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**Assessment in the case of accommodative entry provider and entry
receiver**

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1. Preamble

In the month of February and March we see that the assesses are in search of entry for profits, losses, exps., donation to political party, for weighted deduction u/s.35 etc.

We have come across many reported decisions in respect of entry receivers like bogus purchases, income from short term/long term capital gains, claiming bogus expenses etc. In this paper, I have tried to deal with the assessment in the case of accommodative entry providers and entry receivers. In the years to come, this subject may be of great importance for our professional friends. Keeping this issue in mind, this subject has been selected by me. I hope that it will help our professional friends in dealing with such cases.

2. Transaction of accommodative entry. How takes place

The entry seeker will approach the entry provider. He (entry seeker) will deposit cash with shroff. He will pay the charges to the shroff for obtaining the cheque / RTGS etc. The shroff will issue cheque or credit the amount by RTGS in the account of entry provider. The amount credited in the account of entry provider will be transferred in the account of entry seeker by cheque / RTGS. Sometimes the amount is not directly transferred in the account of entry seeker but it is rotated through other entry provider and then transferred in the account of entry seeker. The entry provider will get his commission.

Amount of commission depends on nature of entry and parties involved in this transaction. In case of entry for exempted capital gains, the rate of is more in comparison to other entries.

The entry provider has to incur certain exps. also like rent, salary etc.

The entry provider is neither knowing the shroff nor entry seeker. The transaction is done through sub-brokers. Thus the amount of commission received by entry seeker will be meager. The amount of commission is given by cash to the entry provider.

3. Accounting entry in the books of entry provider

When the cheque / RTGS is received by the entry provider, account of shroff will be credited and when the cheque / RTGS is given to the entry seeker, account of the entry seeker will be debited. This is not correct accounting because the amount the shroff is neither loan nor deposit for entry provider. The shroff never treats this transaction as transaction of lending in his books of accounts. Thus if the contra account by the income tax department is call from the shroff, it will be simply a business transaction carried out in the course of business on which service charges were received. The entry provider is not shown as the debtor in the books of the shroff.

4. Types of accommodative entries provided

The accommodative entries are provided

- i. For entering sharafi transactions.
- ii. For subscribing to share capital.
- iii. For long term – short term capital gains.
- iv. For exps. like commission, brokerage repairs etc.
- v. For becoming confirming party in the transaction of immovable property.

- vi. By giving speculative profit / loss.
- vii. For giving donation to political party.
- viii. For claiming deduction u/s.35.
- ix. For bogus sales bills.

5. Duration of entry

The entry is provided either for certain period or for unlimited period. If it is one time entry and which is not to be returned, the entry seeker will give one time payment to the entry provider.

Sometimes the entry seeker is debiting interest on the entry received and even deducting the tax. In that case, the entry provider will return the differential amount to the entry seeker i.e. if the interest is debited @ 12%, and if it is agreed that 1/3 amount is to be retained by the entry provider, the difference of 2/3 will be returned to the entry seeker.

If the entry is returned after sometime, the entry will be given to the other entry seeker and cash received from new entry seeker will be returned back to the first entry seeker.

6. Assessment in the case of entry provider

If the case of the entry provider is selected for scrutiny, the entry provider is not able to provide the details of amount credited in his books of account because the assessee is not knowing by whom the cheque was issued in his favour and to whom it was given. If the entry provider is calling for contra account from both the parties, the entry will not tally because the shroff has not shown the amount of cheque / RTGS given to the entry provider as outstanding debtor. The entry seeker's address, PAN is not provided by the middle man. Thus the assessing officer will try to make addition u/s.68 being cash credit.

If the entry provider is assessed on such amount u/s.68, it will create a huge demand and he will be subject to interest, penalty and prosecution. In such circumstances he (entry provider) will try to disclose the true nature of transaction. He will file an affidavit stating on oath that whatever credit and debit entries are appearing in the books are nothing but transactions of entry provided and only commission income was earned.

