REWIND 2023

UNRAVELING DIRECT TAX VERDICTS OF 2023

Presentation by :

CA. Naveen Khariwal G

Chartered Accountant

Partner : H.C. Khincha & Co.,

No. 40, 1st Floor, Lakshmi Complex

K.R. Road, Fort Bangalore – 560002.

naveenkhariwalg@gmail.com

Mob No : 9880683725

Index of case laws

Sl no	Particulars
1	[2023] 149 taxmann.com 238 (Delhi) / [2023] 293 Taxman 385 **Commissioner of Income-tax (International Taxation)-1 v. Brandix Mauritius Holdings Ltd**
2	ITA No.3006/DEL/2022 / ITA No.3008/DEL/2022 dated 15.11.2023 **Smt Sharda Devi Bajaj, Vs DCIT, Central Circle-32, New Delhi**
3	**Income Tax Officer vs Sh. Balwan singh** in ITA No. 2869/Del/2019, A.Y. 2014-15 dated 07.08.2023
4	**Narendra Kumar Gupta VS DCIT, Central Circle** in ITA No.1186/Del./2023 (ASSESSMENT YEAR : 2019-20)
5	**Kamal Kumar Jain VS ITO, Ward, Baraut In** ITA Nos.2235 to 2238/Del/2022 [Assessment Years: 2013-14 to 2016-17]
6	**M/s.D.N. SINGH VS. COMMISSIONER OF INCOME TAX, PATNA** AND ANOTHER CIVIL APPEAL NO(S).3738-3739 OF 2023 (Arising out of SLP(C) No(S).10617-10618 OF 2023 @ Diary No(s).7803 of 2018)
7	[2023] 149 taxmann.com 380 (HC Bombay) **CLSA India (P.) Ltd. v. Deputy Commissioner of Income-tax dated 10.02.2023**
8	[2023] 157 taxmann.com 418 (Delhi) dated 12.12.2023 **Commissioner of Income tax (IT)-1 v. Hersh Washesher Chadha**

Index of case laws (Contd….)

Sl no	Particulars
9	[2023] 155 taxmann.com 493 (Bombay) dated 12.09.2023 **Hemant Dinkar Kandlur v. Commissioner of Income-tax (International Taxation)**
10	[2023] 157 taxmann.com 680 (Chennai - Trib.) dated 20.12.2023 **Income Tax Officer, Corporate Ward-2 v. Sahana Jewellery-Exports (P.) Ltd**
11	[2023] 149 taxmann.com 190 (Gujarat) dated 13.02.2023 **Milan Arvindbhai Patel v. Assistant Commissioner of Income tax**
12	[2023] 156 taxmann.com 31 (Gujarat) dated 12.09.2023 **Nathalal Ambalal & Sons v. Income-tax Officer**
13	[2023] 150 taxmann.com 182 (Gujarat) dated 06.12.2023 **Nayana Kanakbhai Hutheesing v. Income-tax Officer**
14	[2023] 154 taxmann.com 347 (Chandigarh - Trib.) dated 24.07.2023 **Parmod Singla v. ACIT**
15	[2023] 156 taxmann.com 446 (Delhi) dated 19.10.2023 **Principal commissioner of Income-tax-7 v. Prosperous Buildcon (P.) Ltd**
16	[2023] 156 taxmann.com 346 (Gujarat) dated 28.08.2023 **Principal Commissioner of Income-tax (Central) v. Naresh Nemchand Shah**

Index of case laws (Contd….)

Sl no	Particulars
17	[2023] 157 taxmann.com 564 (Delhi) dated 24.11.2023 **Principal Commissioner of Income-tax v. Blackroak Securities (P.) Ltd.**
18	[2023] 153 taxmann.com 612 (Amritsar - Trib.) dated 20.02.2023 **Ramandeep Singh Sidhu v. Income-tax Officer**
19	[2023] 157 taxmann.com 208 (Delhi - Trib.) dated 07.12.2023 **Sarita Gupta v. Principal Commissioner of Income-tax**
20	[2023] 157 taxmann.com 669 (Visakhapatnam - Trib.) dated 29.11.2023 **Smt. Vijapurapu Sudha Rao v. Income Tax Officer, Ward-3(1)**
21	[2023] 157 taxmann.com 9 (Madras) dated 06.11.2023 **S. Uttam Chand v. Assistant Commissioner of Income-tax (Non-Corporate Circle 7(1))**
22	[2023] 157 taxmann.com 249 (Delhi) dated 13.10.2023 **Tirupati Trading Corporation v. Assistant Commissioner of Income-tax**
23	[2023] 152 taxmann.com 385 (Delhi - Trib.) dated 23.05.2023 **Income-tax Officer v. Appealing Infrastructure (P.) Ltd.**
24	[2023] 155 taxmann.com 202 (Bombay) dated 04.09.2023 **Darshana Anand Damle v. Deputy Commissioner of Income-tax**

Index of case laws (Contd….)

Sl no	Particulars
25	[2023] 152 taxmann.com 662 (Mumbai - Trib.) dated 22.05.2023 **Zainul Abedin Ghaswala v. Commissioner of Income-tax (Appeals), NFAC, Mum**
26	[2023] 155 taxmann.com 276 (Madhya Pradesh) dated 16.08.2023 **Nitin Nema v. Principal Chief Commissioner of Income-tax**
27	**SARASWATI PETROCHEM PVT. LTD. versus INCOME TAX OFFICER, WARD 22(3)** **W.P.(C) 10802/2018 dated 17.11.2023**
28	[2023] 155 taxmann.com 553 (Bangalore-Trib)[20.9.2023]**Bharat Electronics Ltd vs Asstt Commissioner of Income-tax, LTU IT Appeal No. 420 (Bang) OF 2023**
29	[2023] 156 taxmann.com 392 (Bangalore - Trib.)[20-09-2023] **Bellary Iron-Ores (P.) Ltd. vs. ITO IT Appeal Nos. 1540 (Bang.) of 2018 & 15 (Bang.) of 2019**
30	[2023] 149 taxmann.com 399 (SC) **SUPREME COURT OF INDIA Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd**

[2023] 149 taxmann.com 238 (Delhi)/ 293 Taxman 385

CIT, (International Taxation)-1

v.

Brandix Mauritius Holdings Ltd.[*]

RAJIV SHAKDHER AND

MS. TARA VITASTA GANJU, JJ.

IT APPEAL NO. 163 OF 2023[†]

MARCH 20, 2023

Where AO passed final assessment order without DIN, since there were no exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained.

Section 292B, read with sections 143, 144C and 147, of the Income-tax Act, 1961 - Return of income not to be invalid on certain grounds (Issue of order manually without DIN)

Assessment year 2011-12 - Whether object and purpose of issuance of Circular No. 19/2019, dated 14-8-2019 was to create an audit trail, thus, communication related to assessments, appeals, orders without DIN (document identification number) would have no standing in law - Held, yes -

Whether since in instant case, final assessment order passed by Assessing Officer did not bear any DIN and there was nothing on record to show that there were exceptional circumstances as mentioned in Circular No. 19/2019 which would sustain communication of final assessment order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained - Held, yes [Paras 18 and 19] [In favour of assessee]

Circulars and Notifications : Circular no. 19/2019, dated 14-8-2019

3.2 Further, **there is a specific requirement under the 2019 Circular to quote the DIN in the body of any such communication**.

4. The 2019 Circular also sets out **certain circumstances in which exceptions can be made**. These circumstances are categorically referred to in **paragraph 3 of the 2019 Circular.** For the sake of convenience, paragraph 3, in its **entirety, is extracted hereafter:**

'3. In **exceptional circumstances** such as, **-**

(i) when there are **technical difficulties in generating/allotting/quoting the DIN** and issuance of communication electronically; or

(ii) when **communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office**, for discharging his official duties; or

(iii) when **due to delay in PAN migration,** PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when **PAN of assessee is not available** and **where a proceeding under the Act** (other than verification under section 131 or section 133 of the Act) **is sought to be initiated;** or

v) When the **functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of income tax.**

In cases **where manual communication is required to be issued due to delay in PAN migration,** the **proposal** seeking **approval for issuance of manual communication shall include the reason for delay in PAN migration.**

The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/Director General of Income-Tax for issue of manual communication in the following format-

"..This communication issues manually without a DIN on account of reason/reasons given in para 3 (i)/3(ii)/3 (iii)/3 (iv)/3 (v) of the CBDT Circular No ... dated .... . (strike off those which are not applicable) and with the approval of the Chief Commissioner /Director General of Income-tax vide number .... dated . . . ."

5. It is relevant to note that in sofar as the exceptions given in **paragraph 3 (*i*), (*ii*) and (*iii*)** are concerned, the specified authority is required to **take steps to regularise the failure to quote DIN within fifteen (15) working days.**

The manner in which regularisation is to take place is set out in paragraph 5.

Once again, for the sake of convenience, the relevant part of paragraph 5 of the 2019 Circular is extracted hereafter:

"5. The communication issued manually in the **three situations specified in para 3- (*i*), (*ii*) or (*iii*) above shall have to be regularized within 15 working days of its issuance, by -**

i. uploading the manual communication on the System.

ii. compulsorily generating the DIN on the System;

iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System."

6. Furthermore, the 2019 circular, in paragraph 6, states that the intimation of issuance of manual communication, for the reasons mentioned in paragraph 3(*v*), shall be sent to the Principal Director General of Income-Tax (Systems) within seven (7) days from the date of its issuance.

7. As a matter of fact, paragraph 7 of 2019 Circular mandates alignment of all pending assessment proceedings, where notices were issued manually, prior to the issuance of the said circular, by having them uploaded in the system by the date given therein, *i.e.*, 31-10-2019.

8. Therefore, any communication which is not in conformity with the provisions of paragraph 2 and 3 of the 2019 Circular is to be treated as invalid, as if it was never issued [See paragraph 4 of the 2019 Circular].

8.1 In **a nutshell, communications referred to in the 2019 Circular would fall in the following slots:**

i. Those which do not fall in the exceptions carved out in paragraph 3(i) to (v)

ii. Those which fall in the exceptions embedded in paragraph 3(i) to (v), but do not adhere to the regime set forth in the 2019 Circular.

11.2 In support of his plea that the **2019 Circular is binding on the revenue,** Mr Vohra **has relied on the following judgments:**

a. ***UCO Bank* v. *CIT* [1999] 104 Taxman 547/237 ITR 889 (SC);**

b. ***Ellerman Lines Ltd.* v. *CIT* [1971] 182 ITR 913 (SC); and**

c. ***Dy. CIT* v. *Sunita Finlease Ltd.* [2011] 11 taxmann.com 241/330 ITR 491 (Chhattisgarh)**

11.3 Furthermore, to back his contention that **recourse cannot be taken to the provisions of Section 292B of the Act, reliance is placed on the following judgments:**

a. ***Pr. CIT* v. *Maruti Suzuki India Ltd.* [2017] 85 taxmann.com 330/250 Taxman 409/397 ITR 681 (Delhi), in ITA No. 65 of 2017 (Del) and**

b. ***Spice Enfotainment Ltd.* v. *CIT* [IT Appeal No. 475 of 2011, dated 3-8-2011] (Delhi)**

17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraphs 2 and 3 shall be treated as invalid and shall be deemed to have never been issued.

The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are *non-est* in law.

17.1 It is also well established that **circulars issued by the CBDT in exercise of its powers under section 119 of the Act are binding on the revenue.**

17.2 The **aforementioned principle stands enunciated in a long line of judgments, including the Supreme Court's judgment rendered in *K.P. Varghese* v. *ITO* [1981] 7 Taxman 13/131 ITR 597/4 SCC 173.**

18. The argument advanced on behalf the appellant/revenue, **that recourse can be taken to section 292B of the Act, is untenable, having regard to the phraseology used in paragraph 4 of the 2019 Circular.**

19. The **object and purpose of the issuance of the 2019 Circular**, as indicated hereinabove, *inter alia*, **was to create an audit trail**.

Therefore, **the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular**.

21.1 We find no error in the view adopted by the Tribunal.

The Tribunal has simply applied the provisions of the 2019 Circular and thus, reached a conclusion in favour of the respondent /assessee.

22. Accordingly, the appeal filed by the appellant/revenue is closed.

Supreme Court Stays Delhi High Court's Stance On DIN-Less Assessments 03.01.2024.

The Supreme Court has granted a stay on a Delhi High Court judgement, which said that any assessment without a Document Identification Number will be non-existent in law.

If an assessment is issued without a DIN and if it is held non-existent because of this fact, the top court said that a vacuum will build up, which might have serious consequences.

The court said that such an assessment could be an 'irregularity' but not an 'illegality'.

