

TAX FLASH NEWS

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Tax assessment cannot be based on news articles because it does not constitute sufficient evidence

The Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Reindeer Software Solutions Pvt. Ltd.¹ (the taxpayer) held that assessment carried out by the Assessing Officer (AO) based on news articles cannot be justified as it does not constitute sufficient material on record. The information disseminated through the media is devoid of facts and may not be technically correct. Therefore, the addition made by the AO was rightly deleted by the Commissioner of Income-tax (Appeal) [CIT(A)].

Facts of the case

The taxpayer is engaged in the business of software development and providing service and sales of products through end to end business transaction and conducted its business operation through a website with the domain name www.urbantouch.com and under the brand name 'Urban Touch'. The taxpayer was incorporated during FY 2010-11 with a paid-up share capital of INR 1,00,000. Subsequently, the taxpayer received funding in two rounds in the form of Compulsorily Convertible Preference Shares (CCPS) and equity shares of INR203.49 million during FY 2010-11 and FY 2011-12. On 9 August 2012, the shares of the taxpayer were transferred by its shareholders to another Indian company (the Buyer) in a similar line of business for a sale consideration of INR122.33 million.

Subsequent to the transfer of shares, the business of the taxpayer was consolidated under the buyer. The director in the taxpayer was appointed as a CEO and also admitted to the board of directors in the buyer.

Subsequently, during March 2013, owing to certain issues and the fact that the taxpayer was running into huge losses the taxpayer sold off all its assets and the domain name of www.urbantouch.com operated along with all other intellectual property/brand assets to the buyer vide Brand Assets Assignment Agreement dated 14 March 2013 for a total consideration of INR0.3 million. During the Assessment Year 2013-14, the taxpayer filed loss return.

As a result of the above continued losses, the management of the buyer decided that the stake held by it in the taxpayer shall be sold to an investor. Accordingly, the shares of the taxpayer held by the buyer were acquired by investor for a value of INR0.14 million as the net asset value of the taxpayer was negative and each share was valued at INR1. The aforementioned facts were furnished before the AO. However, the same was not considered at the time of passing the assessment order for AY 2013-14. While processing the return, the AO made addition of undisclosed income on sale of Urban Touch under the head 'capital gains'. The AO relied on the various news reports where it was mentioned that the taxpayer has received an amount of USD30 million as proceeds for sale of Urban Touch. CIT(A) allowed the appeal and deleted the addition made by the AO.

Tribunal's decision

The information disseminated through the media is devoid of facts and may not be technically correct. Further, such news articles were not authored by technical/field experts so as to ensure that nuances of the transaction are reported correctly. The article printed may have been to provide information with

¹ ACIT v. Reindeer Software Solutions Pvt. Ltd. (ITA No. 1354/Bang/2017) – Taxsutra.com

respect to the fact that the shareholders of the taxpayer are selling the shares held by them. However, the same has been misunderstood by the AO and accordingly, the information contained in the news article was not ratified by the taxpayer. The Tribunal relied on the Supreme Court decision in the case of Laxmi Raj Shetty².

The sale of shares by the buyer is distinct and separate from the sale of shares undertaken in August 2012. Accordingly, it was held that the amount has been reported in the news articles relied upon by the AO without carrying out adequate due diligence and without being ratified by the taxpayer or the investors.

Therefore, the Tribunal held that the assessment based on a news articles does not in any case constitute adequate material on record. Consequently, the addition made by the AO was rightly deleted by the CIT(A).

Our comments

The issue with respect to the assessments made by the tax department based on external sources i.e. news reports and social networking websites such as Facebook, Twitter, LinkedIn, etc. has been a subject matter of debates before the Courts/Tribunal. The tax officers are apparently bringing all their investigative skill to find out and use information which may help them to enhance the quality of their assessments.

It is interesting to note that in the case of GE Energy Parts³, the tax department used social media (LinkedIn profiles) to lend support to their contention on the existence of a Permanent Establishment (PE). The Tribunal held that LinkedIn profiles submitted by the tax department had a considerable bearing on the subject matter of appeal. LinkedIn profiles were not in the nature of hearsay because it is the employee who himself had given all the relevant details on the website. Accordingly, the Tribunal admitted the LinkedIn profiles submitted by the tax department as an additional evidence.

The Tribunal in the present case has held that assessment carried out by the AO based on news articles cannot be justified as it does not constitute sufficient material on record. The amount has been reported in the news articles relied upon by the AO without carrying out adequate due diligence and without being ratified by the taxpayer or the investors.



² Laxmi Raj Shetty and Anr v. State of Tamil Nadu (1988 AIR 1274)

³ GE Energy Parts Inc v. ADIT [ITA No 671/Del/2011, dated 4 July 2014]

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