7. Legal position on concept of real income

As per the Income Tax Act, the assessee (entry provider) should be assessed on the principle of real income concept. The income which has neither accrued nor received or receivable cannot be taxed in his case. In such situation, landmark decisions given by the Honorable Supreme Court should be brought to the notice of assessing officer.

1. CIT V/s. Shoorji Vallabhdas & Co.

46 ITR 144 SC

A mere book-keeping entry cannot be income unless income has actually resulted and where lesser income is actually received consequent to a subsequent agreement, only that part is taxable and not the entire income accounted in books.

2. Godhra Electricity Co. Ltd. V/s. CIT

225 ITR 746 SC

Assessee electricity company after enhancing the tariff having been restrained from realising the enhanced rates either by Court orders or by Government orders and having never been able to realise the enhanced rates till it was taken over by the State Electricity Board, no real income accrued to the assessee and nothing on that count could be added **even though assessee followed mercantile system.**

8. Cases decided by ITAT for determining income in the cases of entry providers**i. GOLD STAR FINVEST (P.) LTD. vs. INCOME-TAX OFFICER****ITAT MUMBAI BENCH 'C'****(2008) 27 CCH 953 MumTrib****(2013) 57 SOT 409 (Mumbai)****Sunil Kumar Yadav, JM & D. K. SRIVASTAVA, AM.**

Income from other sources. Chargeable as. Hawala transactions. Assessee was engaged in business of dealing in shares and securities and investment as brokers—It filed return of income declaring a loss—AO held that assessee received certain amount in cash from customers which was deposited in bank and, in return, cheques were issued to them—Assessee charged commission at rate of 0.15 per cent on such transactions—AO treated cash deposits as well as deposit by way of transfer and clearing made into accounts with bank as income of assessee from undisclosed sources—AO made addition of Rs. X crore—Held, assessee has made out case that customers do not come directly to him and they come through sub-broker who also charging particular share of commission—In cases of Palresha & Co. [ITA. No. 1640/Bom/82] and Kiran & Co. vs. ITO [ITA. No. 3604 /Bom/ 83], Tribunal has considered reasonableness of percentage of commission to be earned on turnover was at 1%—Assessee himself has offered percentage of commission at 0.15%, which is more than percentage of commission considered to be reasonable by Tribunal in cases of Palresha & Co. and Kiran & Co., in similar type of transactions—Theory of AO to treat entire deposit as "unexplained cash credits", cannot be accepted in light of assessment orders in case of beneficiaries and also in light of fact that assessee is only concerned with commission earned on providing accommodation entries.

Conclusion:

Where assessee, a share broker, earned commission on providing accommodation entries to its customers, it was only said commission which could be added to assessee's taxable income and not entire amount representing value of transaction.

ii. SANJAY KUMAR GARG vs. ACIT**ITAT, DELHI 'H' BENCH****(2012) 144 TTJ (Del) 77 : (2012) 134 ITD 82 : (2012) 66 DTR 281****A.D. Jain, J.M. & K.D. Ranjan, A.M.**

Income from undisclosed sources—Addition—Assessee engaged in business of providing accommodation entries—At the time of survey no evidence was found to suggest that the assessee was engaged in real commission business—CIT(A) has given a finding of fact that the assessee was engaged in the business of providing accommodation entries—Amounts deposited in the account of dummy concerns were to be treated as total receipts on which commission was to be determined—Same cannot be treated as income of the assessee—As regards estimation of income from commission, neither the CIT(A) nor the AO had given any comparable case wherein commission @ 1.75 per cent as taken by the AO or 1 per cent adopted by the CIT(A) has been admitted by other assessees engaged in business of bogus entry provider—No material was found on the basis of which it could be said that the assessee had passed on 0.1 per cent commission to the persons in whose names the bank accounts were maintained—However, in the business of entry provider certain expenditure has to be incurred which has been stated to be 5p during the course of survey—Therefore, credit of 5p out of 25p received as commission has to be allowed—AO is directed to estimate commission income by applying 0.2 per cent net commission on turnover determined by the CIT(A) for both the assessment years as against 1 per cent taken

