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DTRTI NEWS LETTER

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राजभाषा स्कंध



INTERVIEW OF SHRI KRISHNA MOHAN PRASAD, IRS MEMBER, CBDT

1. Your brief biography Sir including (i) place of birth, (ii) schools & colleges studied in & courses/degrees attained and (iii) any employment prior to joining the Income Tax Department?

I was born in Darbhanga which is in North Bihar. I studied in Netarhat Residential School (1972-77), Ranchi, and then did Intermediate in Arts & BA in Economics (Honours) from St. Xavier's College, Ranchi(1981). I did my MA in Economics at Delhi School of Economics and in my first year MA, got selected in the Indian Economic Service besides the Indian Revenue Service and also the RBI but I chose IRS and subsequent to joining the Department, I did

my LLB from Dhanbad Law College, Dhanbad, Jharkhand. Recently about two years back, I did M.A. in Education from IGNOU(2019) and am presently studying Intellectual Property Laws also from IGNOU. I am conversant with Hindi, English, Sanskrit, Bhojpuri and Maithili languages.

2. What are the vivid memories of your training days at NADT, Nagpur?

At NADT, Nagpur I did my Induction training from December, 1984 to May, 1986 and as you will appreciate those were the most beautiful days of our life. Apart from the usual training in accounts, law, book keeping, office procedure etc., we met people from all over the country. That was a very nice experience. It was nice learning, working, playing and moving around with such a bunch of very talented and lovely individuals and taking part in various cultural & entertainment activities, apart from dinner outings to Nagpur city during weekends.

3. Could you kindly furnish details of your Departmental and deputation postings and achievements therein?

After training at NADT, Nagpur, I was posted in Delhi from 1986 to 1994 where I worked in the Assessment charge for three years and in Investigation for 3 years and later worked in CBDT from 1991 to 1994 as Under Secretary, TPL where I was also Secretary to the National Committee for Approvals u/s 35AC under the Chairmanship of Ex Chief Justice of India. I was also Member of some of the Committees, like identification of backward areas, which was led by the then Chief

Economic Advisor. That experience was absolutely wonderful because Dr. Manmohan Singh was the Finance Minister and a lot of economic changes were taking place and also a lot of tax reforms. Based on the Chellaiah Committee Report, we introduced some very significant reforms which led to simplification and rationalization of tax laws.

Then, I got posted to my home state Bihar, where I was posted in the Special Range, Dhanbad, with additional charge of Special Range, Ranchi, for one and a half years, during which I did some of my finest assessments which were confirmed in appellate forums and where prosecutions were also launched. I later shared those cases among AOs and they also learnt a lot from those assessments. Then I was posted in the largest mofussil charge at Muzzaffarpur which consisted of 24 districts of Bihar after which I was posted as the Headquarters to the Chief Commissioner of Income-tax, Patna, who had jurisdiction of Bihar, Orissa and the whole of Northeast when I was also looking after the Computer Center, which at that time was doing important work of allocation of PANs and processing of tax challans for indicating collections in computer system along with so many other activities. Thereafter in 2001, I was posted in Mumbai, initially, in the Corporate charge. There were huge cases and I did assessment of one big case namely M/s. VSNL, now M/s Tata Communications. In the year 2003, I was promoted as CIT and posted as CIT(Judicial), Mumbai for two years. That time, as some counsels were over charging the Department for rendering their services, we started the system of interviewing

advocates for appointing them as special counsels and now it has become the norm. But I faced a lot of resistance from the then Chief Commissioner and advocates, but, it led to streamlining of judicial work of the Department and proper litigation management. Then for two years, I was posted as CIT(DR) in ITAT, Mumbai. One significant case which I still remember was that of M/s VSNL, in which, huge deduction u/s.80IA was claimed till that time amounting to approximately Rs.2000 crore which I vehemently argued in the ITAT. The whole judgment came in favour of the Department and till date it remains in favour of the Department. Until now, I understand more than Rs.3000 crores have been collected by the Department as a result of that case.

Later, I was posted as CIT(A)IV, Mumbai, in which most of the cases were of share brokers or share broking firms and share market. My two years there were very meaningful with new concepts like 'mark to market' etc., coming into vogue for the first time. Then I was transferred to Northeast by mistake, but the order was cancelled after four months, whereafter I was posted as CIT (A)-18, Mumbai and then as CIT(A)-6, Mumbai which was also a very huge appeal charge wherein I did significant work in many cases including in M/s Tata Steel Ltd., and M/s Tata Insurance and a number of Tata Group cases and also in M/s Exim Bank where I effected enhancement of incomes. But, I also gave relief of almost Rs. 4000 crores in the case of M/s Tata Sons where addition was made u/s 10(38).

Another interesting case in Mumbai was that of a British lady married to a Goa based Italian man Ms. Carol Ashby where she had filed an appeal under FEMA and which was pending in my office against the adjudication order of the DD, Enforcement Directorate, wherein it was held that she was in violation of FERA law as a result of which her house was confiscated and penalty of Rs.5 lakhs was also levied. In that case lot of human emotions were involved and after hearing all the parties to the dispute, I set aside the order of the DD, ED and gave relief to Ms. Ashby in my capacity of Special Director(Appeals) for FEMA cases for the Western Region. The details of this interesting case could be seen in my article "A Human story in a Taxman's Life : My Gift of Magi" in the July-Sep 2020 edition of Taxalogue.

