

Case Highlight

Our taxation Partner, Sachit Jolly, along with Principal Associate, Divya Bhalla Sudan and Associate, Abhishek Chauhan, successfully represented a high net worth individual in the prosecution launched by the Income-tax Department in connection with an alleged undisclosed bank account in HSBC, Switzerland.

The case set up by the Income-tax Department was that the base notes allegedly stolen by ex-HSBC employee, Herve Falciani, and received by the Indian Government from the French Government under the India-France Double Taxation Avoidance Agreement constituted evidence for prosecuting the alleged account holders.

Setting-aside the prosecution case and discharging the accused, the Tis Hazari Court of Additional Chief Metropolitan Magistrate has laid down the following propositions:

1. Standard of proof is much higher in a warrant case – like a tax prosecution matter;
2. Base notes, which form the bedrock of the prosecution case, do not mention HSBC Bank or any branch thereof;
3. Base notes do not even suggest that the taxpayer deposited any amount;
4. Section 279B of the Income-tax Act, 1961 requires the tax authority to certify that they have the original documents, and unless such burden has not been discharged, the document, so produced, does not qualify as evidence;
5. Accordingly, base notes do not qualify as evidence in the absence of any certification or corroborative evidence; and
6. Presumption of culpability under Section 278E of the Income-tax Act, 1961 kicks in only when there is *prima facie* evidence.

The judgement has come as a huge relief for various taxpayers against whom prosecution has been launched by the Income-tax Department as a matter of routine, without even examining whether there was any material or evidence which could withstand the scrutiny in any court of law. The judgment also reinforces the settled principle that not all documents/material qualify as evidence and that in the absence of any corroborative material, the base notes received by the Indian Government from the French Government do not meet the test of evidence.