

US court blocks Internal Revenue Service's bid to help Indian I-T

LUBNA KABLY, TNN | Jul 24, 2013, 07:31AM IST

MUMBAI: The US Internal Revenue Service's

(IRS) efforts to help [Indian tax authorities](#) uncover financial information of a US resident, alleged to have evaded tax in India, have hit a road block. A US district court has recently quashed summons issued by the IRS to gather such information and pass it on to the Indian tax authorities.

The Illinois District Court has held that the IRS did not fulfill the statutory requirements while serving administrative summons on [Bank of America](#) in the US for seeking bank account-related information of a particular individual. Nor did the IRS serve a proper summon notice on such individual at his Indian address.

The bigger blow to both the IRS and the Indian tax authorities is that the district court has held that the IRS failed to prove that the tax summons were issued in good faith. The IRS was unable to demonstrate the purpose and relevance of seeking the information. Based on these grounds, the tax summons issued by the IRS for gathering information was quashed.



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Recently, Indian tax authorities have intensified requests to seek exchange of information under tax treaties or tax information exchange agreements from other countries in a bid to crack down on tax evaders and black money.

Nishith Desai, international legal counselor, says: "Indian tax authorities must demonstrate the relevance of information sought. This in turn will enable overseas tax agencies to show a legitimate purpose for gathering the required information. Tax authorities in both countries need to follow the prescribed procedures as regards requesting and gathering the information."

In its petition to the US district court, the individual pointed out that he is a US resident, he has filed his tax returns in the US and does not owe any taxes in India. He added that that the IRS failed to follow the notification procedures set down under the US domestic laws.

He claimed that he never received a summons notice supposedly mailed to him by the IRS at his India address. A copy of the summon notice was subsequently forwarded to him by Bank of America. Further, even the summons certificate issued to Bank of America was defective because it was unsigned and undated.

A US Supreme Court decision has set down the tenet that any investigation underlying the tax summons must have a legitimate purpose, the information sought must be relevant to such purpose and must not already be available with the IRS and lastly that the IRS should follow the statutory steps for issuing the summons.

The Indian authorities' request for information was made under Article 28 of the India-USA tax treaty, which deals with the exchange of information and administrative assistance. However, even this article provides that the US tax authorities shall not be obligated to obtain information or carry out administrative acts at variance from US domestic laws. A technical explanation to the [tax treaty](#) provides that only information which is necessary can be exchanged under the treaty.

The Illinois District Court held that, in this particular case, not only were the summons technically defective but the IRS also failed to show the purpose and relevance of the information sought. The provisions of Article 28 of the India-US tax treaty were not sufficient ground for collecting and providing such information to the Indian tax authorities.