However, considering that **this is an interim order and not a final order, one should not read too much in between the lines.**

The stay does not affect the precedence value of the high court judgement and can still be relied upon by the taxpayers.

SC has stayed the Delhi HC judgement in Brandix case, wherein the Delhi HC has held the assessment order without DIN as non est in the eyes of Law.

SC has observed that not mentioning DIN may be an irregularity but not an illegality, and that quashing an assessment based on an internal Circular is too serious a consequence.

This Stay is a setback to the underlying objective of introduction of the concept of DIN by our hon'ble FM in 2019, to ensure accountability of the officers issuing Notices to assessees.

It's ironic that fatal failures of Assessing authorities to implement safeguards inserted by the Legislature based on the principles of natural justice, are being touted as bonafide mistakes and thus curable, the time barring deadlines for completing assessments both by Income Tax & GST authorities / processing by CPC, are extended based on administrative convenience, whereas even a small error or even a minor delay on assessee's part results in dire penal consequences.

Further, all CBDT Circulars are internal only and are binding on the IT authorities as per section 119 and thus are mandatorily to be complied with by the IT authorities.

ITA No.3006/DEL/2022 / ITA No.3008/DEL/2022 dated 15.11.2023

Smt Sharda Devi Bajaj,

Vs

DCIT, Central Circle-32, New Delhi

8. Coming to the merits, of the ground as introduced, the issue is no longer res integra, as it is covered by several decisions of the coordinate Bench and in particular the decision dated 19.9.2022 in the case of **M/s Brandix Mauritius Holdings Ltd. Vs. DCIT 2022 (11) TMI 34,** which has been confirmed by the **Hon'ble Delhi Court in the case of CIT (International Taxation-1), New Delhi vs. M/s Brandix Mauritius Holdings Ltd. 2023 (4) TMI 579**.

9. The CBDT vide aforesaid Circular dated 14.8.2019 has mandated, Generation / Allotment / Quoting of computer generated Document Identification Number (DIN) in the body of all communications, in the nature of notices / summons / letters / correspondences as well as the orders passed.

Para 3 of the Circular sets out, exceptional circumstances, in which such communications may be issued manually, with the rider that this shall be done **only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner / Director of Income Tax.**

Para 4 of the Circular provides that any **communication which is not in conformity with the requirement of Para 2 and Para 3** shall be **treated as invalid and shall be deemed to have never been issued.**

10. In the present case, it is not in dispute and otherwise, **it is a matter of record that the order of the Assessing Officer does not bear any DIN**.

11. It is not necessary to multiply authorities on the point.

However, to the similar effect is the decision of the **Hon'ble Bombay High Court in Ashok Commercial Enterprise vs. ACIT in WP Nos. 2595 of 2021 & Ors. Judgement dated 04.09.2023** and the **Hon'ble Kolkata High Court in PCIT vs. M/s Tata Medical Centre Trust in ITAT/202/2023 Judgement dated 26.9.2023**.

12. The Hon'ble Bombay High Court has inter alia held that **subsequent generation of the DIN will not be sufficient as the requirement of the CBDT Circular, is quoting of the DIN, in the body of such communication and / or order.**

13. On behalf of the Revenue reliance is placed on the communication dated 17.9.2019 which pertains to the roll out of facility for System generated Document (i.e. Intimation Letter) containing Document Identification number (DIN) for documents issued outside the system but uploaded manually in Income Tax Business Application (ITBA).

14. We are unable to see as to how the said communication can come to the aid of the Revenue.

All that the communication states is about the provision of facility for generation of Intimation Letter containing Document Identification Number / Document Number (DIN/DN) for documents issued outside ITBA system but uploaded manually in Income Tax Business Application (ITBA).

15. From para 4 of the communication, it is clear that it pertains to the functionality to capture and uphold the letters, notices and orders issued manually and served on taxpayers by users due to any exceptional circumstances under Para 3 (i), (ii) and (iii) of the aforesaid Circular dated 14.8.2019.

It is not the case made out that there are any exceptional reasons recorded in these appeals as required by the Circular dated 14.8.2019.

Thus, in our opinion, the said communication cannot come to the aid of the Revenue in the present Appeals.

16. In that view of the matter, the additional ground as raised has to succeed.

In the face of this it is not necessary to go into the merits of other Grounds, as raised.

17. In the result, the Appeals of the Assessees being ITA No. 3006/Del/20222 (Sharda Devi Bajaj AY 2015-16)); ITA No. 3008/Del/2022 (Sunder Lal Bajaj AY 2015-16) and ITA No. 3009/Del/2022 (Sunder Lal Bajaj, HUF AY 2015-16) are allowed and the assessment orders are set aside.

Income Tax Officer vs Sh. Balwan singh in ITA No. 2869/Del/2019, A.Y. 2014-15 dated 07.08.2023

2. The facts in brief are that the **Ld. AO had questioned the unsecured loans amounting to Rs. 4,56,50,000/- and finding the evidence given by assessee to the insufficient** made the addition **which has been deleted by ld. CIT(A).**

4. Primarily the **Ld. DR** submitted that the **evidence** led by the assessee during the appellate proceedings **has been relied without giving due consideration to the remand report.**

It was further submitted that **even the evidence provided was insufficient to establish with the parties had their own sufficient funds and were genuine in the transaction.**

Ld. DR heavily relied on the judgment of **Hon'ble Supreme Court of India in the case of CIT vs. Biju Patnaik 1986 AIR 1428** to submit that the **assessee have always been under a burden to establish the source of source and the concept is not new.**

Though, reiterated by way of an amendment brought by the Finance Act, 2022.

4.1 On the other hand Ld. AR relied the order of Ld. CIT(A) and submitted that all the relevant evidences were before the Ld. CIT(A) and **when the transaction were through banking channel and there was no cash entries in the accounts of the investors there was no reason to disbelieve the unsecured creditors.**

It was submitted that in the remand report Ld. AO had not disputed the facts of identity and credibility of the investors.

Ld. AR submitted that the explanatory notes to the amendments brought in Section 68 makes it clear that the amendment brought to establish the source of source is effective from 01.04.2023.

5. Giving thoughtful consideration to the matter on **record it comes from the order of ld. CIT(A) that the additional evidence with regard to the identity and genuineness of the transaction were forwarded to Ld. AO whose report has been reproduced by Ld. CIT(A) in its order.**

It also comes up that **Ld. CIT(A) discusses the remand report particularly in context to each lender individually and pointing out that how ld. AO had failed to appreciate the evidence in the right context.**

6. After giving thoughtful consideration to the findings of Ld. CIT(A) it comes up that Ld. **CIT(A) had appreciated following facts individually for the four suspected parties;**

a) **Mangal Sain Mittal**; The issue was of unsecured loan of Rs 10 lacs. Ld. CIT(A) relied confirmation of lender, copy of ITR; copy of bank account of lender, explanation regarding source of loan of Rs 10 lacs) factum of confirmation of loan in statement recorded u/s 131 at remand stage. It was specifically of observed that in the accounts of lender there were no cash deposits.

b) **Mukesh Kumar;** The issue was of unsecured loan of Rs 230,00,000. Ld. CIT(A) relied lender's confirmation, bank account; ITR of lender; source explanation and factum of loan confirmation by lender in statement recorded u/s 131 at remand stage.

c) **Yashpal;** The issue was of unsecured loan of Rs 105,00,000 Ld. CIT(A) relied lender's confirmation, bank account and explanation regarding source of lender in statement recorded u/s 131 recorded at remand stage.

d) **Vijay Dhunela;** The issue was of unsecured loan of Rs. 1,11,00,000 CIT(A) relied lender's confirmation, bank account of lender, source explanation by way of capital receipts from sale of properties.

7. The bench is of considered view that **reliance of Ld. DR of the judgment of Hon'ble Supreme Court of India in CIT vs. Biju Patnaik (supra) is not sustainable as that was a case where the Trust which has given money to the that assessee was found to be non-existing trust and very identity of the trust was found to be doubtful.**

Further, in that case the cash amounts were received by the said trust and individuals who have given the money to the trust were also not identifiable and traceable therefore, taking a wholesome view Hon'ble Supreme Court had observed that the source of source was doubtful.

7.1 However, in **the case in hand** the **material evidence** produced by the assessee has been **duly examined by Ld. CIT(A) and there is no dispute with regard to identity of the parties, the amounts were paid by them through banking channels.**

They themselves did not receive any amount cash in the immediate vicinity of the transactions.

7.2 **The 2022 amendment in Section 68 of the Act takes effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.**

The amendment is the illustration of application of 'Mischief Rule' in interpretation of statutes.

Memorandum explaining the amendment makes it crystal clear that amendment is proposed to remove doubts created by certain judicial rulings about the onus of proof of source of source.

The principle may have been there in certain judgments in favour of Revenue, but now once this amendment has specifically made applicable the principles with effect from AY 2023-24, the Bench cannot apply retrospectively.

8. Further if this evidence was insufficient to the satisfaction of ld. AO then the burden was on Ld. AO to have at least brought on record some evidence during the remand proceedings to show that the parties transacting with assessee were not genuine.

The burden when discharged by the assessee by substantial evidence the onus shifted on Ld. AO to discredit the same with some evidence, direct or circumstantial, and not just bald assertions on his own belief and dissatisfaction.

The grounds raised have no substance.

Consequently, the appeal of Revenue is dismissed.

The 2022 amendment in Section 68 of the Act

Sec. 68 : Cash credits

- Where any sum is found credited
- in the books of an assessee
- maintained for any previous year,
- and the assessee offers no explanation
- about the nature and source thereof or
- the explanation offered by him is not,
- in the opinion of the Assessing Officer,
- satisfactory,
- the sum so credited
- may be charged to income-tax
- as the income of the assessee
- of that previous year:

Inserted by the Finance Act, 2022, w.e.f. 1-4-2023

[Provided that where the sum so credited consists of loan or borrowing or any such amount,

by whatever name called,

any explanation offered by such assessee

shall be deemed to be not satisfactory, unless -

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

The following proviso shall be inserted in section 68 by the Finance Act, 2012, w.e.f. 1-4-2013 :

Provided further that] where the assessee is a company (not being a company in which the public are substantially interested),

and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called,

any explanation offered by such assessee-company

shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Inserted by the Finance Act, 2022, w.e.f. 1-4-2023

- **[Provided also] that nothing contained in the first proviso [or second proviso]**
- **shall apply if the person,**
- **in whose name the sum referred to therein is recorded,**
- **is a venture capital fund or**
- **a venture capital company**
- **as referred to in clause (23FB) of section 10.**

Narendra Kumar Gupta VS DCIT, Central Circle

in ITA No.1186/Del./2023 dated 11.10.2023

(ASSESSMENT YEAR : 2019-20)

3. Brief facts of the case are that **there was a search & seizure operation on Faquir Chand Lockers and Vaults Pvt Ltd** group of cases.

The **assessee's locker No.237** at 6704A, Khari Baoli, Delhi-6 was **also covered under section 132(1) of the Income-tax Act, 1961** (for short 'the Act').

On operation of the locker no.237, cash amounting to Rs.52,02,500/- was found and seized.

On an enquiry in this regard, **assessee submitted that cash of Rs.24,71,352/- was from assessee's proprietorship concern, Nelly Creations and the remaining cash of Rs.28,00,000/- was from trading of kirana items by Narender Kumar Gupta and Sons HUF.**

AO was not convinced with this explanation.

He **rejected the cash found said to be from Nelly Creation.**

He also **rejected the claim of Rs.28,00,000/- from trading of kirana items by Narender Kumar Gupta and Sons HUF.**

6. **As regards the rejection of claim of cash from assessees proprietorship concern, we find that books have not been rejected.**

It has also **not been proved that cash withdrawn is also put to any other use.**

In such circumstances, **there is no reason to reject the source of cash in this regard.**

In this regard, we draw support from the decision of **Hon'ble Delhi High Court in the case of CIT vs. Kulwant Rai (2007) 291 ITR 36 (Delhi)** for the following proposition :-

*"16. This **cash flow statement furnished by the assessee was rejected** by the Assessing Officer which is **on the basis of suspicion that the assessee must have spent the amount for some other purposes**. The orders of the **Assessing Officer as well as the Commissioner of Income-tax** are **completely silent as to for what purpose the earlier withdrawals would have been spent.***

As per the cash book maintained by the assessee, a sum of Rs.10,000 was being spent for household expenses every month and the assessee has withdrawn from bank a sum of Rs. 2 lakhs on December 4, 2000 and ***there was no material with the Department that this money was not available with the assessee.***

It has been held by the Tribunal that in ***the instant case the withdrawals shown by the assessee are far in excess of the cash found during the course of search proceedings.***

No material has been relied upon *by the Assessing Officer or the Commissioner of Income-tax (Appeals)* ***to support their view that the entire cash withdrawals must have been spent by the assessee*** *and accordingly,* ***the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted."***

7. **As regards, the amount belonging to Narender Kumar Gupta and Sons HUF is concerned, we note that 44AD return has been submitted which has been accepted.**

The income, therefore, therein has been accepted.