Thereafter, I was posted in the North-East region. I held Guwahati-1 Charge with additional charge of Jorhat. I travelled to all parts of the NE region and I was amazed by the quality of work that was being done in that part of India and the love for Hindi of the local officers/officials. I got the love and respect of the people there. Whenever the Action Plan Target was issued, there used to be detailed discussions and seminars on how to implement it, which I would say was a very rewarding experience. Even though these two were small charges, the declarations in IDS Scheme were better than even compared to Mumbai and Delhi charges. Even the surveys conducted u/s 133A were very good.

Thereafter, I got posted as DGIT(I&CI), Delhi in 2017 for two years having all India

jurisdiction. At that time, a lot of support came from the then Chairman who took lot of interest in this charge and lot of quality verification took place in FATCA, CRAS, Non-Bank cases etc.

Then there was SFT surveys also. So the number of reporting entities increased by many folds and also the undisclosed income detected increased substantially. About one third of the identification of the Benami Transactions Prohibition Act were also found out by the officers of I&CI. During demonetisation, identification of huge cash transactions in Delhi and in Hyderabad of more than 6000 crores of cash payments in violation of Section 269SS were identified and communicated to the field officers for appropriate action.

In the case of M/s Leelavathy Hospital, violation u/s 269ST amounting to Rs. 13 crores was detected and penalty levied. Simultaneously surveys also took place in M/s Apollo Hospitals & others in Chennai, Kolkata, Lucknow etc., which resulted in their changing of their software, so that, they don't show receipt in cash. So these were the good investigation that was done then. Then, transactions of Indians in Dubai also resulted in unearthing of violations of Black Money Act particularly by DIT(Mumbai) apart from others.

Then I got promoted as Pr. CCIT and later as Pr.DGIT(L&R), Delhi for four months during which I had reported to CBDT that in respect of more than 300 cases or so it was not fit cases for filing SLP as I believe that litigation is painful and we should reduce it as much as

possible and the then Member(CBDT) agreed. Monetary limits for filing appeal were consequently increased and we ensured that all such cases were withdrawn from Hon'ble High Court and Supreme Court. Then I was posted as the first Pr. CCIT, NeAC in September, 2019 when Faceless assessment scheme was introduced and for five months it was a roller coaster time because everything was to be set up. It was a complicated system and, we had to liason with the System people as well as with the jurisdictional charges. There were twenty five Commissioners, and I was very happy to report that more than 50,000 cases were disposed under the new system.

Then for the first time, selection of Member through interview was introduced. It took place in my case with the Cabinet Secretary during Covid lock down after which I was selected as Member and my orders came on 25/03/2020. I have now completed one year as Member, CBDT where I am looking after Member(A&J) as well as Member(IT).

4. Who were the senior officers instrumental in shaping your career and were the guiding light to you in your journey in the Income Tax Department?

I would start with Sri. GP Singh who was my first CIT belonging to 1961 batch of IRS and a highly dedicated person. But for him, I would never have cared to read Income Tax Act/Rules. For 3 years, he was my Commissioner after which he left for an UN assignment.

Then, Smt. Kamlesh Shukla was the next person. I passed an order in case of SP Bansal

in 1989, and I went to show the draft order to her. She told me that since she had been CIT (A), she would like to draft that order and asked me to see how she drafted it. She took three hours and drafted each and every line narrating facts, quoting case laws etc., and that was a wonderful experience and it changed the way I used to draft assessment orders thereafter. Then my first DDIT was Mr. K Vasudevan of 1974 Batch IRS, very respected and brilliant officer of the Department. I was ADIT, Unit-1, Delhi, the first and only Investigation charge in Delhi between 1961 to 1986. He used to send me to a lot of searches. My first search was in case of M/s Mehrasons Jewellers. In that case, there was one person who was investing money on his behalf in the Mehrauli area and that person too was covered. Search started at 5:00 AM and at 7:00 AM the next day, I was leaving for my home and he asked me to come by 9 A.M. but I could come back after a little rest at 10.30 a.m. only. By that time Mr. Vasudevan had already gone to Mehrauli and sealed eight lockers, which were in the names of the servants of Mr. Dayaram Choudhary, the MD of M/s Mehrasons Jewellers. That led to seizure of 72 lakh rupees of cash in those times. This was the first case in which reward was given by Investigation wing in Delhi where Mr. Vasudevan got Rs. 1,08,000/- and I got Rs. 72,000/-. There was a big function organised to celebrate the search at the DIT's office in Jhandewalan, where on enquiries, I narrated how difficult was the paper work undertaken to get the reward sanctioned by the then Member(Investigation), CBDT.

The next person is Sri. KM Sultan of 1974

Batch IRS. He is presently working in Washington, possibly in the World Bank. Earlier he worked for the Government of Ukraine and as Advisor to the President of Afghanistan. Sri.Sultan worked in TPL-II and many instructions in the 1990s were drafted by me at his behest. He was a supremely patient man with lucid language and guided me in drafting the one page return before the 'Saral Return Form' was introduced. Then during my stint in Ranchi as DCIT, I worked under Sri. SK Jha who was the CCIT, Ranchi who you must be aware was connected with the famous Azadi Bachao Andolan case law. He was an extraordinary man, very knowledgeable and spoke English in typical Oxford style and had a great influence on me. He used to go very deep into legal issues. The book on him is one of the finest biographies by anybody and it requires a lot of publicity and people should read such a profound book.

