

Protective assessment under income tax act, 1961

This is a type of assessments that focus on those assessments which are made to ‘**protect**’ the interest of the revenue.

Protective Assessment is permissible in law. It is occasioned when an income is offered by one person, while the Revenue considers that such income is assessable in the hands of other. In such case, the Revenue has the right to assess the income offered protectively, so that in case its inference that such income is assessable in the hands of another person is not sustained in appeal, the protective assessment becomes final.

There are many cases, where the income declared by a person in his return is claimed by two Assessing Officers that the income belongs to them or in their category. Some time income declared by a person in his return, would be assessed in the hand of a company, associations of person or some other entities and hence the jurisdiction of AO will be changed.

Though there is no provision in the income tax act authorizing the levy of income tax on a person other than whom the income tax is payable, yet it is open to the authorities to make a protective or alternative assessment if it is not ascertainable who is really liable to pay the tax among a few possible persons. It is a kind of assessment whereby the assessing officer, not knowing the true ownership of the asset, the income of which he wants to tax, deems the incomes of all the persons who are actually claiming to have their rights over there.

It must, however be noted that while protective assessment is permissible, a protective order for recovery is not permissible. in making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided (as to whom the asset owned by) one way or another. furthermore, a protective order of assessment can be passed but not a protective order of penalty." and as & when the final assessment is made, the department must recover the tax from the person in whose hands the income is finally assessed.

As decided in **Lalji Haridas Vs ITO (1961)43ITR387** that the officer may, when in doubt, to safeguard the interests of the revenue assess in more than one hands. In this case an addition was made protectively in the hands of the daughter, while substantially in the hands of the father. In the father’s hands the addition was deleted. Thereupon the daughter who has initially not filed an appeal against the assessment in her case in view of the fact that the assessment in the hands of the father became final. The High Court found that the delay could not be condoned, since it was inordinate. It was found that the claim that the notice was not properly served was incorrect. In such cases, the person against whom protective assessment is made does not get relief automatically, because the addition itself has to be disputed on the merits by the person on whom the protective assessment is made by filing a regular appeal in time.

CIT Vs. Ram Chand Tilli Works (2013)217 Taxmamm; it was held that in case of doubt or ambiguity about real entity in whose hands a particular income is to be assessed, Assessing Officer is entitled to have recourse to make Protective Assessment.

CIT Vs. Khalid Mehdi(1987)165ITR(AP); it was held that where assessment to be done is Protective Assessment, it should be sp expressed by the Assessing Authorities.

CIT Vs. Shobhrajmal (2014)51(Raj); where additions were already made on substantive basis in case of partnership firm or other partners and said additions has been finally sustained by Tribunal, then the same addition could not be made on Protective basis in the hands of the assessee being partner of the firm.

CIT Vs. Beharilal Pyarelal (1983)141ITR32(Pu); a Protective Order under law is possible but not Order of Protective Penalties. A penalty cannot be imposed on the basis of Protective Assessment Order.

THE PROTECTIVE ASSESSEMENT BECOMES REDUNDANT, WHEN OTHER ASSESSEMENT BECOME FINAL;

CIT Vs. Latha Chandy(2003)260ITR385(Kerala); according to the provisions of the Income Tax Act, 1961, the same income cannot be taxed in two hands, but Protective Assessment is temporarily justified, when there is disputes in whose hand the income is to be taxed to safeguard the interest of the revenue. When an assessee declares his income in his returned and Assessing Officers is of the view that the income should be assessed in the hands of another person and there is disputes in the assessment, then Protective Assessment shall be valid till final order received from the Appellate Authorities in whose hands the said income will be assessed.

The Protective Assessment can be cancelled according to the provisions of Section 264 of the Income Tax Act, 1961.

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