In such circumstances, there is no reason why the cash due of the income disclosed u/s 44AD should not be accepted.

It is settled law that books of account & vouchers are not required in 44AD return.

Hence, adverse inference cannot be taken that cash book & vouchers have not been maintained.

The same income cannot be taxed twice once in the hands of HUF and once again in the hands of the assessee.

In these circumstances, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

8. In the result, assessee's appeal stands allowed.

Kamal Kumar Jain VS ITO, Ward, Baraut

(Delhi ITAT) in ITA Nos.2235 to 2238/Del/2022 dated 21.09.2023

[Assessment Years: 2013-14 to 2016-17]

These are **appeals by the assessee against the respective orders of the National Faceless Appeal Centre (NFAC), New Delhi,** all dated 28.07.2022 **pertaining to Assessment Years 2013-14 to 2016-17**

2. Since, the **issues are common and connected** and the appeals were heard together, **these are being consolidated and disposed of together for the sake of convenience by this common order.**

3. **For the sake of reference, we are referring to grounds of appeal and facts and figures of Assessment Year 2013-14.**

4. The Ld. Counsel for the assessee has **pressed only merits of the case.**

The assessee is an individual and filed his return of income on 08.02.2014 declaring total income of Rs.2,61,280/-. The return was processed u/s 143(1) of the Act.

Subsequently, **the information received from DDIT(Inv.), Unit-2, Meerut. As per the Insight portal of the Department, the assessee during the relevant year has made aggregate cash deposits Rs.37,14,350/- and had also withdrawn aggregate cash of Rs.36,76,000/- from his bank account maintained with Axis Bank, Punjabi Bagh, New Delhi.**

On the basis of this information, the case was reopened.

During the assessment, **the Assessing Officer made addition of cash deposits.**

The Assessing Officer has **completed assessment u/s 147/143(3) r.w.s. 144B of the Act** determining total income of Rs.39,75,630/- **considering the said cash deposits of Rs.37,14,350/- as unexplained and added the same u/s 68 of the Act.**

7. The Ld. Counsel for the assessee submitted that **the assessee has filed his return of income on the basis of presumptive business income return filed in Form Sugam ITR 4S wherein the said bank account was duly shown and the amount in dispute as under:-**

Sl. No.	Assessment Year	Income declared u/s 44AD (sole lubricant oil business) retail trading	Gross receipts declared u/s 44AD (Rs.)	Sole Dispute Bank deposit added u/s 68/Rs.(unexplained cash credit sole subject matter of dispute in extant cases (being Sole impugned Addition made u/s 68 in impugned asst. Order para 9 of asst. Order as sustained by CIT-A)
				Without disturbing returned status of assessee u/s 44AD
1.	2013-2014	299,700 @ 8% of gross receipts	37,45,200	37,14,350
2.	2014-2015	266,000 @ 9.75% of gross receipts	27,26,300	27,83,450
3.	2015-2016	643,200 @ 8% of gross receipts	80,36,200	82,79,551
4.	2016-2017	753,800 @ 8.62% of gross receipts	87,40,000	93,28,595

8. Referring to the above, the ld. Counsel for the assessee stated that the assessee has **submitted the return u/s 44AD that there is no requirement in section 44AD that the assessee should maintain books of account.**

Hence, he **pleaded that the addition of deposits in bank account is not permissible**.

He further **submitted that apart from the receipts, other credits have also been taken into account in making addition in three Assessment Years 2014-15 to 2016-17.**

Hence, **he again pleaded that the addition is not sustainable in law.**

10. Upon careful consideration, **we note that the assessee has declared income u/s 44AD of the Act.**

Section 44AD provides for presumptive business income assessment and it also does not require the assessee to maintain books of accounts.

Hence, **the cash deposits to the extent of gross receipt cannot be added as unexplained income**.

As regards difference between 44AD gross receipts and deposits in Bank, we note that the same can be treated as income of the assessee and the profit rate as applicable can be applied.

The Ld. Counsel for the **assessee fairly agreed to the above proposition.**

The Ld. **DR did not make any cogent objection in this regard.**

Accordingly, **the appeal of the assessee is partly allowed** as indicated hereinabove.

M/s.D.N. SINGH

VERSUS

COMMISSIONER OF INCOME TAX, PATNA AND ANOTHER (SC)

CIVIL APPEAL NO(S).3738-3739 OF 2023

(Arising out of SLP(C) No(S).10617-10618 OF 2023

@ Diary No(s).7803 of 2018)

Justice K.M. Joseph & Justice Hrishikesh Roy [16-05-2023]

1. …….. for the purposes of **Section 69A of** the Income Tax Act, 1961- the **deeming effect of the provision will only apply, if the assessee is the owner of the impugned goods and secondly, for any article to be considered as 'valuable article' under Section 69A, it must be intrinsically costly,** and it **will not be regarded as valuable if huge mass of a non precious and common place article is taken into account, for imputing high value.**

2. Two principal questions arise in this matter.

Firstly, **whether the assessee herein can be regarded as an 'owner'** for the concerned goods, and, secondly, **whether 'bitumen' can be covered within the category of 'other valuable article', alongside money, bullion and jewellery,** as mentioned in Section 69A of the Income Tax Act, 1961.

3. ……. **Someone having mere possession and without legal ownership or title over the goods, will not be covered within the ambit of Section 69A.**

An assessee may nevertheless be also regarded as deemed owner if possession is imputed on the assessee and no other person having a better claim is contesting the assessee's claim.

In the present case, the assessee was certainly not the owner of the bitumen - but was the carrier who was supplying goods from the consignor - oil marketing companies to the consignee - Road Construction Department.

Notably, due to short delivery of goods, the possession of the assessee was unlawful.

The inevitable conclusion therefore is that the assessee is not the owner, for the purposes of Section 69A.

4. …… To address the second question on **whether bitumen is a valuable article under Section 69A, we must understand what sort of article is bitumen.**

Commonly, bitumen is described as a sticky, black, highly viscous, liquid or a semi-solid form of petroleum and a crude oil by-product, which is also known as asphalt. ……

The question is **whether this residual offshoot from crude oil refining, can be categorised as a valuable article, in the context of Section 69A of the Income Tax Act keeping in mind that the section, specifically lists three items i.e. money, jewellery and bullion.**

5. The Patna High Court in the order challenged before us- held that under Section 69A "**any article which has value will come under the expression "valuable article" as mentioned in Section 69A of the Act…".**

According to the Division Bench, for purposes of Section 69A, **it will not be relevant whether the article in question is generally considered to be of high value and is a precious item.**

It possibly **could be a common place and ordinary article but all that will be relevant is that the considered item has some value.**

The **article can be a run-of-the-mill item or it can be a high priced one.**

According to the High Court **the nature of the article is immaterial so long as it is of some value which may be accounted only by volume.**

In this case, the addition to assessee's income related to Rs. 1.05 crores worth of bitumen.

In particular, the impugned judgement also noted that in Section 69A the word 'valuable article' is a 'separate item' from bullion, money and jewellery and concluded that it may include any article of value.

7. Now returning to the facts of **Dhanush General Stores vs. Commissioner of Income Tax (2011) 339 ITR 651** (supra), the learned Division Bench, in contrast, held that **the stock in kirana store is not a valuable article for the purposes of Section 69B.**

The Court noted that **kirana store items are not valuable articles having a high price and are rather in the nature of ordinary articles. In that case the excess stock worked out to around Rs. 87,000/-.**

8. Between the two contrary opinions, **on the applicability of Section 69A/69B** as mentioned above, **on the nature of the article** for the purpose of tax liability, **the Chhattisgarh High Court in Dhanush (supra) propagates the correct view.**

There is no basis to give a wide interpretation to Section 69A and include within its ambit, any and every article of value.

Notably, it can be seen that- articles of value are a genus of which valuable articles are a species i.e. a subset of high priced items.

To put it differently, an **article having value, may not be a valuable article.**

As for instance, a bag of cement, a sack of rice or a diamond stone will certainly have some value. But only the diamond stone can be regarded as a high cost valuable item.

To categorise all sundry items as valuable articles will mean an interpretation which will be foreign to the purpose of the law and the intention of the legislature in so far as Section 69A is concerned.

10. …… **In this context, when the principle of Ejusdem Generis is applied, the preceding words in Section 69A such as money, bullion, jewellery would suggest that the phrase 'other valuable article' which follows those words, would justify inclusion of only high value goods.**

Any other way of reading the phrase 'other valuable article' or 'valuable article' by **ignoring the kind of specific goods mentioned in the preceding part of Section 69A, would be incorrect and would do violence to the plain language of the provision and will travel beyond the legislative intent.**

15. …… **in the context of Section 69A, unexplained valuable article has to be high priced item which are procured to hide income, to avoid tax liability.**

To adopt a wide interpretation for the phrase- ‘valuable article’ and thereby include within its scope any sundry article of whatever value, is found to be unjustified.

It needs to be also reiterated that, ordinarily, fiscal laws including taxation statutes, are to be strictly interpreted and tax must not be imposed through analogy, inference or by extension of phrases used by the legislature.

16. …… For **purpose of Section 69A** of Income Tax Act, it is therefore declared that- **an 'article' shall be considered 'valuable' if the concerned article is a high-priced article commanding a premium price.**

As a **corollary, an ordinary 'article' cannot be bracketed in the same category as the other high priced articles like bullion, gold, jewellery mentioned in Section 69A by attributing high value to the run-of-the-mill article, only on the strength of its bulk quantity.**

17. …….. **Premium price cannot be attributed to an otherwise ordinary and common place article like bitumen only on the basis of huge mass of bitumen.**

It would be an incorrect way to categorize bitumen as a 'valuable article', under Section 69A of the Income Tax, Act.

18. ……. **it can be appropriately said that the legislature while introducing section 69A to the Income Tax, Act, 1961 by the Finance Act, 1964, was concerned only with such precious and aspirational articles like bullion and jewellery which are capable of being repositories of hidden earnings but were not really concerned about common place stuff like "bitumen", which would not attract a second glance, on any road surface of our country.**

19. **In conclusion, it is held that bitumen is not a valuable article in the context of Section 69A and the assessee here was not the owner of the concerned bitumen for the purpose of section 69A of the Income Tax Act,1961.**

[2023] 149 taxmann.com 380 (HC Bombay)

CLSA India (P.) Ltd.

v.

Deputy Commissioner of Income-tax

dated 10.02.2023

Section 170, read with section 148, of the Income-tax Act, 1961 - Succession to business other than on death (Validity of reassessment) - Assessment year 2017-18 –

Assessing Officer **issued a reopening notice in name of company LBPO under section 148.**

Petitioner-company CLSA informed Assessing Officer that LBPO was a non-existent company as it was amalgamated with it.

Further, a **reassessment order was passed in name of CLSA while at same time mentioning name of LBPO**.

It was noted that **it was clear that notice under section 148 which formed basis for reassessment proceedings was issued in name of a non-existent entity LBPO.**

Further, **despite fact that Assessing Officer had knowledge regarding non-existence of LBPO, reassessment order was passed in name of CLSA while at same time mentioning name of assessee as LBPO.**

Whether **fact that PAN in name of non-existent company LBPO had remained active would not create any exception and, thus, impugned reopening notice and reassessment order having name of LBPO were unjustified and same were to be set aside** - Held, yes [Paras 4 and 7] [In favour of assessee]

4. Be that as it may, it is thus clear that the notice under section 148 of the Act which forms the basis for **reassessment proceedings was issued in the name of a non-existent entity and despite the fact that the Respondents had the knowledge regarding the non-existence of the said entity and despite having been informed, the order of assessment was passed in the name of the Petitioner while at the same time, mentioning the name of the assessee as Laysin BPO Pvt. Ltd.**

5. This is **clearly untenable in view of the Apex Court judgment** in ***Saraswati Industrial Syndicate Ltd.*** **v.** ***CIT*** **[1990] 53 Taxman 92/186 ITR 278.**

……. In **the case of** ***Spice Entertainment Ltd.*** **v.** ***CST*** **2012 (280) ELT 43 (Delhi) a Division Bench of the Delhi High Court** held that **once the factum of amalgamation of a company had been brought to the notice of the A.O,** despite which the proceedings are continued and **an order of assessment passed in the name of non-existence company, the order of assessment would not be merely be a procedural defect but would render it void.**

6. Recently, the Apex Court in the case of **Pr. CIT v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 reiterated the aforementioned principles.**

7. The stand of the revenue that the reassessment was justified in view of the fact that the PAN in the name of the non-existent entity had remained active does not create an exception in favour of the revenue to dilute in any manner the principles enunciated hereinabove.