In Mumbai too, some senior officers impressed me. But it is in your initial days that you get impressed relatively easily. When you become a senior yourself, it takes time. Somehow you remember your earlier days more than your latter days. However, in Mumbai, Sri. Sriram Singh, CCIT, who was a very straightforward and balanced man, again influenced me a lot and he could with conviction hold that a particular case was not fit for further appeal. Then, our former Chairman, CBDT Sri. Sushil Chandra had a lot of enthusiasm and is a very motivational person who knows many different laws like Black Money Act etc., and is very hard working and disciplined in his day to day conduct and very frugal in eating also. So

these were some of the officers who influenced me the most in my career.

5. What are the perceptual differences between the department when you joined and now, particularly in the aftermath of the latest structural changes?

There are two aspects to this. As the saying goes, 'The more things change, the more it remains the same' which is to say that the more it appears to change, it remains the same. So the Department basically in the last 36 years, I would say, is more or less the same. And if I go to the Aayakar Bhavans in Delhi or Mumbai even now, I'm amazed to feel that I have come to the same old places, the same smell and the old admirals and the attitude are all the same. So there is not many changes that has taken place. And, this is good in many respects. We have a really strong culture of being professional and whatever people may say, I personally consider that IRS community of India, generally speaking, to the extent of more than 90% are some of the most refined, educated and civilized human beings anywhere and nice in their conduct and behaviour and kind to the taxpayers and lay people alike. We should not be bothered about the less than 10% employees who spoil the image of the Department and our image should not be dependent on them. Some of whom have now been shown the door. But in general, Department has been very kind to some of these people and unfortunately, some of them are not doing their duty properly. I have always believed that dereliction of one's duty is Vigilance's first effort in order to ensure that employees do routine work in

routine manner and no crisis occurs. We should promote and project the work done by the majority of the officers and not the black sheep in the Department.

Then again, the cleanliness of offices which were quite dirty earlier continues to be dirty even now inspite of the Swachtha Abhiyaan. We have to keep our premises clean and tidy. Now in Faceless schemes, we have the three key words transparency, accountability and efficiency. Transparency as per its Sanskrit logo means we have to be clean in our conduct and experts in what we do. At present we have some brilliant young officers and many bright officers are still joining the Service and the Department therefore would do better in future. I had an occasion to meet them last year when I spent two days with them at NADT when we had a course on Faceless assessment scheme, where nine Pr. CCITs, CCITs and I was there and I was very impressed with their knowledge and temperament.

As for the image of the Department, we have been saying and listening for long that the image of our Department is not good. Unfortunately, I always tell people, just go behind North Block and ask them about Income-tax. Ask anybody and we will understand that we have no image. People talk about CBI, ED etc., which are much better known inspite of being smaller organisations comparatively. Even though we have been doing such quality work, very few know our Department even when we have an explosion of information in social media these days. So far, whether our so called image is good or

bad, I am not sure. But most of the people I have encountered have stated that their personal experiences with our Department have not been bad, rather it has been quite good. So we have to promote the good image of the Department. There will always be people who are critical and we must improve our image based on their constructive criticism and feedback. So whether good, bad or ugly, we should first and foremost establish the image of the Department. Then we can always improve further from there.

6. Sir, in the light of the introduction of the faceless assessments and appeals what is your feedback on the new initiatives in improving the efficiency and the image of the Department, as well as in augmenting the revenues of the Department going forward?

More than the faceless assessment or appeal scheme, it is the facelessness of Income-tax proceedings which is the best outcome. This is a very significant thing and a big step. In spite of doing good assessments earlier, most of it did not survive and used to be knocked out at the ITAT stage and it had a cascading effect giving the feeling that the assessee could get relief in most cases. I personally feel that since only substantial questions are being decided in the Hon'ble High Courts and Supreme Court, Income-tax proceeding should be faceless all the way right up to the Hon'ble High Courts and Supreme Court. This is going to be a big challenge because some issues including constitutional issues may come up. But if the decision is taken at the highest level nothing would hinder it and it will bring transparency,

accountability, and efficiency in the whole system of assessment. That is one aspect. Then quality assessments should also be done in Central and International charges where more improvement is required in the quality of assessments since lot of additions are not surviving there also and I am not sure whether best quality assessments are being made in these charges. So, overall improvement is required in framing quality orders in these charges too.

Thirdly, Investigation work and detection of tax evasion is important and as you must be aware that as per the White Paper on black money and earlier reports and studies also, there have been a lot of recommendations about detecting black money and taxing the same. But, still there is a huge amount that is unaccounted across the country that needs to be tapped. And my opinion is that the biggest grievance redressal mechanism for honest tax payer is that there should be no leakage or minimum tax leakage. That is the best service we can give to the honest tax payer because they bear the burden. But still there is so much of tax leakages and we are collecting only 10 lakh crores whereas ideally at least 20 lakh crores could be collected. If tax leakages are reduced, then we can even reduce the rates of Income tax and GST. So the biggest service we as a collective organization can do is to reduce tax leakages. Most importantly, in the aftermath of the demonetisation, the then FM Mr. Arun Jaitley had remarked that we are generally a non-tax compliant country. Therefore the narrative should be now to make India a more tax compliant country.