Conclusion :

Total amount of cash deposited by the assessee bogus entry provider in different bank accounts cannot be added but only commission can be determined on the impugned deposits made in the bank accounts of the dummy concerns; further, AO is directed to estimate commission income by applying 0.2 per cent net commission on turnover determined by the CIT(A) as against 1 per cent adopted.

iii. **MANOJ AGGARWAL vs. DCIT**

ITAT, DELHI 'A' SPECIAL BENCH

(2008) 117 TTJ (Del)(SB) 145 : (2008) 113 ITD 377 :

(2008) 11 DTR 1

R.V. Easwar, Vice President; P.N. Parashar, J.M.; P.M. Jagtap, G.S. Pannu & R.C. Sharma, A.Ms.

Search and seizure—Block assessment—Computation of undisclosed income—Commission for giving accommodation entries—Assessee having admittedly rendered services to two companies by providing accommodation entries for long term and short-term profit transactions through cheque, it stands to reason that he has also received commission—Therefore, CIT(A) was justified in estimating net commission received by assessee at 0.35 paise per Rs. 100—In the absence of specific details, 10 per cent of the commission income was rightly allowed towards expenses

Conclusion :

Assessee having admittedly rendered services to two companies by providing accommodation entries, CIT(A) was justified in estimating net commission received by assessee at 0.35 paise per Rs. 100; in the absence of specific details, 10 per cent of the commission income was rightly allowed towards expenses.

Thus if we are representing the case of an entry provider, the above decisions should be relied.

Plea to be taken when we are representing entry receiver / seeker

9. Preamble

If the entry provider has filed an affidavit that no genuine transaction has taken place though the transaction was by banking channel, the assessing officer will act on the basis of affidavit of the entry provider. Income tax officer of entry provider will intimate to the assessing officer of entry receiver and the cases of entry receivers will be reopened. In such cases what should be our defense ?

10. Challenging reopening

- i. The reopening should be challenged on the basis of tangible material / application of mind. Plea should be taken that the assessing officer was not having any tangible material and simply on the basis of an affidavit filed by third party, his case was reopened. Settled position of law including decision in the case of **CIT V/s. Kelvinator of India Ltd. reported in on 320 ITR 561 S.C.** should be relied.
- ii. The reopening also should be challenged on the basis of non application of mind by the assessing officer. The assessing officer should not act blindly on the basis of information received. After due verification of facts, after making necessary inquiry if he satisfied that the case is required to be reopened, he has to pass a satisfaction note and after obtaining approval within the stipulated time (4 years or 6 years) the case can be reopened.
- iii. **Natural Justice**
In assessment proceedings, principle of natural justice has to be applied. If any evidence / material is collected behind the back of the

assessee, such evidence / material has to be given to the assessee. Opportunity of cross examination to be provided to the assessee. Without furnishing such evidence to the assessee, if the assessment is framed, it's a breach of principle of natural justice and such assessment can not sustain in appellate proceedings. Following decisions can be helpful to the assessee.

a. 3 S.C. Page 410 (1998)

CBI V/s. V. C. Shukla [Vidhyacharan] Jain Dairy Case

The loose papers and documents found from the possession of the third party even if such documents contain narration, the revenue cannot be justified in resting its conclusion on it.

b. 30 ITR 181 S.C.

Mehta Parikh & Co. V/S. CIT

High Denomination notes of Rs.1000/- in possession of assessee. Assessment as undisclosed profits. Finding based on mere surmise. Affidavits. Rejection without cross examination. Legality.

c. 45 ITR 206 S.C.

C. Vasantlal & Co. V/S. CIT, Bombay

Income Tax enquiries. Evidence. Income Tax authorities whether bound by technical rules of evidence. Rules of natural justice. Examination of witnesses in the absence of assessee. Duty to give opportunity to assessee to cross examine.

d. 249 ITR 216 S.C.