[2023] 157 taxmann.com 418 (HC Delhi)
dated 12.12.2023

Commissioner of Income tax (IT)-1

v.

Hersh Washesher Chadha

Section 69A of the Income-Tax Act, 1961 - Unexplained moneys - (General) - Assessment year 2017-18

Whether expression "if any" specifically used in section 69A amplifies that where books of account are not maintained, it would not be possible to invoke this provision - Held, yes

Assessee, a non-resident individual, filed his return of income, thereby declaring his income as Rs. 1.02 lakhs, which included savings bank interest of Rs. 95,305 and interest on income tax refund of Rs. 6,983

Assessing Officer made additions under section 69A to tune of Rs. 1.40 crores on account of unexplained credit entries in bank account in India

It was noted that before Tribunal, assessee explained that a sum of certain amount was received from his bank account in Dubai by transfer to NRO account in India; certain sum of cash deposits were made during demonetization period out of earlier cash withdrawal; certain sum was received by him from his daughter and certain amount was received from one SS on cancellation of a hotel booking.

Whether since assessee gave specific explanation of a split up of money in question and Tribunal meticulously examined and elaborately discussed documentary record in support of said explanation of money ingress in bank account of assessee, Tribunal rightly deleted impugned addition made under section 69A

Whether, further, provision under section 69A did not apply in case of assessee as his only source of income in India was from interest on bank account and interest on income tax refund and he was not obliged to maintain any books of account in India. Held, yes [Para 10] [In favour of assessee]

3. Briefly stated, circumstances relevant for present purposes are as follows.

The respondent/assessee being a **non-resident individual residing in the United Arab Emirates (UAE**) filed his Return of Income for Assessment Year 2017-18, thereby **declaring his income as Rs.1,02,288/-, which included savings bank interest of Rs.95,305/- and interest on the income tax refund of Rs.6,983/-.**

By way of scrutiny proceedings, the Assessing Officer made **additions under Section 69A of the Act to the tune of Rs.1,40,09,733/- on account of unexplained credit entries in the bank accounts, a sum of Rs.1,64,219/- on account of under reporting of interest and an amount of Rs.4,69,335/- towards deemed dividend under Section 2(22)(e) of the Act.**

Feeling aggrieved, the respondent/assessee filed an **appeal to the limited extent of assailing the addition made under Section 69A of the Act.**

The said appeal of the respondent / assessee was partly allowed by the **Commissioner Income Tax (Appeals)** vide order dated 31.12.2020, **thereby deleting out of the impugned addition of Rs.1,40,09,733/-** the inter-bank transfer of Rs.5,00,000/- and the income tax refund of Rs.2,84,200/-.

Against the said order of CIT(A), the **respondent/assessee filed second appeal before the Income Tax Appellate Tribunal**, which **appeal was allowed by way of the impugned order, thereby deleting completely the addition made under Section 69A of the Act.**

Hence, the present appeal.

4. In the impugned order**, the Tribunal took a view that the provision under Section 69A of the Act does not apply in the present case since the respondent/assessee being a non-resident, whose only source of income in India is from interest on bank account and interest on income tax refund, one of the conditions of Section 69A of the Act is not satisfied, consequently the addition made by invoking Section 69A of the Act is not sustainable**.

Having observed that, the **Tribunal proceeded further and examined the issue even on merits, thereby accepting the explanation of the respondent/assessee on the basis of records** that a sum of Rs.1,25,16,533/- was received from his bank account in Dubai by transfer to NRO account in India; Rs.2,42,000/- cash deposits were made during demonetization period out of earlier cash withdrawal; Rs.3,00,000/- was received by him from his daughter and Rs.1,67,000/- was received from one Sugandha Saigal on cancellation of a hotel booking.

7. Admittedly, in the present case, **the respondent/assessee is a Non-Resident Indian and his source of income in India being from interest on bank accounts and interest on income tax refund, he is not obliged to maintain any books of account in India.**

It appears to us prima facie that the expression "if any" specifically used in Section 69A of the Act amplifies that where books of account are not maintained, it would not be possible to invoke this provision.

But as mentioned above, learned counsel for appellant/revenue requested to keep this question open to be agitated in some better case.

We accede to this request

8. **Further, the money in question can also not be treated as unexplained money insofar as the respondent/assessee gave specific explanation of a split up of the money in question as enumerated above**.

In the impugned order, **the Tribunal meticulously examined and elaborately discussed the documentary record** in support of the said explanation **of money ingress in the bank account of the respondent/assessee.**

In the absence of a stand taken by the appellant/revenue alleging perversity, this court while acting under Section 260A of the Act cannot enter into the arena of appreciation of facts and documents.

9. In the case of K.V. Mathew (supra), the High Court of Kerala also took a view that the question involved in the said case being not a question of law did not arise for consideration of the court.

However, unlike the present case, there was no material before the authorities and the High Court of Kerala explaining the influx of the subject money in the bank account of the said assessee.

In the said case, even the Kerala High Court ultimately held that the question of fact raised in the said case had already been clinched by the fact finding authorities, so it was not fit case to interfere under Section 260A of the Act.

10. In view of the aforesaid, it is held that **there is no substantial question of law raised by the appellant/revenue** in this appeal for being considered by us. Accordingly, the appeal stands dismissed.

[2023] 155 taxmann.com 493 (Bombay)

dated 12.09.2023

Hemant Dinkar Kandlur

v.

Commissioner of Income-tax

(International Taxation)

Section 54F, read with section 5, of the Income-tax Act, 1961 - Capital gains - Exemption of in case of investment in residential house (**Property Purchased outside India - Position Prior to 1-4-2015) - Assessment year 2014-15**

Whether amendment in section 54F by Finance (no.2) Act of 2014 imposing condition that assessee should invest sale proceeds arising out of a sale of capital asset in a residential property situated 'in India' within stipulated period is prospective in nature and cannot be applied to transactions prior to 1-4-2015 - Held, yes

Whether where assessee, a non-resident India working in USA, sold a residential flat in India and invested sale proceeds from same, in a residential house in USA within specified period, same satisfied conditions stipulated in section 54F as it stood and was applicable to relevant assessment year and thus, assessee was to be allowed exemption under section 54F - Held, yes [Paras 7, 9 and 10] [In favour of assessee]

7. We have heard the learned counsel for the parties and perused the impugned order.

It is an admitted position that **Petitioner has sold his house property in India and invested the sale proceeds in a residential house in USA, out of the capital gain on the sale of the property in India, within the specified period.**

Petitioner has thus satisfied the conditions stipulated in section 54(F) of the Act as it stood and was applicable to the relevant Assessment Year.

The language of section 54(F) of the Act before its Amendment was that the assessee should invest capital gain in a residential house. It did not mention any boundary.

It is only after the amendment to section 54(F) of the Act, which amendment came into effect from 1st April 2015, that the condition that the assessee should invest the sale proceeds arising out of a sale of capital asset in a residential situated "in India" within the stipulated period was imposed.

Thus, a **plain reading of the pre-amended section 54(F)** of the Act, **leaves no room for doubt that the assessee need not restrict his investment only in India.**

The **only condition** was that **sale proceeds should be invested in a residential property within the stipulated period of time.**

9. It may also be noted that the amendment stated that the **amended provision would come into force with effect from 1st April 2015 and therefore, would apply to future periods only and not prior to the date of amendment**.

It is well settled position of law that an **amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is declaratory and clarificatory provision.**

If there is no such clear statement, the amendment is not merely a clarification, but a substantive amendment, which shall apply prospectively.

In the matter of ***Virtual Soft Systems Ltd.*** **v.** ***CIT*** **[2007] 159 Taxman 155 / 289 ITR 83 (SC),** the Apex Court has gone further and held that **'even if the statute does contain such a statement, the Court will not regard itself as being bound by the statement, but will proceed to analyse the nature of the amendment and then conclude whether it is in reality clarificatory provision or is intended to change the law and apply to future periods.'**

10. In the context of the above-mentioned position of settled law, we have examined the interplay of section 5(2) and section 54(F) of the Act, prior and post-amendment.

As reproduced above, section 5(2) of the Act starts with the words, 'subject to the provisions of this Act…….'. Thus, even if the words 'in India' appearing in section 5(2) are read into the unamended section 54(F) of the Act, yet, the said provisions would always operate subject to the other provisions of the Act including section 54(F) of the Act. Furthermore, the unamended section 54(F) of the Act was not at all ambiguous.

It expressly and specifically excluded the words 'in India'. The amended provision also does not refer to section 5(2) of the Act to even remotely suggest it to be a mere clarification.

The statute also does not contain any statement that the amendment is merely declaratory or clarificatory or "for removal of doubts".

In this perspective the amendment in section 54(F) can be said to be neither clarificatory nor merely explanatory giving it retrospective operation.

We agree with the contention of Mr. Jain that the **amendment is prospective in nature and cannot be applied to the transaction prior to 1st April 2015 as it would tantamount to imposing an additional condition retrospectively to an earlier transaction, which was neither the intention nor the object of the amendment.** ***Leena Jugalkishore Shah v Asstt. CIT [2016] 72 taxmann.com 185/[2017] 392 ITR 18 (Guj)*** (*supra*) and ***CIT (International Taxation) v. Anurag Pandit [IT Appeal No. 1169 of 2018, dated 14-5-2019]*** (*supra*) support the contention of Petitioner.

[2023] 157 taxmann.com 680 (Chennai - Trib.)
dated 20.12.2023

Income Tax Officer, Corporate Ward-2

v.

Sahana Jewellery-Exports (P.) Ltd

Section 68, read with section 115BBE of the Income-tax Act, 1961 - Cash credit (Demonetization deposits) - Assessment year 2017-18.

Assessee was **engaged in business of trading in gold and jewellery**

During demonetization, **assessee had deposited substantial amount of cash in his bank accounts**

Assessing Officer **called upon assessee to furnish books of accounts, including cash book and to also explain source for cash deposits during demonetization period**

In response, **assessee claimed that source for cash deposits was out of advance received from customers for gold scheme**

Thereafter, **Assessing Officer also issued summons to customers which were returned unanswered**

He, thus, **treated cash receipts as unexplained cash credit under section 68 on ground that assessee had failed to prove genuineness of credits found in his bank account.**

Whether since assessee received trade advances in cash and same had been subsequently converted into sales by issuing sale bills, then, said trade advance could not be examined in light of provisions of section 68 - Held, yes

Whether furthermore assessee had furnished name and address of customers from whom it has received cash for sale of jewellery and assessee need not to obtain confirmation as law did not mandate to collect PAN details of persons, if sale value of jewellery does not exceed Rs.2 lakhs, thus, assessee had satisfactorily discharged onus cast upon to furnish name and address of persons and additions under section 68 was unwarranted.

Held, yes [Paras 14 and 15][In favour of assessee]

14. Be that as it may. **The fact remains that, the assessee has furnished name and address of the customers from whom it has received cash for sale of jewellery.**

The assessee need not obtain confirmation and submit to the AO, because, the law does not mandate colleting PAN details of the persons, if sale value of jewellery does not exceed Rs.2 lakhs as per Rule 114B of Income Tax Rules, 1962.

In so far as compliance of KYC norms, it is mandatory under Prevention of Money Laundering Act, 2002, w.e.f. 04.05.2023 onwards and not applicable for the impugned assessment year.

Therefore, in our considered view, when the assessee has furnished name and address of the persons from whom it has received trade advances for sale of jewellery, the assessee has satisfactorily discharged onus cast upon to furnish name and address of the persons.

Therefore, the observation of the AO in light of provisions of Sec.68 of the Act, that the assessee has not satisfactorily explained cash receipts is unwarranted and devoid of merits.

15. Having said so, let us come back whether the assessee could able to explain source for cash deposits made during demonetization period or not.

It is an **admitted fact that the assessee was having sufficient cash balance as per cash book maintained for the relevant period.**

In fact, **cash in hand as on the date of demonetization i.e. 08.11.2016 was at Rs.48,84,03,169/-** and said **cash balance is backed by cash receipts recorded in the books of accounts before the date of demonetization.**

Further, **cash receipts from various persons have been further substantiated with sales made to them before the date of demonetization.**

In fact, the **assessee has filed various evidences, including sales bills to support its arguments.**

The AO never disputed sales declared by the assessee nor pointed out any discrepancy in purchase or stock in trade held in the business of the assessee before the date of demonetization.

In fact, the assessee has filed **comparative sales for the month of April, 2016 to November, 2016 and corresponding April-15 to November, 2015** and we find that **there is no abnormal deviation in sales declared for the month of November, 2016 when compared to earlier periods.**

It is not a case of the AO that the assessee has declared sales without purchases.