If you have gone through the Report of the Finance Commission, there's a chapter on analysis of Tax-GDP ratio and as a country, we should try and achieve a collection of at least 25% of GDP as taxes and only when such GDP is collected and spent that our country would become a developed country. Out of the 130 crore Indian population, 30 crore people are already in the developed state of life but we have to take care of the remaining 100 crore people providing them quality education, medical facilities and internal security etc. So at least 25% of GDP should be coming in from of taxes and substantial part of it from the direct taxes, because indirect taxes lead to many distortions in the economy because it becomes part of the price and thus affects the poor also. Therefore, major part of taxes must come from direct taxes as in most developed nation.

7. What is your advice/suggestions to the new officers/officials in the field, borne out of your long and varied experiences in the field?

First and foremost, you must enjoy your job. Many of you may have aspired to be IAS or IPS or something else like being a poet or film maker etc., but once you have chosen IRS you must be focussed and take pride in being an IRS officer. You should be satisfied with the

work responsibilities assigned to you. Loving your job will make you happy day in and day out.

Number two, being healthy. Focus on your physical as well as mental health. Don't be dissatisfied about your postings or other things.

Thirdly, constantly upgrade your knowledge by reading the Income Tax Act and other Acts again and again, new practices, case laws etc., quality assessment orders, appeal and other orders on a daily basis.

Then last but not the least, love yourself.

8. What are your hobbies and interests besides the varied work that you do in the Department?

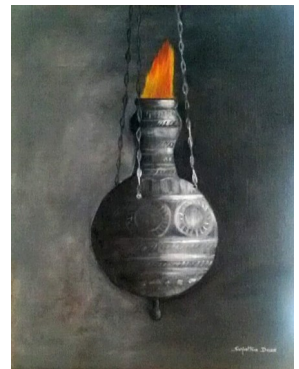
I love watching films, initially Hindi films and then Hollywood films, classical ones like Philadelphia Story, Casablanca, Dr Zhivago etc. Recently I have started watching Bengali films on Netflix and Prime Video also.

Secondly, I also love watching cricket matches on TV.

Thirdly, doing gardening where I also do all kinds of gardening work. Also doing yoga regularly, going for walk, travelling and cooking also.



Art work by
Smt. Sujatha Doss, ITI





**INVESTIGATION OF
FOREIGN ASSETS
IN FAS**
*Shri K. Rohan Raj, IRS
JCIT (TP)*

In the Assessment Scheme, a considerable number of cases were found to be selected for the following reasons

- New foreign assets in the nature of investments
- Large balance in foreign bank account/s
- New Foreign assets in the nature of financial interest in an entity.
- Large investments in foreign assets – Immovable property.
- New foreign assets.

This note may help guide the AOs in handling the cases selected on these CASS reasons. These CASS reasons can attract the provisions of two statutes viz., Income Tax Act 1961 and THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015. Therefore, it becomes necessary to thoroughly understand the interplay between these statutes while handling such cases.

To start with, the AO shall verify the foreign assets Schedule of ITR to identify the disclosed foreign assets. A complete

list of the assets and other details of the assets as disclosed in the ITR shall be brought out in the assessment order in detail. The AO should also verify the prior 2/3 previous year ITRs to compare whether there is any variation in the number of Foreign Assets/ Value of assets disclosed with that filed for A.Y 2018-19. In one particular case, it was found that while the assets remained the same, there was substantial increase in the value of the assets compared to the previous year.

While framing the questionnaire, it is important that the AO calls for the details of all the foreign assets held by the assessee in his name and also the details of the assets wherein the assessee is a beneficial owner. For instance there may be a foreign bank account in the name of a company where the assessee may be a beneficial owner/ authorized signatory. All efforts need to be taken to identify new foreign assets which were not disclosed in the ITR.

Now having compiled the complete list of foreign assets, the next step is to verify the source of funds used to acquire the foreign asset/s and the mode of transfer of funds outside India to acquire the asset. The AO should carefully examine the value of the assets disclosed in ITR vis-a-vis the source of funds. If the acquisition of a Foreign Asset was in A.Y 2018-19 or

any previous years, the respective bank statements reflecting the remittance of funds and other documents, like Form A submitted to bankers reflecting the purpose of remittance has to be scrutinized and cross verified with details reported in ITR. For Instance, if the purpose of remittance (as submitted to bankers) is shown as investment in immovable property, whereas in ITR if it is declared as investment in shares of a company, then there is a possibility that they pertain to two different assets. If the source of funds for acquisition of the foreign assets furnished by the assessee is not explained or the explanation given is not satisfactory to the AO, then the same has to be taxed under Black Money Act.

It is also imperative that the AO looks for the corresponding income from the foreign asset reported by the assessee in the ITR, viz, rental income from a foreign House Property, Dividend income from Investments in Foreign Company, interest in come from deposits in foreign bank accounts.

Black Money Act came into effect from 01/04/2016, however the provisions become applicable even if an asset has been acquired prior to 01/04/2016 for which the sources stand unexplained. The information about the foreign assets revealed during the Income tax

proceedings is to be communicated to the JAO for initiating proceeding under Black Money Act. Further, the AO shall ensure that the assessee is a resident during the year of acquisition of foreign assets as Black Money Act is applicable only to resident assessee. On any unaccounted foreign income earned prior to 01/04/2016, the information has to be passed to the JAO for reopening u/s.149 (1)(c) of the Income Tax Act.

Post script: For a resident assessee, his global income is taxable in India under the Income tax Act. Since the provisions relating to penalty and prosecution are entirely different in both these acts, an income which becomes taxable under Black Money Act should not be brought to taxation under the Income tax Act.