Tin Box Company V/S. CIT

Income tax proceedings. Opportunity of being heard. Assessment. Appellate Tribunal finding that assessee was not given proper opportunity of being heard. Appellate tribunal holding assessee had opportunity before commissioner (appeals). Deciding claim of assessee

as not having merit and not remanding matter to assessing officer. High court. On reference confirming order of tribunal. Supreme Court. Appeal.

Orders of High court, Tribunal and Commissioner (Appeals) set aside and matter remanded to assessing officer for fresh consideration after giving assessee proper opportunity of being heard.

e. 68 ITR 796 Kerala

Joseph Thomas & Bros. V/S. CIT

When income is estimated without furnishing details of such cases to the assessee, the assessment is illegal.

f. 96 ITR 96-97 Allahabad

Gargi Din Jwala Prasad V/S. CIT UP

Assessment. Principles of natural justice. Addition of amount of income. Opportunity to assessee to be heard and inspect record. Permission to cross examine witnesses given but names of witnesses and substance of statements made by them not given. Assessment whether valid ?

Held that the assessment was vitiated by violation of the principles of natural justice as the permission given for cross examination of witnesses was illusory.

g. 101 ITR 721 (J & K)

International Forest Co. V/S. CIT

111 ITR 923 Orissa

Orissa Fisheries Development Corp. Ltd. V/S. CIT

Assessment. Income from forest coupe. Additions made by ITO to amount returned. Validity. Mere low yield of outturn. Lesser outturn

in accounting year than in earlier years. Ignoring report of forest officer about extent of rot without good grounds or examining forest officer. Non acceptance of sale of timber referred to by assessee. Use of schedule adopted by forest department for working out of yield of sawn timber. Reliance on Ayyangar commission report. Opportunity to assessee to meet remarks in that report. Arbitrary addition to income based on guess work. Whether justified ?

h. 125 ITR 713 Supreme Court of India

Kishinchand Chellaram V/S. C.I.T.

Income-tax Proceedings. Evidence to be Used against Assessee. Letter from Manager of bank through which money remitted. Not shown to assessee. Not admissible. Opportunity to controvert should be given to assessee.

i. 238 ITR 282 Madras

Vijay Hemant Finance and Estates Ltd. V/S. Ito and Another

TDS. Declaration in form no.15-H filed along with return of TDS. Minor defects in form no.15-H. Opportunity to rectify must be given. Natural justice. Opportunity to be heard. Obligatory where adverse consequences to party likely. Even where statute does not specifically provide for it.

j. 242 ITR 501 Gujarat

Kusumben M. Parikh Vs. Central Board of Direct Taxes

Refund u/s.119. Refund exceeding Rs.10000/-. Application to CBDT for condonation of delay to CBDT. Rejection of application without giving reasons. Not justified. Power u/s.119 are quest judicial power must be exercised in conformity with principals of natural justice.

k. 262 ITR 269 Delhi

J.T. (India) Exports Vs Union of India (Del)

If no provision in law still opportunity of cross examination has to be given

Natural justice. Personal hearing before exercising discretion is necessary. Unless specifically excluded. Even if statute is silent requirements to follow a fair procedure before taking a decision.

l. 284 ITR 557 Kerala

CIT V/S. C.F. Thomas

Order passed without giving assessee opportunity to rebut statement collected behind his back. Failure of natural justice. Effect. Order quashed and matter restored to stage where illegality intervened.

m. 295 ITR 105 Delhi

CIT V/S. Dharmpal Premchand Ltd.

Cross not given though demanded by assessee

Natural Justice. Refusal despite request by assessee to permit cross examination of analyst. Violation of natural justice.

n. 295 ITR 303 Madras

V. Selladurai V/S. Chief CIT

Order by CIT passed u/s.263 without granting personal hearing to Assessee. Violation of natural justice.

o. 301 ITR 134 M.P.