In fact, a sale declared by the assessee is backed by corresponding purchases, and is supported by necessary purchase bills.

The AO could not point out any discrepancy in stock register maintained by the assessee nor made out a case that the assessee has declared sales without there being any stock in hand.

Therefore, **in absence of any contrary findings** to the effect that the **sales declared by the assessee is not backed by any corresponding purchase or supported by stock in hand,** in our considered view, **simply sales cannot be rejected on the ground that sale for the particular month or period is higher when compared to corresponding previous period.**

In our considered view, **there cannot be any reason for uniform sales in all days or month or year.**

There may be **various reasons for increase or decrease in sales which depends upon various factors, including festival sales, clearing sales, year end sales, etc.**

Therefore, in our considered view, **the explanation of the assessee that it has received cash from various customers towards sale of jewellery and subsequently the advances have been converted into sales, appears to be bona fide and reasonable**.

[2023] 149 taxmann.com 190 (Gujarat)

dated 13.02.2023

Milan Arvindbhai Patel

v.

Assistant Commissioner of Income tax

Section 205, read with section 199, of the Income-tax Act, 1961 - Deduction of tax at source - Bar against direct demand on assessee (Illustrations) - Assessment years 2011-12 and 2012-13.

Assessee, a **pilot by profession, was an employee of Kingfisher Airlines which had deducted tax at source from his salary but had not deposited amount to Central Government's account.**

Assessing Officer issued on assessee notice seeking recovery of outstanding demand

Whether in view of provisions of section 205 Assessing Officer shall not deny benefit of tax deducted at source by employer to assessee and shall give credit of TDS amount to him - Held, yes [Para 12] [In favour of assessee]

Circulars and Notifications : Office Memorandum F. No. 275/29/2014-IT(B), dated 11-3-2016

11. The above ratio would have direct applicability in the instant case.

Reference of section 205 of the I.T. Act is to the effect where it provides that the tax when is deductible at source, assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Its applicability is not dependent upon the credit for tax deducted being given under section 199 of the I.T. Act.

12. Facts being identical, petition is allowed.

The department shall not be denying the benefit of tax deducted at source by the employer during the relevant financial years to the petitioner.

The credit of the tax shall be given to the petitioner and if in the interregnum, any recovery or adjustment is made by the department, the petitioner shall be entitled to the refund, with the statutory interest, within eight (08) weeks from the date of receipt of copy of this order.

13. Petition is accordingly disposed off.

F.No. 275/29/2014-IT (B)
Government of India
Ministry of Finance
Central Board of Direct Taxes
(CBDT)

New Delhi, Dated: 11th March, 2016

Office Memorandum

Sub: Non-deposit of tax deducted at source by the deductor- Recovery of demand against the deductee assessee.

Vide letter of even number dated 01.06.2015, the Board had issued directions to the field officers that in case of an assessee whose tax has been deducted at source but not deposited to the Government's account by the deductor, the deductee assessee shall not be called upon to pay the demand to the extent tax has been deducted from his income. It was further specified that section 205 of the Income-tax Act, 1961 puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced coercively.

2. However, instances have come to the notice of the Board that these directions are not being strictly followed by the field officers.

3. In view of the above, the Board hereby reiterates the instructions contained in its letter dated 01.06.2015 and directs the assessing officers not to enforce demands created on account of mismatch of credit due to non-payment of TDS amount to the credit of the Government by the deductor. These instructions may be brought to the notice of all assessing officers in your Region for compliance.

This issues with the approval of Member (Revenue &TPS).

(Sandeep Singh)
Under Secretary (Budget)
Ph: 2309 4182
Email: Sandeep.singh68@nic.in

All Principal Chief Commissioners/ Principal Directors General of Income Tax.
All Chief Commissioners/ Directors General of Income Tax.

[2023] 156 taxmann.com 31 (Gujarat)

dated 12.09.2023

Nathalal Ambalal & Sons

v.

Income-tax Officer

Section 69A, read with section 148, of the Income-tax Act, 1961 - Unexplained moneys (Reassessment) - Assessment year 2017-18

Assessment was **sought to be reopened** in case of assessee on ground that **assessee had made cash deposits amounting to Rs.1.07 crores in bank accounts during demonetization period and that transaction was not disclosed for year under consideration.**

However, it was found that **pursuant to summons** issued to assessee under section 131(1A), **assessee submitted that amount of Rs. 1.07 crores deposited in bank account was pertaining to daily cash as well as of petrol, diesel deposited every day in bank**.

A statement of reconciliation containing details of cash deposits and cash for relevant period were placed on record.

Audited accounts were also produced along with petition indicating that there was fresh and plausible explanation tendered by assessee in context of these cash deposits.

Assessment order passed after due inquiry also indicated that **there was full and complete disclosure of income** at hands of assessee.

Apparently therefore, **reasons supplied by revenue and order disposing objections were without jurisdiction for reason that it was case of change of** opinion on part of revenue with regard to source of cash deposits made in banks.

Whether therefore, notice issued under section 148 and order rejecting objections of assessee were to be quashed and set aside - Held, yes [Paras 7.1 to 8] [In favour of assessee]

6. Mr. Karan Sanghani, learned counsel appearing for Mrs. Kalpana Raval, learned counsel for the revenue, would make the following submissions:

6.1 That the **reasons to believe that the assessee had deposited large cash amounts and entered into high value financial transactions was on the basis of information and it was on a satisfaction that the petitioner had not fully and truly disclosed his income for the assessment year under reference.**

The reasons for reopening are just and proper after obtaining prior approval.

Relying on the decision of the **Hon'ble Supreme Court in the case of *Asstt. CIT* v. *Rajesh Jhaveri Stock Brokers (P.) Ltd.* [2007] 161 Taxman 316/291 ITR 500**, he would submit that **at the stage of initiation of reassessment proceedings under sec.147 of the Act, it is not required to be conclusively proven that the income has actually escaped assessment.**

The only requirement is whether there is any relevant material on which a reasonable person can form the requisite belief that the taxable income has escaped assessment.

He would, therefore, **submit that the notice under Sec.148 and the order disposing the objections is just and proper.**

7.1 What is evident from the annexures produced together with the petition is that **pursuant to summons issued to the petitioner under sec.131(1A)** of the Income-tax Act, asking the petitioner to show how he has deposited large amount of cash in the account of the Ahmedabad Mercantile Co-operative bank, the petitioner had responded on 27-3-2017 **submitting the explanation indicating that the amount of Rs. 1,06,68,500/- was deposited in the bank account and it was pertaining to daily cash as well as of petrol, diesel deposited every day in the bank.**

A **statement of reconciliation** containing **details of cash deposits and cash for the period from 9-11-2016 to 31-12-2016 was placed on record.**

7.2 The **audited accounts are also produced along with the petition indicating that there was fresh and plausible explanation tendered by the petitioner in context of these cash deposit.**

The assessment order passed after due inquiry on 17-12-2019 also indicates that there was full and complete disclosure of income at the hands of the assessee.

7.3 **Apparently therefore, the reasons supplied by the respondent in its communication dated 9-6-2021 and the order disposing the objections are without jurisdiction for the reason that it is the case of change of opinion** on the part of the respondent **with regard to the source of cash deposits made in the banks.**

It is well settled in the case of *CIT v. Kelvinator of India Ltd. [2010] 187 Taxman 312/320 ITR 561 (SC)* (*supra*), that **reason must have a link with the formation of the belief.**

8. For the aforesaid reasons, therefore, **the notice dated 31-3-2021 issued under sec.148 of the Income-tax Act, 1961, and the order dated 19-8-2023 rejecting the objections of the petitioner are hereby quashed and set aside.**

The petition is allowed, accordingly. Rule is made absolute accordingly.

[2023] 150 taxmann.com 182 (HC Gujarat)

dated 06.12.2023

Nayana Kanakbhai Hutheesing

v.

Income-tax Officer

Section 199 of the Income-tax Act, 1961 - Deduction of tax at source - Credit for tax deducted (Conditions precedent)Assessment year 2017-18.

Assessee filed return declaring income inclusive of income from interest received in name of her deceased husband and claimed credit for TDS.

However, **TDS credit was granted only against claim of assessee's income on ground that TDS claim did not match with department records.**

Commissioner (Appeals) directed Assessing Officer to verify claim of assessee and grant TDS credit to assessee.

However, **Assessing Officer denied claim on ground that credit of TDS stood in name of late husband of assessee, therefore, she could not be given refund although she had offered income in her return and paid tax thereon –**

Whether since assessee was fair enough to offer interest income received on account in her return of income and tax paid also reflected in Form 26AS, TDS relating to such interest income was to be allowed to assessee and same was to be refunded through physical grant if refund was not feasible through system - Held, yes [Para 13] [In favour of assessee]

13. The **amount of TDS was of the husband of the assessee who expired on 3-2-2016.**

The **petitioner was fair enough to offer the interest income received on account of the husband to offer the same in return of income.**

She has **also paid the tax on the same and hence it is reflected in Form 26AS,** as specifically ordered by the Commissioner (Appeals).

In such eventuality, instead of denying her, **when the Commissioner (Appeals) himself was convinced on reflection of the said amount on 26AS form, the TDS could have been credited in the account of the petitioner.**

It was not the case that the petitioner not paid the tax or not having offered the amount which has been accumulated in the account of her late husband.

She should have been careful in filing it as a heir, as rightly pointed out by learned counsel Mr.Patel, however, if that was the lapse of her part, she could not have then paralyzed of not getting the refund when Form 26AS had clearly reflected this.

In our opinion, the order of Commissioner (Appeals) ought to have been followed by the department.

If it the refund was not feasible through the system, the physical grant of refund also could have been possible in any event.

The petition is allowed.

The order of CIT (Appeals) be complied with without fail within 12 weeks from the date of receipt of this order with interest and with all consequential reliefs.

[2023] 154 taxmann.com 347

(Chandigarh - Trib.) dated 24.07.2023

Parmod Singla v. ACIT

Section 69, read with sections 69A, 115BBE, 133A and 28(i), of the Income-tax Act, 1961 –

Unexplained investments (Applicability of provision) - Assessment year 2017-18.

A survey was conducted in business premises of assessee during which assessee surrendered certain amount towards unaccounted advances, stock and cash in hand.

Said amount was offered in return of income at rate of 30 per cent but Assessing Officer held that as per provisions of section 115BBE read with sections 69 and 69A, amount so surrendered was taxable of rate of 60 per cent -

Whether mere fact that survey/search proceedings have been initiated at business premises of assessee doesn't mandate Assessing officer to automatically invoke deeming provisions of sections 69 and 69A; **before invoking deeming provisions, he has to call for explanation of assessee and only where explanation so offered is not found satisfactory, he can proceed and invoke deeming provisions - Held, yes –**

Whether **since assessee had been confronted with not just discrepancy so found during course of survey but nature and source of income surrendered during course of survey proceedings and it was clearly emerging that source of such income was from his business operations,** income so surrendered could not be brought to tax under deeming provisions of sections 69 and 69A and same had been rightly offered to tax under head "business income" - Held, yes [Paras 32 and 33] [In favour of assessee]

FACTS

- A **survey under section 133A was carried out at the business premises** of the assessee during which certain discrepancies were noticed and **assessee surrendered a sum towards advances, unaccounted stock and cash in hands.**
- Thereafter, **the assessee filed his return of income, declaring certain income including the surrendered income.**
- During assessment proceedings, the Assessing Officer issued **show cause notice stating that the income surrendered during survey had been offered in the return of income at the rate of 30 per cent,** however, **as per the provisions of section 115BBE read with sections 69 and 69A, the amount so surrendered was taxable at the rate of 60 per cent.**

- The assessee submitted that the **source of income so surrendered was not unexplained rather the business of the assessee which was the only source of assessee's income** and as such, **provisions of sections 69 and 69A were not attracted.**
- **The Assessing Officer did not accept submission of the assessee** and accordingly, the **income so surrendered was brought to tax as deemed income under sections 69 and 69A and tax at the rate of 60 per cent was computed under section 115BBE.**
- On appeal, the Commissioner (Appeals) sustained the additions made by the Assessing Officer.