As per S.4(3) of the Black Money Act, the income included as total undisclosed foreign income shall not form part of total income under the Income tax Act. However, as per Section.5(1)(c) of the Income tax Act, all income which accrues or arises to a resident assessee outside India shall become taxable in his hands during the relevant previous year. The relevant amendment has not yet been brought in under the Income tax Act post enactment of the Black Money Act. This aspect is left as such for debate and readers view.



**EXCHANGE OF INFO: USING
THIRD COUNTRY ROUTE**
*Shri Sankarganesh
Karuppiah, IRS
Joint Commissioner*

The assessee, an Indian Company, is engaged in the business of export of processed crab meat on billed-to shipped-to model. The goods are sent directly to the associated enterprise located at US (USAE) whereas the invoices are raised against the associated enterprise located at Hong Kong (HKAE) which is a wholly owned subsidiary of USAE. While invoice amounting to Rs.56 Crore was raised by the assessee, HKAE in turn had raised its own invoice on USAE for the same consignment.

During the Transfer pricing proceedings, the information relating to Hong Kong Enterprise (HKAE) including the sale values in the invoices raised by HKAE were not provided by assessee. The assessee claimed to be not privy to the information related to HKAE.

With no **DTAA** between India and Hongkong during the financial year 2018-19, exchange of Information from Hongkong revenue authorities was not possible. Thus the needed information like the value of invoice raised by the HKAE and financials of HKAE could not be obtained.

Information and other forms of assistance can also be requested on the basis of **Mutual Legal Assistance Treaties** (MLATs) through Ministry of Home Affairs particularly with countries/jurisdictions with which there is no tax treaty. However, such information

could be obtained only for mutual legal assistance in criminal matters emanating out of proceedings under direct taxes. There being no criminal angle involved in this case, the MLAT channel could also not be used.

Information could also be obtained through **Egmont Group of Financial Intelligence Units** (FIUs). The Egmont Group is an informal network of FIUs established with a view to have international cooperation including information exchange in the fight against money laundering and financing of terrorism. Information obtained under this channel can be used to supplement proceedings related to taxation and not for just taxation purposes. Hence this channel was also not also available for the present case.

The question now was if information can be obtained from US in the absence of any transaction by assessee with USAE. The transactions of the assessee were with only HKAE. To explore any possibility, the Comprehensive Agreement between India and the US was examined. Article 28 of the convention enables exchange of information between contracting states and it begins as:

“The competent authorities of the Contracting State shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention.....”

It indicates that the information can be

obtained both in adherence to the provisions of the convention entered by the contracting states and also to implement other domestic laws of the contracting states. Thus relying on the above article, the invoices raised by the HKAE, the financials and Income tax return details of HKAE filed by USAE with US IRS, a third-party country, were requested through exchange of information by the Indian Competent Authorities with its counterpart in USA. The US revenue authorities provided the copies of the invoices raised by HKAE against USAE.

An analysis of the invoices received from USA competent authorities revealed that HKAE had raised invoices on USAE to the extent of Rs.78 crores against those raised by the assessee against HKAE to the extent of Rs.56 Crore, which helped establish that the HKAE had retained Rs.22 Crore out of the total value of the products produced and exported by the assessee. This value worked out to 28.50 % of the total value of the products produced and exported by the assessee. But for the subsidy received from the Government of India, the assessee would have ended up booking losses in view of the above arrangement.

During the TP study the assessee adopted TNMM (Transactional net margin method) as MAM (Most appropriate method) by treating itself as tested party. Determination of the MAM and choice of tested party (the least complex entity) demands a detailed analysis of Functions, Assets and Risk (FAR) which was carried out. The detailed FAR analysis

revealed that HKAE was the least complex entity which stood contrary to the claim of the assessee. Hence the HKAE was treated as tested party.

HKAE acts as intermediary between the assessee and USAE. Chapter 2 of the OECD Guidelines gives an illustration of intermediary activities where a taxpayer purchases goods from one associated enterprise and sells those goods to another associated enterprises, wherein the **Berry ratio** is applied as the most appropriate method. In such cases, both sales and costs of goods are controlled transactions leaving operating expenses as the only reasonably independent accounting line item which acts as a basis to arrive at a transfer pricing method.

In the case of the assessee, as the data relating to cost incurred by HKAE was not available (financials of HKAE were not provided by US Competent authorities), the ratio between the Gross profit margin to the cost of goods sold was treated as PLI (profit level indicator). The data of the traders in aqua products in Asia pacific region was selected from Bloomberg database as comparable companies data.

The GP margin of HKAE was 28.5% whereas the margin of comparable companies was in range of 8.41% to 12.18 %. This shows that the profit earned by HKAE was excessive than that of the comparable companies and the same should be adjusted upward in the hands of the assessee. An upward adjustment of Rs 14 Crore was therefore made.



