

Affidavit- Its Relevance in Income Tax Proceedings



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The Affidavit is a declaration as to the facts made in writing sworn before a person having authority to administer oath. In Civil litigation, giving of evidence in Court or before an authority administering particular enactment is an ancient and time-honoured practice.

When the Assessee submits averments in the form of Affidavit before the Authorities, it casts a serious responsibility on him to state the facts in a true and correct manner. The opposite party is entitled to cross-examine the deponent of the Affidavit. The scope of Affidavit is confined to such facts, which the deponent has direct knowledge of. The Affidavit shall not unnecessarily set forth matters of hearsay or argumentative nature. In case it is proved that a party has filed an Affidavit containing palpably wrong and untruthful averments, the deponent shall be liable to be prosecuted for giving false evidence. Providing a point by way of filing an Affidavit is not violative of the principles of natural justice so long as the witness is made available to the opposite party.

Ingredients of Affidavit

Every Affidavit should clearly express how much is the statement of the deponent's knowledge and how

much is a statement of his belief and the ground of belief must be stated with sufficient particularity to enable the Court/Administering Authority to judge whether it would be safe to act on the deponent's belief.

When the Affidavits filed by the party bear only the verification that they were sworn on oath and the contents of the Affidavits were admitted by them to be correct without giving source of knowledge or information, the verification makes the Affidavits meaningless and valueless as noted in the case of *Babu Lal vs. Motilal, AIT 1953 MB & 2 (Gwalior benefit)*.

The onus to prove *malafide* lies heavily on the person alleging it. Facts constituting *malafide* have to be supported by Affidavits stating that they have 'come to the knowledge' of

the deponent. The nature and source of knowledge is to be disclosed with sufficient particularity. Affidavit will not be one as required by law if the above ingredients are missing, stated the Supreme Court categorically in *Suckwinder Pal Bipan Kumar vs. State of Punjab. AIR 1982 SC 65*. It is therefore necessary that



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the party stating facts must disclose as to what facts are in the Affidavit. An Affidavit which does not comply with aforesaid requirement has no probative value and it is liable to be rejected. In such circumstances, the words 'the contents of the Affidavit are true and correct to the best of my knowledge the belief' carry no sanctity and such a verification can be disregarded.

Disclosure of source of information in an Affidavit was considered by the Guwahati High Court in the case of *Muktinath Das vs. Smt. Brinda Das*. AIR 1990 Gau 10. In this case, the Affidavit did not contain the source of information. The Court held that where the averment is not based on personal knowledge, the source of information should be clearly deposed. The deponent has to disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer. In yet another case, the apex court [*State of Bombay vs. Purshotham Jog*. AIR 1952 SC 317] enunciated that when an averment is not based on personal knowledge, the source of information should be clearly deposed.

Evidentiary value of Affidavit

An Affidavit *per se* does not become evidence in the suits, but it can become evidence only by consent of the party or where it is specially authorized by particular provision of law. Affidavits are not even included in the definition of 'evidence' as provided in Section 3 of The Evidence Act, 1872. Consequently, Affidavits cannot be used as evidence even under any of the provisions of the Evidence Act.

In the case of *Abdul Rasheed vs. Calcutta Municipal Corporation* AIR 1990 Cal 37, it was observed that the text of a document was in English. There is no indication in the body of document that its text was explained to the deponent who had signed in Hindi. The Court held that in such circumstances the Affidavit cannot be relied upon.

In the ordinary course, an Affidavit can not be used as evidence to prove a particular fact. It can only be used as an admission of a party under 18 to 21 of the Evidence Act and can be used against the party making such admission.

It emerges from the resume of judgements concerning the Affidavits that except in certain circumstances referred to in the decisions, Courts have been by and large reluctant to place absolute reliance on Affidavits as evidence to tilt the scale of their decision

in favour of one party or another.

Applicability under Income Tax Laws

The Income Tax Act and Rules made thereunder. The Income Tax Appellate Tribunal Rules, Settlement Commission rules etc. duly recognise the importance and relevance of sworn statements.

In terms of Section 253 (7) read with Rule 35A of Appellate Tribunal Rules, 1963, the Assessee is required to file the petition for stay of demand raised by the I.T. authorities. The Income Tax Appellate Tribunal requires that the stay petition must accompany an Affidavit verifying the contents of the stay petition.

Also, as per Rule 10 of the Income Tax Appellate Tribunal Rules, 1963, "Where a fact which can not be borne out by, or is contrary to the record is alleged, it shall be stated clearly and concisely and supported by duly sworn Affidavit."