HELD

- For the deeming **provisions of section 69 to be attracted,**
- there has to be a **finding that the assessee has made investments during the financial year in the stock and by way of advances,**
- **such investments are not recorded in the books of account** so maintained by the assessee,
- and the **assessee offers no explanation about the nature and source of the investments or the explanation so offered is not found satisfactory** in the opinion of the Assessing Officer.
- Similarly, for the **deeming provisions of section 69A to be attracted,** there **has to be a finding that the assessee was found to be owner of cash so found at the time survey,**
- **such cash has not been recorded in the books of account** so maintained by the assessee,
- and the **assessee offers no explanation about the nature and source of the cash or the explanation so offered is not found satisfactory** in the opinion of the Assessing Officer. [Para 15]

Therefore, **the foundational requirement** before invoking the deeming provisions **is not that there were certain survey operations under section 133A and some undisclosed income has been detected and surrendered by the assessee and**, thus, the deeming provisions are automatically attracted.

Rather the **foundational requirement is whether the assessee has made the investment/has been found to be owner of cash and the explanation offered by the assessee** explaining the **nature and source of such undisclosed income and the reasonability of the explanation so offered by the assessee** keeping into account the facts and circumstances of the relevant case.

In fact, if one looks at the provisions of **section 133A, clause (*iii*) of sub-section (3)** provides that an income tax authority acting under this section **shall record the statement of any person which may be useful for or relevant to any proceedings under this Act.**

Therefore, **what explanation has been offered by the assessee as part of his statement recorded under section 133A needs to be analysed and examined before drawing any conclusions in this regard.** [Para 17]

Through various questions raised **during the course of survey,** the assessee has been **asked about the nature and source of his income and various discrepancies** so found during the course of survey.

In response, the **assessee has stated** that he is running **a sole proprietorship business concern since 2008** wherein he **manufactures and sells aluminium and copper wires and all along, the same is his only source of income** and thereafter, he has been **confronted with discrepancies in terms of cash found excess** as compared to what has been recorded in the books of account, **certain advances relating to his business written in a rough diary** and **excess value of stock** as compared to what has been recorded in the books of account.

Therefore, **it is found that the assessee has been confronted with not just the discrepancy so found during the course of survey** but **the nature and source thereof during the course of survey proceedings** and **it is clearly emerging that the source of such income is from his business operations.**

There is a **clear statement of the assessee that the advances are related to his business,** however since the **same have not been recorded in the books of account, he has offered the same to taxation.**

Similarly, the **stock physically found has been valued** and then, **compared with stock as recorded in the books of account** and thus, there is **clear nexus of stock with the assessee's business.**

The **statement of the assessee is available on record and related documents** so found during the course of survey are **stated to be in possession of the revenue authorities.**

Apparently, the **Assessing Officer has failed to take into consideration the statement of the assessee recorded during the course of survey holistically, and other documents and findings of the survey team which are very much part of the records.**

Following the surrender so made during the course of survey, the assessee has **honoured the surrender so made and offered the additional income as business income in his return of income and paid due taxes thereon.** [Para 19]

What is **relevant before invoking the deeming provisions is not just the factum of survey action** but besides that,

what is the **explanation so offered by the assessee explaining the nature and source of income** so found **during the course of survey proceedings and** which has **not been recorded in the books of account and**

the same is the **essence of the statutory provisions as duly recognized by the Courts and various Benches of the Tribunal** and which has been reiterated from time to time.

The **statement of the assessee has to be read as a whole and not in piecemeal especially where the revenue is relying on the same statement and in such circumstances, the defence available to the assessee in terms of part of the statement having not been considered by the revenue cannot be ignored.**

The **mere fact that survey/search proceedings have been initiated at the business premises** of the assessee **doesn't mandate the Assessing officer to automatically invoke the deeming provisions** and

before invoking the deeming provisions, he has to call for the explanation of the assessee and only where the explanation so offered is not found satisfactory, he can proceed and invoke the deeming provisions. [Para 20]

In the instant case, the **difference in stock so found out by the authorities has no independent identity and is part and parcel of entire stock** and therefore, **it cannot be said that there is an undisclosed asset which existed independently and** thus, **what is not declared to the department is receipt from business and not any investment as it cannot be co-related with any specific asset and the difference should, thus, be treated as undeclared business income. [Para 23]**

In the instant case, **the surrender on account of advances were relating to the business being carried on by the assessee.** The **Commissioner (Appeals) has also returned a finding that the advances were admitted as being related to business activity of the assessee.**

Where the same has been found unrecorded in the books of account, the same has to be brought to tax under the head "business income". [Para 29]

The income surrendered during the course of survey cannot be brought to tax under the deeming provisions of sections 69 and 69A and the same has been rightly offered to tax under the head "business income".

In absence of deeming provisions, the question of application of section 115BBE doesn't arise for consideration. [Para 33]

[2023] 156 taxmann.com 446 (HC Delhi)

dated 19.10.2023

Principal commissioner of Income-tax-7

v.

Prosperous Buildcon (P.) Ltd

Section 40A(3), read with sections 148 and 263, of the Income-tax Act, 1961 - Business disallowance - Cash payment exceeding prescribed limits (Revision) - Assessment year 2006-07.

Pursuant to a search conducted against group companies, **Assessing Officer received information that assessee had made substantial amount of cash withdrawals and deposits**

Assessing Officer, thus, **initiated reassessment proceedings against assessee.**

Assessing Officer after considering submissions of assessee **passed reassessment order without making any additions with respect to cash deposits made by assessee.**

Principal Commissioner invoked revisionary proceedings on ground that cash withdrawals were used to purchase inventory and would be hit by section 40A(3).

Tribunal set aside order of Principal Commissioner holding that since assessee had not claimed any expenditure with regard to cash that was withdrawn, as said money was utilised for purchase of a parcel of land, which in books of account of assessee was shown as stock-in-trade, provisions of section 40A(3) were not applicable.

Tribunal, further held that since no addition was made regarding cash deposit, which was subject matter of reassessment proceedings, then it was not open to Assessing Officer to make an addition qua any other amount and thus, Principal Commissioner could not have triggered revisionary proceedings for cash withdrawals - Whether Tribunal's order was not to be interfered with - Held, yes [Para 14] [In favour of assessee]

HELD

Another aspect which the Tribunal appears to have adverted to is that if **no addition was made *viz-a-viz* the deposit, which was the subject matter of the reassessment proceedings, then it was not open to the Assessing Officer to make an addition *qua* any other amount.**

In other words, **if the Assessing Officer did not bring to tax the amount which was adverted to in the "reason to believe" framed in the first instance, then the Principal Commissioner could not have triggered proceedings for cash withdrawals under section 263.** [Para 12.2]

13. We agree with the view taken by the Tribunal on this score as well.

This view is covered by the various judgments including the judgment rendered in ***Martech Peripherals (P.) Ltd.* v. *Dy. CIT*** **[2017] 81 taxmann.com 73/394 ITR 733 (Mad)** by one of us i.e., **Rajiv Shakdher, J. when sitting in the Madras High Court**.

23. This view, as has been correctly submitted by the learned counsel for the petitioner-assessee, has **found resonance with at least three (3) High Courts, is, the Bombay High Court, the Gujarat High Court and the Delhi High Court in the following cases:**

i. ***CIT* v. *Jet Airways (I) Ltd.*** **[2011] 331 ITR 236 (Bom);**

ii. ***CIT* v. *Mohmed Juned Dadani*** **[2013] 355 ITR 172 (Guj); Manu/GJ/0061/2013**

iii. ***Oriental Bank of Commerce* v. *Addl. CIT*** **Manu/DE/1935 /2014.**

23.1. The only High Court, which has taken a contrary view, as it were, is the **Punjab and Haryana High Court in the matter of: *Majinder Singh Kang* v. *CIT* [2012] 344 ITR 358 (P&H); (2012) 25 taxmann.com 124 (P&H)**

23.2. In my opinion, with respect, the court, **in rendering the judgment in Majinder Singh Kang's case, ignored the fact that the provisions of Explanation 3 had to be read in conjunction with the main provision, and that, the said Explanation cannot override the main provision.**

23.3. This **aspect of the matter has also been brought to fore** by the **Bombay High Court in: CIT Jet Airways (D) Ltd. (2011) 331 ITR 236 (Bom).**

[2023] 156 taxmann.com 346 (HC Gujarat)

dated 28.08.2023

Principal Commissioner of Income-tax (Central)

v.

Naresh Nemchand Shah

Section 68 of the Income-tax Act, 1961 - Cash credits (Loan) - Pursuant to a survey carried out, in premises of assessee, **it was noticed that assessee had taken loans from Gujarat Computer and Software Limited (GCSL)**

Assessing Officer had **made additions considering loan amount as non-genuine on basis of statement of one 'T' director of GCSL** - Said 'T' had **accepted that he was engaged in providing accommodation entries and was not engaged in real business -**

Accordingly, **on basis of such information, unsecured loans were treated as bogus and added to total income of assessee.**

On appeal, Commissioner (Appeals) held **that Assessing Officer had made additions considering loan amount as non-genuine only on basis of statement of director of GCSL and apart from that no documentary evidence was found during course of survey which remotely indicated that transactions with GCSL were not genuine.**

Further there was evidence in form of confirmation from creditor, audited accounts of creditor and copies of banks accounts to prove genuineness and creditworthiness of creditor which was within parameters of section 68.

On further appeal, **Tribunal observed that if transaction was through regular banking channels and creditor had confirmed transactions, such transactions were genuine and therefore, addition made by Assessing Officer were not sustainable** - Whether no question of law arose for consideration - Held, yes [Para 6] [In favour of assessee]

5. Having perused the reasons of the ITAT, it is apparent that **both the authorities *i.e.* CIT (Appeals) and the Tribunal have on the basis of evidence found that the identity, genuineness and creditworthiness of the loan of the assessee were confirmed by way of the evidence produced.**

These documents were filed by the Director Shri Tamal Roy. Even, during the course of survey of GCSL, there was no other evidence found which would support the statement of the Director. The Tribunal observed as under :-

"22. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee.

***We note that to prove the identity genuineness and creditworthiness of the loan, the assessee filed confirmation signed by the director of the company, copy of bank statement of creditor, copy of return of income of creditor, PAN number, Name and address and copy of audit report of creditor**.*

All these documents were also filed by Shri Tammal Roy, director of the company before the assessing officer along with letter dated 7-10-2017, which confirm the contention of the assessees.

The ld Counsel contended that Rs. 1.61 Crore is the opening balance and Rs. 12,14,13,015/- is the correct amount of loan taken during the year. The assessing officer passed the order u/s 154 of the Act on bringing this mistake to notice.

The ld Counsel argued that the ***survey upon GCSL was conducted for the transactions entered into with HAH Global Enterprise & Services.***

Most of the statement was recorded during the survey on this issue only,

therefore, the transaction related to the assessee was not the subject matter of survey and Shri Tammal Roy raised story of providing accommodation entry to the assessee to divert the attention of the survey team.

The ld Counsel stated that Shri Tammal Roy's statement that 'angadias' was used to send money abroad for the transaction with HAH Global Enterprise & Services is also factually incorrect as Angadias do not work for transfer of money overseas, but within country only, thus, statement of Shri Tammal Roy is not reliable.

23. We note that ***during the survey on GCSL, no corroborative evidence was found, which support the statement of Shri Tammal Roy.***

The ld Counsel also contended that ***statement recorded during the course of survey does not have an evidentiary value even in the case of the assessee upon whom survey has been conducted in absence of any corroborative evidence.***

Therefore, ***relying upon third party statement without any corroborative evidence is against the settled principle of law on this issue.***

We note that ***there is no written evidence, against the assessee except statement of Shri Tammal Roy. The statement of third party cannot be used against the assessee without giving opportunities of cross examination.***

The Ld Counsel stated that during the course of assessment proceedings, ***cross examination of Shri Tammal Roy was sought by the assessee by making specific request in this regard.***

Shri Tamal Roy was summoned by the assessing officer, but instead of appearing for cross examination, he sent reply in writing on 7-10-2017.

These ***facts clearly prove that in spite of specific request made by the assessee, opportunity of cross examination was not provided to the assessee, hence addition made by the assessing officer relying upon such statement is clearly in violation of the principle of natural justice.***

We note that confirmation from the creditor was filed before the assessing officer, along with copy of ITR, copy of bank account and audit report of the auditor.

Survey ws 133A of the Act was conducted by the Department on the creditor, which prove identity beyond doubt as state ment of the director was recorded twice.

24. Regarding creditworthiness of the creditor, *the ld Counsel stated that* ***creditor had turnover in A.Y. 2011-12 of Rs. 8.56 Crores and Rs. 35.25 Crores, in 2012-13.***

There is no cash deposit found in the bank account of the creditor, prior to the cheque issued to the assessee.

Regarding genuineness of transaction*, the ld Counsel stated that* ***loan was received through regular banking channels, interest was regularly paid and TDS was deducted and deposited in government account as per the provision of the I.T. Act.***

We note that that ***if the transaction is through regular banking channels and creditor has confirmed the transactions, such transactions are genuine and therefore, addition made by the assessing officer are not sustainable."***

6. For the aforesaid reasons, we do not find any question of law much-less substantial question of law arising in the present appeal. Hence, the appeal is dismissed.