**MCQs ON CLUBBING, SET
OFF & CARRY FORWARD
OF LOSSES**

*Ms. Anitha Devi J, ITI
MSTU, Kochi*

Q.1. Income of a minor child who is suffering from disability of the nature as specified in Sec 80U is

- a. to be assessed in the hands of the minor child
- b. to be clubbed with the income of that parent whose total income, before including minor's income, is higher
- c. completely exempt from tax
- d. To be clubbed with the income of father

Q 2. X transferred his rental income from his owned house to Y, without transferring the house. Such rental income has to be included in the total income of

- a. X
- b. Y
- c. Both (a)& (b)
- d. Neither (a) nor (b)

Q 3. A owns a house property in Mumbai. He transfers it to his wife B on the condition that such transfer is irrevocable during the life time of B. A transferred property on an agreement that he will be paid 30% of the rent

received by B on such property. The total income from such House property will be included in the income of

- a. A
- b. B
- c. A & B proportionately

Q. 4. Ram and his wife Sita both working in XYZ Pvt Ltd with a salary of 9,60,000 pa and 7,50,000 pa respectively and total income of 10,00,000 and 9,50,000 before including such salary. They do not possess any professional qualification. Also Ram holds 25% equity shares of the company and Anu holds 30% equity shares of the company. The salary received by Sita will be included in the total income of

- a. Ram
- b. Sita
- c. Neither Ram nor Sita
- d. Both Ram & Sita in proportion to the shares held by them

Q 5. Mr Raju converts his immovable property into immovavble property of HUF in which he is a member. After such conversion property has been partitioned, the share received by Mr Raju will be

- a. Exempt from tax
- b. included in the income of Mrs Raju
- c. included in the income of Mr Raju

d. included in the income of HUF

Q. 6. Master Sandeep, a minor child earned income of 10,00,000 till June 30, 2020. On July 1, 2020, he attains majority and earned income of 40,00,000 during the period of July 1, 2020 to March 31, 2021. The income of minor shall be taxable in the hands of

- a. The entire income of 50 lakhs shall be taxable in his hands
- b. The entire income of 50 lakhs shall be taxable in the hands of his parents.
- c. 10 lakhs shall not be taxable and 40 lakhs shall be taxable in hands of minor
- d. 10 lakhs shall be taxable in the hands of his parents and 40 lakhs shall be taxable in his hands

Q. 7. If both of the parents of a child have died then his income shall be

- a. exempt from tax
- b. taxable for the guardian who maintains the child
- c. shall be taxable for child who has earned it
- d. Taxable for dead parents

Q. 8. At the time of fixation of marriage of his son, Gopal gifted land to his would be daughter in law. The marriage was held in the month subsequent to the date of transfer. The

income accruing on land after marriage shall be taxable in the hands of

- a. Mr Gopal
- b. daughter in law
- c. Equally in hands of (a) & (b)
- d. None of these

Q. 9. Mr Lal transferred his let out residential property to his wife by way of gift on 1/4/2020. During PY 2020-21, she earned rental income of Rs 30,000 pm. She made FD in bank out of such rental income and earned interest income during the year of Rs 21000. The total amount of income liable in the hands of Lal for PY 2020-21 as per S. 27 and clubbing provisions is

- a. NIL
- b. Rs 21000
- c. Rs 2,52,000
- d. Rs 2,73,000

Q. 10. As per Sec 64(1)(iv), if an individual transfers his asset to spouse without adequate consideration, then income from it will be clubbed to transferor. Here asset cannot be

- a. Land
- b. House property
- c. Shares

d. Jewellery

Q.11. Losses from Other sources can be carried forward for ----subsequent years.

- a. 4 years
- b. 8 years
- c. No carried forward
- d. None of the above

Q.12. Losses of discontinued business of an individual undertaking after re-establishment or revival can be carried forward upto

- a. 4 subsequent AYs
- b. 8 subsequent AYs
- c. Indefinite subsequent AYs
- d. None of the above.

Q. 13. Husband gives interest free loan to his wife and wife purchases an asset out of the loan. What will be the treatment of income from such asset?

- a. shall be clubbed in the hands of husband since he transfers asset without adequate consideration
- b. shall not be clubbed in the hands of husband since it is only a loan & not asset transfer without adequate consideration
- c. shall be clubbed in the hands of husband since he transfers a loan without

adequate consideration

d. shall not be clubbed in the hands of husband since he transfers an asset without adequate consideration

Q. 14. With effect from AY 2018-19, loss under the head 'HOUSE PROPERTY' shall be allowed to be set off against any other head of income only to the extent of Rs ----

- a. Rs 1,00,000
- b. Rs 2,00,000
- c. Rs 5,00,000
- d. Rs 10,00,000

Q. 15. In case of a company, being a company in which the public are not substantially interested, but not being an eligible start up, as being referred to in Sec 80IAC, if the person beneficially holding -----% of voting power as on last day of year in which loss was incurred, and on the last day of year company wants to set off brought forward loss are different, then company cannot set off such brought forward loss.

- a. 20%
- b. 25%
- c. 50%
- d. 51%

Q.16. In which of the following conditions clubbing of spouse income is not attracted:-(i) if assets are transferred for adequate consideration (ii) if assets are transferred in connection with an agreement to live apart. Choose the correct option:-

- a. i only
- b. ii only
- c. Both i and ii
- d. None of the above

Q. 17. In case " Income from House property" is a loss and such loss cannot be wholly set off, so much of loss u/s 71B --

- a. cannot be carried forward
- b. shall be carried forward
- c. the same is taken as NIL
- d. can be carried forward subject to a limit of 8 assessment years

Q. 18. As per Section 72A of I T Act, 1961, the accumulated loss shall be carried forward and unabsorbed depreciation shall be allowed in the assessment of amalgamated companies only if the amalgamating company is engaged in the business, in which accumulated loss occurred, for

- a. 1 or more years

- b. 2 or more years
- c. 3 or more years
- d. 4 or more years

Q. 19. The loss incurred by the owners of race horses in the activity of owning and maintaining such horses, which cannot be wholly set off in the same year in which loss is incurred, are allowed to be carried forward and set off against income from

- a. the income of salary source in subsequent years
- b. the same source in subsequent years ie. profits from owning of race horses
- c. the income of 'Property income"source in subsequent years
- d. the income of "capital gains"source in subsequent years

Q 20. Which of the following is not correct in connection with lottery income.

