

BHC in Coca Cola regarding stay of Tax Demand

Assessee's writ petition allowed: in case there's delay in disposition of ITAT Appeal & it is not attributable to assessee : Demand must not be enforced & section 292C analysed in extenso r/w section 132(4A). Further BHC in its verdict explaining section 292C – rebuttable presumption in case of documents etc found at the time of search r/w section 132(4A) : HELD.

- A) "In our opinion, once the document was seized in the premises under control of the appellant, the presumption under Section 292C followed as also section 132(4)(a) and it was for the appellant to rebut that presumption. That has not been done. In our opinion, there has been no violation of principle of natural justice and fair play and consequently that contention also must be rejected."

- B) "In the instant case, considering the language of Section 292C there is presumption as to the correctness of the contents of the documents. The presumption ought to have been rebutted by the Assessee. The assessee at the first available opportunity did not deny the existence of the document nor has the assessee at any subsequent stage of appeal or before this court denied the document. The only contention raised is that the transaction was not given effect to. The two signatures to the document are parties known to the assessee which inference can be drawn from the document itself. It was open to the assessee to have either led evidence or get an affidavit filed to rebut the presumption. Whether on such oral evidence, the contents of the document could be rebutted is another issue. That was also not done."

- C) "The document seized was a zerox copy. The appellant when question No. 20 was put to him, did not deny the said document. On the contrary, in the appeal memo and thereafter before the I.T.A.T. the stand taken was that it was an understanding which was not given effect to. The appellant also does not deny the existence of the two persons who have signed on the document namely Bhupendra Chedda and Mahendra Shaha. On the contrary the contention is that the statement and or application of the said persons were not considered. Considering the language of Section 292C, there is a presumption that the contents of the document are true, as the document was seized from the premises in control of the assessee and that the said document belongs to the assessee. A reading of the said document would make it clear that the document in fact is the document for return of money already advanced"

Also refer other mails containing orders of stay of tax demand in the cases of:

1. SC IN RAJEEV GUPTA AND PENNER INDUSTRIES
2. DHC in VALVOLINE 217 CTR 292 (In case assessed income is twice of returned income or more than the same, stay must be granted in the routine manner)
3. DHC in SOUL 173 Taxman 468 (Followed DHC in Valvoline supra)
4. DHC in HERO HONDA (Rs 96 Crore Demand- Relief by Jurisdictional CIT by reducing demand payment to Rs 31 crores)
5. DHC in TANEJA DEVELOPERS (followed Soul and Valvoline supra)
6. DHC in MAHASHIAN DI HATTI (directed revenue to dispose assessee's stay petition in light of CBDT Instruction No 96/1969)
7. DHC in AEGIS BPO (assessee's writ petition for stay allowed)
8. BHC IN SINGHAD TECHNICAL EDUCATION
9. KAR HC IN SHIVA S KARKERS