The Income Tax Settlement Commission (Procedure) Rules, 1976, also recognises the relevance and importance of Affidavits in following words: "where a fact which can not be borne out by, or is contrary to the record relating to the case is alleged in the statement of facts furnished under rule 7, it shall be stated clearly and concisely and supported by a duly sworn Affidavit."

At yet another place namely under Section 226 (3)(vi), the Assessee is required to file statement on oath for registering objection in response to notice for recovery proceedings of Income Tax demands raised.

The application setting out circumstances for delay in filing appeal before the appellate authorities and seeking condonation thereof etc. should as far as possible, to be supported by duly verified Affidavit.

Likewise, the retraction of statements made earlier before Statutory Authorities during the course of search/survey proceedings, assessment proceedings etc, if any, should necessarily be in the form of Affidavit.

Writ petitions seeking remedy against the actions/inactions of the income Tax Authorities under

Article 226 and 228 of the Constitution of India before the High Courts and under Article 32 of the Constitution before the Supreme Court are decided on the evidence furnished by Affidavits.

Interested Testimony

The question of relevance and weight to be attached to interested testimony is open to debate. It is contended to be merely a place of self serving document.

In this respect, observations of Madras High Court in the case of CIT vs. Krishnaveni Ammal 158 ITR 826 in connection with fictitious cash credits are worth noting. It was contended before the High Court by the revenue that Tribunal ought not to have accepted the interested testimony of the Assessee, when other direct evidences are available with Assessee to repel the aspersion cast on genuineness of credits.

The High Court acceding to the arguments of the revenue noted as it might be that any judicial authority can accept any statement of an Assessee, when that is the only piece of evidence available in the particular case, and order assessment on such sole evidence. But when, even according to the Assessee, there is other documentary evidence or corroborative value and the same is within the reach of Assessee, in such a case, judicial body can not act on such interested testimony of the assessee alone. Hence, the isolated statement of the Assessee has no evidentiary value at all. The High Court held that any finding of such unworthy evidence deserves to be characterised as perverse and has to be set aside. The High Court further observed that as a matter of fact, the law of evidence mandates that if the best evidence is not placed before the Court, an adverse inference can be drawn as against the person who ought to have produced it.

The Supreme Court in *CIT vs. M. Ganapathi Mudaliar (1964) 53 ITR 623* noted that when only available evidence is the statement of Assessee, the tribunal would be justified in placing reliance on the same. When such evidence is accepted by the Tribunal, it is not open to the High Court to interfere with such a finding of fact.

A word of caution is necessary here in view of observation of Allahabad High Court in the case of *Nihorilal Prabhudayal (19 ITR 240)* according to which, if a party on whom the burden of proof lies produces evidence which is considered to be unsatisfactory and is, therefore, disbelieved, the mere fact that

there is no evidence to the contrary does not compel the Tribunal to record a finding in favour of the party on whom the burden lies. Therefore, mere furnishing of Affidavit by the party concerned does not discharge his burden and absolve him ipso-facto.

Affidavit – A part of it cannot be ignored

The Gujrat High Court in the case of Glass Line Equipments Co. Ltd. vs. CIT reported in 253 ITR 454 (2001) held that while dealing with Affidavits, the revenue can not choose to accept only one part of the statement which is favour of revenue and against the Assessee while ignore the rest of the portion wherein specific averments were made on facts. It is a well settled canon of interpretation that a document has to be read as a whole: it is not permissible to accept a part and ignore the rest of the document.

Cross examination of Affidavits

The Supreme Court in the case of Mehta Parikh and Co. vs. CIT [1956] 30 ITR 181 laid down that when none of the authorities considered it necessary to cross-examine the deponent with reference to the statement made in the Affidavit, it was not open to the Revenue under these circumstances to challenge the correctness of the statement made by the deponent in the Affidavit. In other words, consequently, the Assessee was entitled to assume that the authorities were satisfied with the Affidavit as sufficient proof on this point.

The Allahabad High Court in the case of *L. Sohanlal Gupta vs. CIT [1958] 33 ITR 786* was confronted with question of rejection of Affidavits. The Hon'ble High Court held that rejection of Affidavit is not justified unless Assessee has either been cross-examined or called upon to produce documentary evidence in support of the Affidavit sworn by him. ■

To sum up, to prove a point in appropriate cases, the Assessee can resort to declaration in the form of Affidavits by adhering to the stipulated norms and thus shift the burden on the other side to a great extent.