- a. No basic exemption is allowable in case of individual or HUF
- b. deduction under chapter VI A is allowable
- c. No expenditures are allowable
- d. set off against loss is not allowable

Q. 21 If for any assessment year, the result of computation in respect of a

short term capital asset is a loss (short term capital loss) the same can be adjusted for that AY against the following head of income:

- income from any other capital asset
- income from any other long term capital asset
- income from any other short term capital asset
- income of any other head

Q. 22 If a person has sustained loss in the previous year under the head "profits and gains of business or profession" and claims that the loss or part thereof should be carried forward under Sec 72 or 73 or 74 of the Act then he is required to file return of income within the time allowed under:

- Sub section 1 of Sec 142 of the Act
- Sub section 4 of Sec 139 of the Act
- Sub section 1 of Sec 139 of the Act
- Sub section 5 of Sec 139 of the Act'

Q. 23 Assets held by a minor child of the assessee will be included in the net wealth of the parent if:

- the minor child is suffering from any disability of the nature specified u/s 80U of the Income Tax Act
- the minor child is a married son

c. the assets were acquired by the minor child out of his/her income from manual work

d. assets held by minor child were acquired by him from an activity involving application of his/her talent

Q 24. Brought forward long term capital loss can be set off in the subsequent AY against:-

- any other income
- short term capital gain
- long term capital gain
- both short term and long term capital gain

Q. 25. Loss from illegal business can be set off against

- income from speculation business
- income from non speculation business
- to be carried forward for set off with illegal income
- none of the above

Solutions:

1	a	6	d	11	c	16	d	21	a
2	a	7	c	12	b	17	d	22	c
3	a	8	b	13	b	18	c	23	b
4	a	9	c	14	b	19	b	24	c
5	c	10	b	15	d	20	b	25	d



LANDMARK JUDGEMENT

*Shri R.K. Ganesan, ITI,
DTRTI, Chennai*

[2020] 120 taxmann.com 25 (Madras)

Vaduganathan Talkies vs. ITO, NCW20(5)

Cash payments were effected by the assesseees for the purpose of acquiring rights to screen movies in their theatres. The AO, referring to S.40A(3) held that the cash payments exceeded Rs.20,000/- and ran to several lakh of rupees and accordingly, disallowed the expenses u/s.40A(3) and completed the assessment. Appeals by the assessee were dismissed by the CIT(A) and the ITAT. Further appeal was filed by the assessee before the Hon'ble High Court.

The learned Senior Counsel contended that the assesseees had produced a list containing the payments made in cash to various parties, letters from the payees to show that they had received the money and accounted for the same in their books and also furnished their PANs. The learned Senior Counsel for the appellants had submitted that only 25% of the payments effected by the assesseees were by cash and the remaining 75% was through banking channels, that is, through cheque or demand draft and such payments by way of cash was under exceptional circumstances.

The learned Standing Counsel for the Revenue submitted that the assesseees had not been able to bring their cases under any one of the exceptional circumstances in Rule 6DD. The assesseees were established parties based in Chennai and therefore, to say that they effected cash payments due to certain circumstances

was an unacceptable plea.

The Hon'ble High Court held that *"These factors will work against the assesseees because the assesseees are fully aware of the legal position that over and above Rs. 20,000/-, the assesseees would not be entitled to effect payment in cash in a day. Thus, merely because the assesseees were able to identify the payees, who were more than 20 in number, would not be a mitigating factor to grant relief to the assesseees under the first proviso to Section 40A(3) of the Act.*