Prakash Chand Nahta V/S. CIT

Assessment. Statement of third party relied on by revenue. Third party retracted statement subsequently. Assessee not allowed to cross examine third party. Power of A.O. to summon third party. Violation of principles of natural justice. Assessment order not valid.

p. 302 ITR 40 Madras

M. Pirai Choodi Vs Income-Tax Officer (Mad)

Violation of principles of natural justice. Documentary evidence tendered by Assessee not considered. Assessee not given opportunity to disprove statement by third party relied on by A.O. Writ maintainable.

q. 306 ITR 27 Delhi

Commissioner of Income-Tax Vs Rajesh Kumar (Del)

Unexplained investment. Addition on a/c. of purchase of house property based on statements recorded during inquiry. Neither copies of statements nor material collected during enquiry disclosed to assessee. ITAT finding that principles of natural justice had not been followed. Justified.

r. 56 ITR 182 Mys.

K. Baliah & Anr. V/s. CIT (1965)

Comparable cases relied by A.O. not given to assessee

Best judgment assessment. Reassessment based on comparable Cases. Duty to give opportunity to assessee to explain such cases. Indian Income-tax Act, 1922, s. 23(4).

s. 318 ITR 24 Delhi ITAT

Centurion Investment and International Trading Co. Pvt Ltd V/s. ITO

Cash Credit. Reassessment on the basis of statement made by entry operator, assessee not given opportunity to cross examine entry operator. Violation of principals of natural justice, Defective proceedings. Defect procedural in nature. Order irregular but not void on illegal. Matter remanded to be continued from stage at which irregularity supervened.

t. 122 TTJ 902

Jindal Stainless Steel Ltd. V/s. ACIT

Opportunity of being heard. Assessee not given opportunity to cross examine the person on the basis of whose sole statement addition was made and when assessee denied under billing. No addition could be made.

u. 330 ITR 104 Calcutta

Bangodaya Cotton Mills Ltd. Vs Commissioner of Income-tax (Cal)

When there was no evidence of receipt of enhanced consideration by the assessee failure to summon persons concerned or providing cross-examination to the assessee, addition in not proper.

v. 345 ITR 288 Allahabad

Jagran Prakashan Ltd. Vs Deputy Commissioner of Income-tax (TDS)

In this case the proceedings were started on 19/12/12 and completed within 10 days. The assessee was required to furnish data of Rs.180000/- payments. It was held that there was a breach of rule of natural justice. The case was set aside for proper verification.

w. 231 CTR 308 Madras

CTR Vol. 50 Part V, Pg. 45 / 46

Dr. N Rajkumar V/s. DCIT

Natural Justice. Appeal Transfer. Assessee had sought for transfer of his cases to another bench and also approached the president of Tribunal who sought for report in this regard and therefore orders passed by Tribunal. Only on the basis of written submission of assesses counsel set aside with a view to comply with the principal of natural justice.

11.

A. Entry in the form of Financial transactions

If entry is provided in the form of advances by entry provider for which the finance is managed by entry seeker and if the entry provider backs out regarding the genuineness of transaction and the entry seeker is trying to prove that the transaction is genuine, the entry seeker will have problem two ways. If the entry seeker is trying to prove that the transaction is genuine, the affidavit filed by the entry provider will come in his way. If demand is raised against the entry provider, the department can issue **notice u/s.226** directing the entry seeker to make payment directly to the income tax department instead of paying it to the entry provider.

Thus if the transaction is proved to be non genuine, the case of entry seeker will be reopened and he will be liable to pay tax, interest and penalty.

