

Beware of Unfair Income Tax Demands on Indian Seaman

An experience with the Income Tax department, and ultimate victory in the taxation case by a Sailing Master, Capt. Utpal Haldar

In recent days Seamen have become a soft target for the Income Tax department of India. As the wages are comparatively higher than the shore jobs and at a time a big chunk of money pours in to their account. Income tax department officers are eying these accounts and trying to find ways to get tax seamen. They themselves know that Seamen working in foreign companies are mostly NRIs and the salaries received are not taxable. But still there are lots of provisions and rules in Income Tax Act, 1961. Which can be interpreted, manipulated and twisted in such a way so that it looks like their income is taxable. I was one of the victims among the chosen few by the income tax department. I would like to share my stories with all of you.

First scrutiny notice came in 2012 September. After a few hearing they sent me a notice in Feb 2013. Please look at the part of the scanned letter bellow. This was for the financial year 2010-11.

I was sailing at that time and my family contacted **Mr. D. saha, my income tax advocate. He took over the case and went for a hearing.** We were required to submit lots of documents as per the request of the IT department. Even though it was a clear straight forward case of NRI taxation, it was not that simple to prove things as per IT department's requirement. The rule said that the "salary received in India". That means even though a person is a NRI, his income will be taxable if the salary is received in India. In my case a major part of the salary came as Monthly allotment and they tried to prove that I have received salary in India, for the first time and not on board, so the same, is supposed to be taxable. It was not easy to prove that I have salary in foreign register vessel. I am employed by a foreign company of Hong Kong. They were not accepting the fact that I have received salary on board, outside India. If I had remitted the salary to any other country following subsequent Remittance to India, this question would not have arisen. However most of the seamen don't have an account in a foreign country and they remit money to India directly. This became a serious issue.

After that every 2-3 months I was getting Notice to attend the hearing in IT department. Mr. Saha was very confident that he will surely win the case, however there was no short and simple route and I had to have patience and have faith in Mr. Saha. There were lots of cases pending worth crores of rupees. We had to go to different levels of officers for staying the tax demand and all the way up to Delhi. But from all places our prayer was rejected. Finally after rejecting all my prayer petition in Dec 2013 and final tax order was given in Jan 14. Please note that the tax burden is huge. Tax is calculated at 30.9%+penalty which is same amount as tax + interest @18% p.a.post 1 month from the date of Tax-Demand Order, till date of payment.



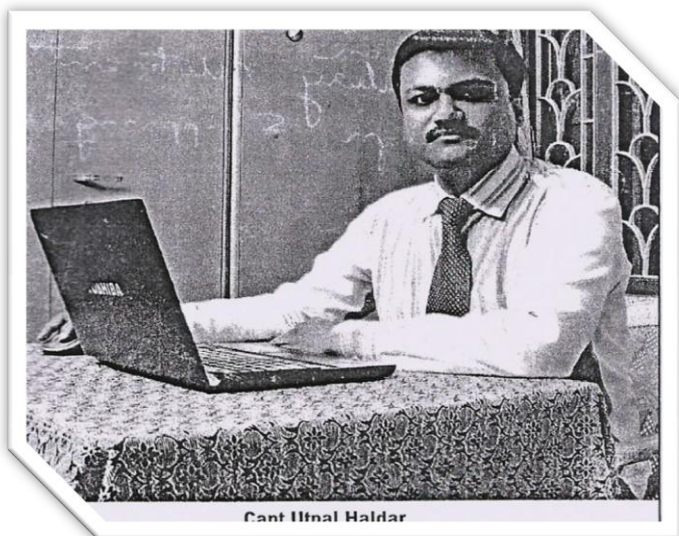
Moreover, if we would have lost the case, they could also have the option to re open/re-issue all my past 6 years and in future tax as well, Total tax + penalty+ interest were so huge an amount and considering all remaining year; we had to go for fighting the case instead of paying the tax. We had no choice other than fighting the case till the end i.e. Supreme court with a hope that the case may be solved earlier.

Mr. Saha, my income tax advocate has done an excellent job in terms of quality of research and legal documentation. He made sure that I can fight the case without paying any tax and this was done by filling a WRIT Application through Honorable High Court at Calcutta. I was hoping to get a date within three months in the High Court. However to his credit he managed to get a date in High Court within 15 days and Honorable Judge gave an order to hear my Appeal Pending before Ld. CIT (A) –VI/Kol and to dispose of the matter within one month. Separately a stay of the entire tax Demand was also granted. So that I do not have to pay any Tax till the disposal of the Appeal or 30-09-2014, whichever is earlier. For your Information in most cases of income tax, a person needs to pay the tax and then continue with his appeal.

Due to the order from High Court, the case was heard on priority basis by the Ld. CIT(A) – VI/Kol (Commissioner of Income Tax Appeal). Mr. D. Saha continued with his expertise and went for hearing a few more times (April end to May end, 2014) and was able to convince them that the tax which was claimed was totally inappropriate. Finally the judgment was given in my favour. The case was solved in record time (3rd Jan 2014 to 30th May 2014). But before that for more 1 year (Sep 2012 to Dec 2013), the IT department was calling us for hearing in order to frame the Tax Asst. Order and hearing in order to frame the Tax Asst. Order and insisting we pay tax. The tax demand was given to me on 3rd Jan 2014 and the case was closed on 30th May 2014. I have received the final order from CIT (A) VI around 16th June 2014.

My advocate Mr. Saha took it as a professional challenge and an oral promise was given that he will not take any money if he loses the case which is quite unbelievable. I had to fight the case alone and the only help was Mr. D. Saha a young energetic advocate who is extremely professional and knowledgeable in his own field.

I also want to tell all seamen to be strong and neither to negotiate, bribe anyone nor to go through any middle man, agent e.t.c. and stand up and resist all illegal demands from government authorities. Otherwise these departments will consider us as soft targets and keep trying their tricks to make money. If needed don't be scared to go to Supreme Court also as I was determined this time. They are sending many letters to seamen. Another three people called me after I won the case to find out the details. For them I have shared the details of my Income tax advocate who can provide them correct advice.



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