[2023] 157 taxmann.com 564 (HC Delhi)

dated 24.11.2023

Principal Commissioner of Income-tax

v.

Blackroak Securities (P.) Ltd.

Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income (General) - Assessment year 2014-15 –

Whether Assessing Officer while initiating penalty proceedings under section 271(1)(c), should have alluded to limb under which penalty is proposed to be levied, **i.e, should have stipulated as to whether penalty was proposed to be imposed on assessee for concealment of particulars of its income, or furnishing inaccurate particulars** - Held, yes

Whether where Assessing Officer had not specified under which limb of section 271(1)(c) penalty was initiated, Tribunal had rightly set aside penalty order - Held, yes [Paras 4 and 6]

4. The reason given by the Tribunal in setting aside the order of the CIT(A) was that the AO, while initiating penalty proceedings under Section 271(1)(*c*) of the Act, should have alluded to the limb under which penalty is proposed to be levied.

4.1 In other words, **the AO should have stipulated as to whether the penalty was proposed to be imposed on the respondent/assessee for concealment of particulars of its income, or furnishing inaccurate particulars.**

4.2 Both limbs find mention in Section 271(1)(*c*) of the Act.

6. According to us the view taken by the Tribunal is correct. The respondent/assessee was entitled to know, clearly, the charge levelled against it. This view finds resonance in the following judgments rendered by the court qua the issue at hand:

(*i*) *Pr. CIT* v. *Minu Bakshi*, 2022:DHC:2814-DB.

(*ii*) *Pr. CIT* v. *Unitech Reliable Projects Pvt. Ltd.* 2023:DHC:4258-DB.

(*iii*) *Pr. CIT* v. *Gopal Kumar Goyal* [2023] 153 taxmann.com 534 (Del).

(*iv*) *Pr. Commissioner of Income Tax-1* v. *Ansal Properties and Infrastructure*, 2023 : DHC:5443-DB.

(*v*) *Pr. Commissioner of Income Tax (Central)-2* v. *Bhudeva Estate Pvt. Ltd*., 2023:DHC:5689-DB.

(*vi*) *Commissioner of Income Tax (Exemptions) Delhi* v. *Jamnalal Bajaj Foundation*, 2023:DHC:5691-DB.

(*vii*) *Pr. Commissioner of Income Tax Delhi (Central)-3* v. *Shyam Sunder Jindal*, 2023:DHC:6138-DB.

(*viii*) *Pr. Commissioner of Income Tax-6* v. *Modi Rubber Ltd.*, 2023:DHC:7856-DB.

[2023] 153 taxmann.com 612

(Amritsar - Trib.) dated 20.02.2023

Ramandeep Singh Sidhu

v.

Income-tax Officer

Section 69 of the Income-tax Act, 1961 - Unexplained investments (Illustrations) - Assessment year 2009-10.

During year **assessee deposited Rs. 58.74 lacs in his bank account and claimed that amount was deposited out of agricultural income earned**

Assessing Officer treated amount as income from undisclosed sources and added same to assessee's income by invoking provisions of section 69

Commissioner (Appeals) accepted an amount of Rs. 18.67 lacs as agricultural income and confirmed addition of Rs. 40.06 lacs –

He rejected contention of assessee regarding availability of funds to extent of Rs. 34 lacs from sale of crop of potato.

Assessee in joint ownership with family members owned 40.5 acres of agricultural land including 4.5 acres in his individual ownership but Commissioner (Appeals) did not believe that entire sale proceeds of agricultural land of family would not be in possession of assessee, as assessee owned only 4.5 acres of land.

Whether since Commissioner (Appeals) had merely suspected size of land holding used for cultivation of potato on basis of joint ownership and he had failed to disprove cash flow statement filed by assessee and had not appreciated documentary evidences regarding potato cultivation filed before him, amount of Rs. 34 lacs shown as agricultural income from sale consideration of potato was quite reasonable - Held, yes

Whether in view of aforesaid addition of Rs. 40.06 lacs confirmed by Commissioner (Appeals) deserved to be deleted - Held, yes [Paras 13 and 14] [In favour of assessee]

13. From the above, it is evident that the Ld. CIT(A) has **merely suspected the size of land holding used for cultivation of potato on the basis of joint ownership without rebuttal to the additional evidence admitted on record or contentions raised by the appellant.**

The Ld. CIT(A) **ought to have brought on record corroborative documentary evidence by way of examining the issue of share of family member's in the income from the potato cultivation from the agricultural land held in joint ownership.**

The Ld. CIT (A) has **failed to disprove the claim of the cash flow and agricultural income of the appellant.**

Thus, the Ld. CIT(A) has **not appreciated the documentary evidences regarding, potato cultivation, computation of agriculture Income and cash flow filed by the appellant in the appellate proceedings before him.**

In our view, the amount of Rs. 34,00,000/- shown as agricultural income by the assessee from sale consideration of potato is quite reasonable considering the size of land holding, calculation sheet, certificate from Horticulture Department etc., as above.

14. In view of above discussion, we hold that the order passed by the Ld. CIT(A) is perverse to the facts on record.

Accordingly, the amount of Rs. 40,06,360/- u/s 69 of the Income-tax Act 1961, confirmed by the CIT(A) is deleted.

[2023] 157 taxmann.com 208 (Delhi - Trib.)

dated 07.12.2023

Sarita Gupta

v.

Principal Commissioner of Income-tax

Section 54 of the Income-tax Act, 1961 - Capital gains - Profit on sale of property used for residence - Assessment year 2012-13

Assessee sold an immovable property and claimed exemption under section 54 - Assessing Officer completed assessment under section 143(3) accepting assessee's claim.

Commissioner observed that capital gain amount was not deposited in capital gain account scheme during interim period till its utilization in purchase/construction of new property.

He was of view that due to non-consideration of these facts, assessment order was erroneous and prejudicial to interest of revenue.

Accordingly, **he set aside assessment with a direction to disallow deduction claimed under section 54.**

Whether since capital gain was invested in purchase/construction of residential house within time limit prescribed under section 54(1), assessment order allowing assessee's claim under section 54 could not be treated as erroneous and prejudicial to interest of revenue only because capital gain was not deposited in capital gain account scheme - Held, yes [Para 5] [In favour of assessee]

5. We have considered rival submissions and perused the materials on record.

From the order sheet maintained by the Assessing Officer in the assessment record, it is evident that in course of assessment proceedings, the Assessing Officer has thoroughly examined the issue of sale of the immovable property and the resultant capital gain arising from such sale

In fact, in order-sheet entry dated 18-6-2019, the Assessing Officer has clearly stated that assessee's counsel has furnished written reply, sale deed, copy of purchase of property and computation of capital gain.

In the said order sheet, the Assessing Officer has also called upon the assessee to furnish the details of exemption claimed under section 54 with supporting evidences.

Thus, as could be seen from the order-sheet entries in the assessment record, the Assessing Officer has duly examined the issue relating to capital gain from sale of property as well as assessee's claim of deduction under section 54 of the Act.

A **perusal of the show-cause notice** issued under section 263 of the Act as well as the order passed under the said provision clearly **reveal that the revisionary authority has not expressed any doubt regarding the quantum of capital gain arising at the hands of the assessee and also the fact that such capital gain was invested in purchase/construction of residential house within the time limit prescribed under section 54(1) of the Act.**

Only because the capital gain was not deposited in the capital gain account scheme, the revisionary authority has treated the assessment order to be erroneous and prejudicial to the interest of Revenue.

In our view, **learned PCIT has adopted a hyper-technical approach while dealing with the issue.** When **the basic conditions of section 54(1) has been satisfied, in our view, the assessee remains entitled to claim the deduction under section 54 of the Act.**

In any case of the matter, **there is no prejudice caused to the Revenue as the assessee in terms of section 54(1) of the Act is entitled to deduction.**

[2023] 157 taxmann.com 669

(Visakhapatnam - Trib.)

dated 29.11.2023

Smt. Vijapurapu Sudha Rao

v.

Income Tax Officer, Ward-3(1)

Section 269SS, read with section 271D of the Income-tax Act, 1961 - Deposits - Mode of taking/accepting (Payment for immovable property) - Assessment year 2017-18.

During relevant year, assessee sold an immovable property for a certain sum, part of which was received in cash - Assessing Officer observed that since assessee received payment in cash, it resulted in violation of provisions of section 269SS and, therefore, initiated penalty proceedings U/s. 271D.

In response assessee filed his reply that assessee's sale of property was a distress sale and under these circumstances, assessee sold property at lower price and he accepted consideration as paid by buyer - Assessing Officer did not consider said submission and imposed penalty.

Whether since cash received by assessee had been deposited by assessee into bank account, there was no suppression of cash receipts by assessee and assessee had also offered capital gains to tax, penalty was unsustainable in law - Held, yes [Paras 5 to 7] [In favour of assessee]

5. From the plain reading of the above section, it is noted that any person is barred from receiving from any amount otherwise by cheque or through banking channels in relation to transfer of the immovable property.

Section 269SS of the Act prohibits receipt of any amount by way of cash in relation to the transfer of any immovable property.

The Memorandum explaining the provisions of Finance Bill 2015 with respect to amendment proposed w.e.f 1/6/2015 in section 269SS is reproduced below:

"In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more."

6. **The objective of the amendment proposed in 269SS of the Act is to curb generation of black money.**

In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee.

The assessee has also offered the capital gains to tax.

Further, the explanation given by the assessee for receipt of sale consideration of Rs.29,65,000/- constitutes a "reasonable cause" as contemplated in section 273B of the Act and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Ld. AR in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the capital gain tax thereon.

Under these circumstances, we are of the considered view that the penalty levied by the Ld. AO-NFAC U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC and Ld. CIT(A)-NFAC are set aside and thereby we delete the penalty.

It is ordered accordingly.

7. In the result, appeal of the assessee is allowed.

[2023] 157 taxmann.com 9 (HC Madras)

dated 06.11.2023

S. Uttam Chand

v.

Assistant Commissioner of Income-tax

(Non-Corporate Circle 7(1))

Section 69A, read with sections 147 and 148 of the Income-Tax Act, 1961 - Unexplained moneys - (Reassessment) - Assessment year 2013-14 - Assessee filed return for relevant assessment year.

In said return, **assessee had disclosed details of exempted income in form of capital gains arising from agricultural land.**

Thereafter, Assessing Officer invoked Explanation (1) of section 147 and issued **reopening notice on ground that no details with respect to land were provided.**

It was noted that assessee in return specifically provided details of exempted income under category "Others“.

Also during original assessment, on request of Assessing Officer assessee provided ledger details of agricultural property and also produced a copy of sale deed.

Whether production of sale deed could not be construed as production of books of accounts or other evidences and thus it could not be construed as that it would fall under explanation (1) of Section 147 - Held, yes

Whether since there was no failure on part of assessee with regard to providing material facts, reopening notice issued would not be sustainable - Held, yes [Paras 11 and 12][In favour of assessee]

11. In reply, the learned counsel for the petitioner would submit that during the course of assessment, the Assessing Officer called for various informations by virtue of notice dated 24.06.2015 and the assessee has filed reply dated 04.02.2016 and also dated 30.01.2016.

In the reply dated 30.01.2016, **the petitioner has provided the ledger details of Kyanallur property and also produced a copy of the sale deed of Kyanallur property.**

These particulars were provided only upon subsequent request made by the Assessing Officer.

The production of sale deed cannot be construed as production of books of accounts or other evidences.

For the specific request of the respondent, the sale deed was produced.

Hence, it cannot be construed as that it would fall under the explanation (1) of Section 147 of the Act.

Sale deed is not a "Books of accounts".

Upon perusal of the exempted income, since the details furnished in the category with regard to sale of agricultural property were not fully disclosed, these details were called for.

Therefore, the respondent's contention that in terms of explanation (1) to Section 147 that merely producing the Sale deed would not amount to providing the entire material facts fully and truly cannot be accepted.

Further, he would submit that the explanation also provides "other evidences".

It is not that without specific request, these evidences were furnished.

In order to justify whether the sale of property comes under capital gain income or not, the specific request was made calling upon the petitioner to file the sale deeds.

12. **The petitioner had disclosed the information with regard to the sale of the agricultural land and all the particulars with regard to sale of agricultural land was disclosed before the Assessing officer in full extent.**

Further, a perusal of the materials placed before this Court would suffice to arrive at a conclusion that there is no failure on the part of the petitioner with regard to providing material facts and the notice issued under Section 148 and 149 of the Act for re-opening assessment for the Assessment Year 2013-14 is not sustainable and the same is liable to be set aside.