B. Defense in the case of bogus purchases

If the entry receiver has purchased goods without bill from the market and the same (material) is either sold or used in manufacturing and for that goods which was purchased without bill, he has taken a bogus bill from the entry provider, the following decisions can be relied.

a. 163 ITR 249 Gujarat**CIT V/s. M. K. BROS**

If the payment of purchases are made by A/c. payee cheque, and the same has **not been received back in any form**, even if Seller of goods declares, that he has simply issued bill, and he has not sold goods, still nothing can be added in the case of assessee.

b. 316 ITR 274 Gujarat**Sanjay Oilcake Industries V/s. CIT**

In this case, addition on a/c. of inflated purchases of oilcakes was restricted @ 25% by CIT (A) and confirmed by ITAT. In this case, sellers who issued sale bills were not traceable. The goods were received from the parties other than the persons who had issued bills for such goods. Payment of purchases was made by a/c. payee cheques and there after the entire amounts was withdraw by bearer cheques and there was no trace or identity of the person withdrawing the amount from the bank a/c. Under such circumstances the likelihood of the purchase price being inflated could not be ruled out and there was no material to dislodge such finding. Thus the addition was confirmed. **The assessee failed in this case to produce material to disprove inflated purchases.**

This was a case of manufacturing assessee and as the assessee could not produce the necessary evidence, the addition was confirmed.

If the assessee is not able to prove that actually the material was purchased but the bill was taken from entry provider, the assessing officer can make addition of entire purchase amount as well as amount paid to the entry provider, for providing bill.

C. If the entry is in the form of exps.

If the assessee has obtained bill for exps. like commission, salary, repairs etc., he will be required to prove,

- i. For commission that actual services were rendered,
- ii. For salary to prove that he was the employer and in lieu of services rendered, salary was paid,
- iii. For repair exps. actual repairs was carried out.

If the assessee is not able to prove these exps. debited in the books of account, the same will be added to his income and the assessee will be liable to tax, interest and penalty on such addition.

D. If the entry is in the form of investment in shares

If the assessee has taken entry for share capital from entry provider, and if the entry provider has backed out regarding genuineness of transaction, the assessee has a very bad case. In such circumstances, at the most, the assessee can ask cross examination of the entry provider or can take a plea that the transaction was done through proper banking channel.

E. If the entry is in the form of capital gains

If the assessee has taken entry of profit or losses either long term or short term, the genuineness of transaction has been proved by the assessee by proving that the actual deliver was given or taken as the case may be. As such the assessee will not be able to prove the transaction of profits or losses and there are every chances that this amount may be added as his income.

F. If the entry is in the form of becoming confirming party

If the assessee has taken help of entry provider in the transaction of immovable property by making him a party to the agreement as a confirming party to reduce his capital gains, and if the entry provider has backed out that he received only small x-amount and also gives an affidavit that nothing was given earlier toward the property to secure right in the property, the amount shown as given to the confirming party may be added as income of the assessee. According to me the assessee has no fair chance in appeal.

G. If the entry is in the form of giving donation

If the assessee has taken entry of donation given to the political party, the assessing officers are not making any inquiry in such cases. Such donations needs deeper scrutiny to ascertain the genuineness of transaction. Date of payment, amount of donation also needs to be considered. This donation may be properly investigated and it may create serious problems to the assessee if not to the political party.

H. If the entry is in the form of weighted deduction

If the assessee has taken entry for deduction u/s.35 against business income (which is allowed as weighted deduction), such entries also needs proper investigation. A person staying in Gujarat will not be interested to give payment for research and development to any party outside Gujarat. Similarly the assessee may not be interested in giving a huge amount for the business other than the business which he is regularly doing. Date of payment, amount of donation also needs to be considered. In such cases, if the payment is found to be not genuine and the person who issued receipt u/s.35 is held to be entry provider, it becomes very difficult to get relief even in appeal.

12. Conclusion

The department is fully equipped and all the information are received by the department immediately. Time has come that the attitude not to pay tax or to pay minimum tax has to be changed. Litigation is becoming very costly. Department is going to be very strict towards tax evaders. In this circumstances, assesses are advised to pay the correct and legitimate tax due to the Government failing which it may invite serious problems / issues.