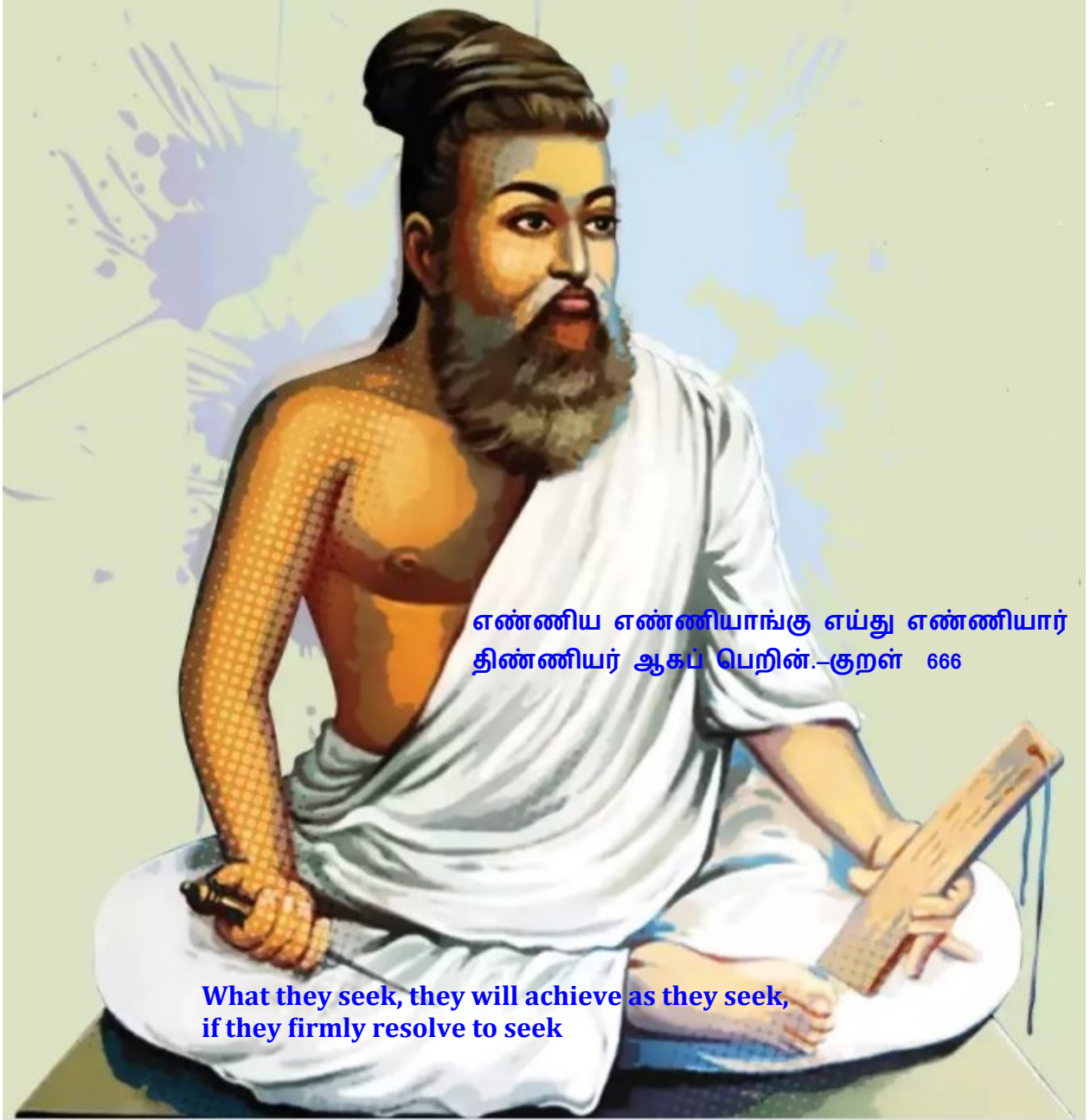
One more aspect to be noted is that there has been periodical payments in cash. The explanation offered by the assesseees is that due to compelling circumstances, they have to effect cash payments. The Revenue is right in their submission that the registered offices of the assessee-firm are in Chennai and therefore, it is not as if there were no banking facilities available in Chennai, nor any other exceptional circumstances, which compelled the assesseees to make urgent cash payments.

However, the correct test to be applied is to examine as to whether the expenses would fall under any one of the exceptional circumstances set out in Rule 6DD of the Rules. Considering the facts of the case, the concept regarding business expediency or commercial expediency can hardly be canvassed by the assesseees, as the assesseees had been periodically adopting the modes by effecting cash payments".

The Hon'ble High Court therefore held that the Revenue was right in contending that the genuineness of the transaction was hardly a matter while examining as to the whether the assesseees had violated S40A(3) and thus dismissed the appeal filed by the assessee.

राजभाषा स्कंध

वेतन दिवस	माह का अंतिम दिन वेतन दिवस के रूप में निर्धारित किया गया है।
Pay day	The pay day has been fixed to be the last day of the month.
विधिवत हस्ताक्षरित	इच्छुक अधिकारियों के निर्धारित प्रारूप में विधिवत हस्ताक्षरित आवेदन को अग्रेषित किया जा सकता है।
Duly signed	Since the main-file is under submission to a higher authority, an urgent matter is required to be dealt in part-file.
खण्ड फ़ाइल	चूंकि मुख्य फ़ाइल एक उच्च प्राधिकारी के समक्ष प्रस्तुत की गई है, इसलिए एक तत्काल मामले को खण्ड फ़ाइल में निपटाया जाना आवश्यक है।
Part-file	Since the main-file is under submission to a higher authority, an urgent matter is required to be dealt in part-file.
दर सूची	इस मामले की समीक्षा की गई है और सीजीएचएस द्वारा अनुमोदित अस्पतालों के लिए संशोधित दर सूची को अधिसूचित करने का निर्णय लिया गया है।
Rate list	The matter has been reviewed and it has been decided to notify revised rate list for the hospitals approved by the CGHS.
अस्वीकृति	कृपया दावे की अस्वीकृति से बचने के लिए यह सुनिश्चित करें कि आपका एलटीसी दावा निर्देशों के अनुसार है।
Rejection	Please ensure that your LTC claim is as per the instructions to avoid rejection of claim.
अनुरूप पद	यह वेतनमान उन कर्मचारियों पर भी लागू होता है जो अनुरूप पदों को धारित करते हैं।
Analogous post	This pay scale is also applicable to the officials holding analogous posts.
संशोधन-पूर्व वेतनमान	कर्मचारी का वेतन संशोधन-पूर्व वेतनमान में उनके मूल वेतन के अनुसार निर्धारित किया जाएगा।
Pre-revised pay scale	The pay of the employee will be fixed in accordance with his basic pay in the pre-revised pay scale.



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