

## TAX FLASH NEWS

### Information as per the database of the tax authorities cannot be a base for making addition to the income of the taxpayer

#### Background

Recently, the Delhi Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Basant Kumar<sup>1</sup> (the taxpayer) held that information as per the database<sup>2</sup> of the tax authorities cannot be a legally sustainable basis for making addition to the income of the taxpayer.

#### Facts of the case

- The taxpayer is engaged in the business of distribution of telecom products in the districts of Haryana.
- During the assessment proceedings, the Assessing Officer (AO) observed that as per Form 26AS, the taxpayer has received INR 8.11 million from a telecom vendor. However, the taxpayer has accounted for only INR 2.23 million. The taxpayer claimed that the balance amount of INR 5.87 million represented various tokens and coupons, referred to as 'Vendor Currency' which was directly issued to the retailers.
- The AO noted that the amount of INR 5.87 million was included in the payments referred to in Form 16A, in respect of which taxes were deducted at source. Accordingly, the AO made additions of INR 5.87 million on account of suppressed receipts.

- The AO held that the income accrues to the taxpayer because as per Section 2(24) of the Act, an income includes any sum or money in cash or kind, either received or receivable under any head of income.
- The Commissioner of Income-tax (Appeals) [CIT(A)] deleted the additions made by the AO. The CIT(A) observed that the AO has to make further enquiries and bring material on record to conclude that the taxpayer had in fact received the amount stated in Form 26AS. The evidence collected by the AO indicated that the amount was received by the various retailers as per the promotional scheme of the telecom vendor. While making the payment directly to the retailers, the vendor resorted to the tax withholding in the hands of the taxpayer since various retailers were not having their permanent account number.

#### Tribunal's ruling

- It is only elementary that information as per the database of the tax authorities cannot be, by itself, a legally sustainable basis for addition being made to the income of the taxpayer and that such inputs are at best starting points for appropriate inquiries.
- There is nothing more than these information inputs which have been put against the taxpayer. As evident from affidavit filed by the taxpayer, the amount of INR 5.87 million shown in Form 26AS was neither received by the taxpayer nor receivable by the taxpayer. The said amount was directly paid by the vendor to the retailers and a complete list of which was provided by the vendor.

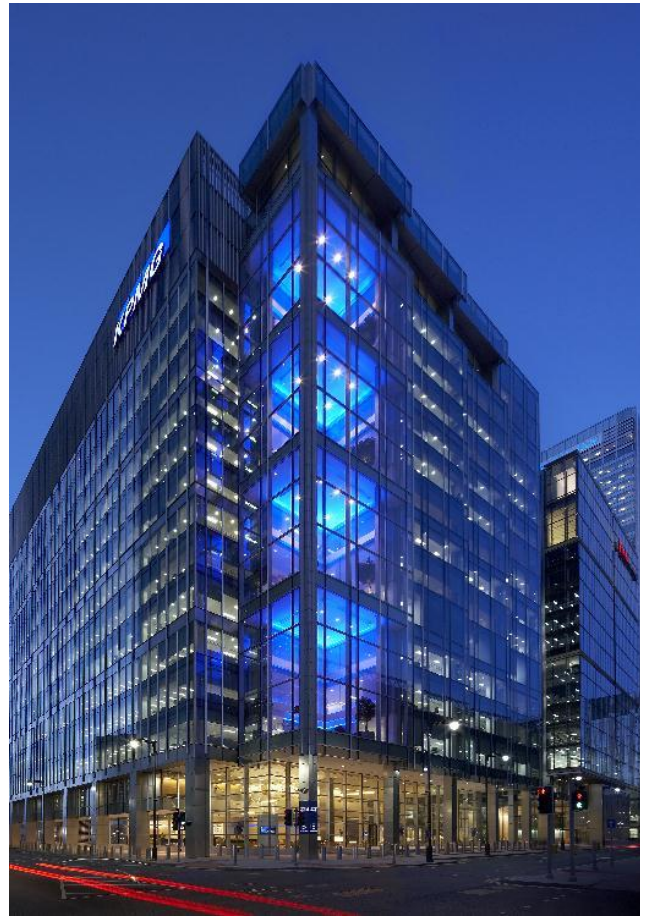
<sup>1</sup> ITO v. Basant Kumar (ITA No. 4679/Del/2012) – Taxsutra.com

<sup>2</sup> Online Tax Accounting System (OLTAS) is the database of the tax authorities

- The vendor had given a complete break up of INR 5.87 million and given details of the retailers to whom the related payments had been made. There was no material to come to the conclusion that taxpayer ever received any such coupons or payments and that the same are not reflected in his books of accounts or bank statements.
- The fact that these payments were made by coupons and vouchers etc. can also not be put against the taxpayer since the taxpayer never received the same and there was no evidence to the contrary.
- The confusion had started because vendor deducted tax at source in respect of the vouchers etc. and stated the name of taxpayer as collective recipient of the entire sum.
- Accordingly, the CIT(A) was justified in deleting the addition of INR 5.87 million.

## Our comments

This is a welcome ruling of the Delhi Tribunal where it has been held that information as per the database of the tax authorities cannot be a base for making addition to the income of the taxpayer. This decision will provide relief to the taxpayers from the unwarranted additions made by the tax officers based on the database (OLTAS) of the tax authorities.



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