for coming to conclusion that income chargeable to tax in the hands of the assessee has escaped assessment.
- It is a well settled principle of law that the **foundation of assumption of jurisdiction u/s 147** of the act is the reasons recorded by the A.O. to form the belief that income chargeable to tax in a particular A.Y. has escaped assessment, but it can not be as stated by the Ld. A.O. (mentioned in the earlier slide).
- While **granting approval u/s 151**, the competent authorities, neither the Additional CIT nor the CIT have applied their minds to the material facts on record. Moreover, without properly examining the issue, the DRP has rejected the assessee's contention in a purely perfunctory manner.

Revenue's Contention

- The assessee had received certain payments from India on which TDS had been deducted by the remitters during the year and even the letter was served on 17.03.2021, however the **assessee chose not to file the return of income or submit an appropriate response.**
- Therefore, the A.O. formulated the reasons to believe that the assessee has willingly not filed ITR in order to escape assessment, and henceforth the A.O. further emphasize that due to failure of filing ITR, the **genuineness of the transactions and the business activities cannot be verified.**
- The Ld. A.O. believes that the only **requirements to initiate proceedings u/s 147** is reasons to believe which was recorded in time (stated above). The case is beyond 4 years but within 6 years from the end of the A.Y. under consideration, the approval for the same u/s 151(1) was solicited for the same purpose.

Relevant Provisions

Section-5 (Scope of Income)

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

Section 147 (Income escaping assessment)

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]

Ruling

Hon'ble Tribunal while passing judgement considered the various case laws relied upon by assessee in the proceedings which were passed by co-ordinate benches and held as under:

- The reasons recorded by the A.O. certainly **do not make a case of reopening the case u/s 147**, however even more important thing in the case is that not only the A.O. has acted in a cavalier manner while reopening the assessment u/s 147, but also the approving authorities have also failed in discharging the **duties cast upon them u/s 151**. It should not be used as a tool for harassment of the assessee.
- The Ld. DRP disposed off the objections raised by the assessee being completely oblivious of the factual position to the extent that DRP has referred to the non-filing of TDS return and related transactions as the reasons for reopening. The case is a classic example of **failure of DRP to effectively deal with the issues at hand**, defeating the purpose for which it was established (i.e., an alternative dispute resolution mechanism for speedy disposal of dispute between the assessee and the department in certain areas of taxation).
- The tribunal hold that the reopening of the case is invalid, hence it declared the assessment order as void ab initio and quash it. In addition, the issues raised in other grounds including the grounds of merit of the addition made have become academic, therefore it desist from deciding them. The **appeal is allowed**.

Our Comments

- Although the above proceedings were quashed because of failure on the part of AO in relation to facts and other details. However, in such cases of non-resident, it is important to understand whether AO has jurisdiction over such non-residents or not.
- The **'jurisdiction'** of the non-resident assessee is said to be in the ambit of Indian tax authorities only when-
 - i. If income or receipt of payment to the assessee accrues or arises in India,
 - ii. If such income is deemed to accrue or arise in India, and
 - iii. If such income is actually received in India.
- While re-opening the assessment of a non-resident entity u/s 147, the first and foremost thing should be to verify if the **jurisdiction falls within the scope of the department**, i.e., whether the provisions of the Indian Income Tax Act shall at all apply to the assessee, and then only the A.O. should proceed towards ascertaining the income escaped the assessment.
- It is important to remember that while representing the case to the higher authorities including CIT, and DRP, the assessee should first challenge the tax authorities with regard to a 'jurisdiction' of the Indian tax authorities, however, the assessee should ensure that such income earned by it is not falling under section 5 of Income Tax Act.

Our Comments

- Additionally, the non-resident assessee **should test the 'jurisdiction' of the A.O. at the outset**, and higher authorities should also first test whether the AO has jurisdiction or not post deciding the jurisdictional issue, the relevant authority should decide the technical aspect of the case.
- Many times in such cases, AO also allot PAN to such non-resident suo moto even without allowing him to challenge the jurisdiction which also results in harassment of the assessee.
- Also, firstly the scope of the transaction should be ascertained, as to whether it falls under the Indian Income Tax Act, before going into the academic merits of the transactions.

Section/Article	Section 5(2), Section 147 of Income Tax Act
DTAA/Country	-
Court	Tribunal
Date of decision	27.10.2023



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