Accordingly, the reopening notice bearing Notice No.ITBA/AST /S/148/2020-21/1031938536(1) dated 30.03.2021 issued by the 1st respondent herein, as well as the consequential order bearing DIN ITBA/AST/F/17/2021-22/1040500420(1) dated 09.03.2022 issued by the 2nd respondent rejecting the petitioner's objections for reopening are set aside.

[2023] 157 taxmann.com 249 (HC Delhi)

dated 13.10.2023

Tirupati Trading Corporation

v.

Assistant Commissioner of Income-tax

Section 68, read with section 148A, of the Income-tax Act, 1961 - Cash credit (Reassessment) - Assessment year 2016-17 –

Writ petition was directed against order passed under section 148A(d) and consequent notice issued under section 148 wherein allegation against assessee was that it had received bogus entry from an entry provider

During financial year under reference, it was found that no transactions had been carried out by assessee with 'R' and his name was inadvertently mentioned by Investigation Wing in report due to similarity in names

Whether since a mistake had been made in triggering reassessment proceedings against assessee, impugned order passed under section 148A(d) and consequential notice were to be set aside - Held, yes [Para 6] [In favour of assessee]

6. Accordingly, the impugned order dated 28-7-2022 passed under section 148A(*d*) and consequential notice of even date, *i.e.*, 28-7-2022 issued under section 148 of the Income-tax Act, 1961 [in short, "Act"] concerning Assessment Year (AY) 2016-17 are set aside.

[2023] 152 taxmann.com 385 (Delhi - Trib.)
dated 23.05.2023

Income-tax Officer

v.

Appealing Infrastructure (P.) Ltd.

Section 56 of the Income-tax Act, 1961 - Income from other sources - Chargeable as (Share premium) - Assessment year 2015-16

Whether share allotment date and not share application, is relevant date to trigger provisions of section 56(2)(viib) as after a subscriber entity advances amount for allotment of shares, subscriber entity has every right to withdraw or cancel its request for allotment - Held, yes

Whether therefore, where assessee received money for allotment of shares in assessment year 2011-12 and shares were allotted in assessment year 2015-16, provisions of section 56(2)(viib) had to be invoked when assessee allotted shares on finalization of share allotment - Held, yes [Para 9] [In favour of assessee]

Section 56 of the Income-tax Act, 1961, read with rule 11UA of the Income-tax Rules, 1962 -Income from other sources - Chargeable as (Share premium) - Assessment year 2015-16.

Whether rule 11UA(2) prescribes two methods-Book Value method and DCF method for valuation and lays down that option to choose method to be adopted to determine FMV of unquoted shares is not with Assessing Officer but with assessee - Held, yes

Whether however, Assessing Officer can refuse method of valuation after proving that methodology resorted by assessee is incorrect or not as per standards laid down - Held, yes [Para 16] [In favour of assessee]

FACTS

The assessee-company was engaged in the business of construction activities. It filed its return of income declaring an income of Rs. Nil.

During the year, the assessee company had allotted 1.65 lakh optionally convertible preference shares having face value of Rs. 10 at a premium of Rs. 990 each to three investors.

The Assessing Officer observed that the share application money amounting to Rs. 1.65 crores was received by the assessee company in assessment year 2011-12 and the shares in respect of this share application money were allotted to the investors during assessment year 2015-16 under consideration.

Valuation report prepared by the Chartered Accountant as per rule 11UA had also been filed before the Assessing Officer wherein value of shares had been calculated at Rs. 1000.

The Assessing Officer rejected the above valuations on the ground that the net worth of the assessee company was negative.

The Assessing Officer treated the premium amount on allotment of 16,500 preference shares as income of the assessee company under section 56(2)(viib).

On appeal, the Commissioner (Appeals) deleted the addition holding that the assessee company received the consideration for issue of shares in assessment year 2011-12 and the shares were allotted in assessment year 2015-16 and hence the provisions of section 56(2)(viib) which had come into force from 1-4-2013 would not be applicable.

On appeal by revenue to the Tribunal:

HELD

Whether provisions of section 56(2)(viib)are applicable for instant assessment year 2015-16 while amounts have been received in assessment year 2011-12?

Section 56(2)(viib) has been inserted vide Finance Act, 2012 with effect from 1-4-2013 to provide that, where a closely held company receives in any previous year from any person being a resident, any consideration for issue of share that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares, will be charged to tax in the hands of the recipient company as income from other sources.[Para 8]

After a subscriber entity advances amount for allotment of shares, the subscriber entity has every right to withdraw or cancel its request for allotment.

Earlier, under old Companies Act regime, many companies accepted share application money under private placement and utilized the same for the business purpose even without allotment of shares.

Only Schedule VI of the Old Companies Act provided the manner to treat the same in the Balance Sheet of the Company.

Now, section 42 of the Companies Act, 2013 puts prohibition over the said practice with effect from 1-4-2014, Companies accepting Share Application money under private placement have to allot the securities against the Share Application money received within 60 days.

If the securities are not allotted within a period of 60 days, the whole application money is required to be refunded within 15 days from the date of completion of 60 days.

If the company fails to repay the application money within the said 60 days period, it shall be liable to repay that money with interest at the rate of 12 per cent per annum from the expiry of the 60th day.

In the case of the assessee, the share application money was received in assessment year 2011-12 and allotted in the assessment year 2015-16.

During the intervening period, the assessee had every right to get their monies refunded and opt out of the share allotment process.

Hence, **it would be only logical when the share allotment has been finalized, the subscriber gets allotted the shares, the provisions of section 56(2)(viib) needs to be invoked.**

A taxing provision cannot be invoked even before the completion of a transaction fully and finally.

Thus, as held in judgment of the Co-ordinate Bench share allotment date, not share application, is relevant date to trigger provisions of section 56(2)(viib).[Para 9]

Whether Assessing Officer is right within his domain to reject valuation report filed by assessee and resort to his own method of valuation ?

It is found that the assessee has filed a valuation report dated 20-3-2015 under rule 11UA from an authorized valuer who valued the shares at Rs. 1000 per share as per the report.

The valuer while determining the value of the optionally convertible preference shares as per the standards on related services (SRS) 4400.[Para 10]

It can be found that the value of the equity shares is Rs. 10 per share after conversion.[Para 12]

It is evident that rule 11UA(2) prescribes two methods - Book Value method and DCF method. However, the said rule also provides that the method to be adopted is left to the choice of the assessee.

The Assessing Officer can refuse the method of valuation after proving that the methodology resorted by the assessee is incorrect or not as per the standards laid down.

The option to choose the method to be adopted to determine the FMV of unquoted shares is not with the Assessing Officer but with the assessee.[Para 16]

Hence, in the peculiar facts and circumstances specific to the instant case, the appeal of the revenue is liable to be dismissed.[Para 17]

[2023] 155 taxmann.com 202 (HC Bombay)
dated 04.09.2023

Darshana Anand Damle

v.

Deputy Commissioner of Income-tax

Section 2(47), read with section 148, of the Income-tax Act, 1961 - Capital gains - Transfer (Reassessment) - Assessment year 2013-14

Assessee entered into a Development Agreement for land development with another party - Assessing Officer questioned whether this agreement constituted a 'transfer of land' liable for capital gains tax.

Assessee provided explanations, and **assessment order was eventually passed without capital gains addition** but with other income additions.

Several years later, **assessee received a notice under section 148, suggesting that income for assessment year 2013-14 had escaped assessment.**

Whether assessee had only granted a licence to Developer who entered into assessee's land for purpose of development, same did not amount to 'allowing possession of land' as contemplated under section 53A of Transfer of Property Act, 1882 and therefore section 2(47)(v) would not apply - Held, yes

Whether further issue as to **whether there was a transfer of land or otherwise was subject of consideration before Assessing Officer during assessment proceedings and there was no failure to disclose any material fact, notice issued under section 148 and impugned order disposing assessee's objections was to be quashed and set aside -** Held, yes [Paras 8 and 9] [In favour of assessee]

FACTS

- The petitioner/assessee was an individual, who filed return of income for relevant assessment year 2013-14, declaring total income of Rs. 2.33 crores. The assessee's case was selected for scrutiny and it received notice under section 143(2).
- During relevant year, the assessee, along with other co-owners, entered into a Development Agreement with SA for developing land in Chikhloli, Ambernath.
- **In the assessment proceedings under section 143(3), the assessee submitted a copy of the Development Agreement to the Assessing Officer.**
- **The Assessing Officer questioned whether the Development Agreement should be treated as the 'transfer of the land,' potentially resulting in capital gains.**
- **The assessee responded, explaining that the Development Agreement did not constitute a transfer of the land, citing relevant legal provisions.**

- **The Assesssing Officer accepted this explanation, and the assessment order under section 143(3) was issued, without making any capital gains addition. However, other additions were made to the petitioner's total income.**
- After 4 years, the **assessee received a notice under section 148**, indicating that the assessing authority believed the assessee's income for the assessment year 2013-14 had escaped assessment under section 147. The **assessee also received a notice under section 142(1) and was provided with the recorded reasons for reopening the assessment.**
- The assessee **raised detailed objections in response** to these notices, **which came to be disposed of by order dated 14-2-2022.**
- On **writ petition, the assessee challenged this order and the notice issued under section 148.**

HELD

The entire basis as could be gathered from the reason for reopening which prompted the Assessing Officer to conclude that there was reason to believe escapement of income is that petitioner along with two other co-owners had granted development rights in respect of land at Chikhloli, Ambernath to 'SA'.

As per the Development Agreement, 'SA' shall develop the property at its own cost and shall give directly to owners 36 per cent of the total constructed saleable area as total consideration for grant of development rights.

As per the Development Agreement, 'SA' paid Rs. 40 crores to land owners as refundable interest free deposit out of which Rs. 21 crore has been paid to petitioner and her co-owner.

From those facts, according to Assessing Officer, it is clear that petitioner has transferred, as defined under section 2(47) , land to 'SA' during financial year 2012-13.

According to Assessing Officer, the market value of the constructed saleable area was Rs. 9.5994 crores and Petitioner has only shown consideration of Rs. 3 crores in the Development Agreement. Therefore, petitioner should have offered capital gain during the assessment year 2013-14.[Para 8]

At the outset, it is noted that during the assessment proceedings a query had been raised by the Assessing Officer and petitioner had submitted copy of agreement relating to joint development at Chikhloli *vide* its Chartered Account's letter dated 17-3-2016.

By a further undated letter, petitioner, after referring to the ongoing scrutiny assessment proceedings and referring to the query that was raised during the assessment proceedings as to why the Development Agreement entered into by petitioner with 'SA' should not be treated as 'transfer of land' and taxed accordingly, **explained in detail as to why there was no 'transfer of land'.**

Subsequently, the assessment order dated 31-3-2016 has been passed in which there is even a reference to the Joint Development Agreement between petitioner and 'SA' of land at Chikhloli village.

Therefore, it is clear that the issue as to whether there was a transfer of land or otherwise was the subject of consideration before the Assessing Officer during the assessment proceedings.

As seen in ***Aroni Commercials Ltd.*** **v Dy. CIT [2014] 44 taxmann.com 304/224 Taxman 13 (Mag)/362 ITR 403 (Bom.) once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was the subject of consideration of the Assessing Officer while computing the assessment.**

It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised.[Para 9]

This would also **indicate that there was no failure to disclose any material fact.**

On that ground alone the notice dated 22-3-2021 issued under section 148 has to be quashed and set side.

So also the impugned order disposing petitioner's objections.

Moreover, the other co-owner's case was also proposed to be reopened.

The other co-owner through legal heir had filed Writ Petition *Bharat Jayantilal Patel* v. *Dy.CIT* [2023] 149 taxmann.com 290 (Bom.) which came to be disposed on 10-2-2023.

In that case, identical reasons for reopening of the assessment was recorded.

The Court after considering the submissions made and relying upon the judgment of the Apex Court in the case of *Seshasayee Steels (P) Ltd.* v. *Asstt. CIT* [2020] (115) taxmann.com 5/275 Taxman 187/421 ITR 46 (SC) held that the assessee had only granted a licence to Developer who entered into assessee's land for the purpose of development and that did not amount to 'allowing the possession of the land' as contemplated under section 53A of the Transfer of Property Act, 1882 and therefore section 2(47)(*v*) would not apply.

The Court held that **granting of a licence** for the purpose of development of the flats and selling the same **could not be said to be granting possession.**

The findings of the Court in above Writ Petition will squarely apply to the facts of this case as well.[Para 10]

Accordingly, the notice under section 148 is set aside. [Para 11]

[2023] 152 taxmann.com 662 (Mumbai - Trib.)

dated 22.05.2023

Zainul Abedin Ghaswala

v.

Commissioner of Income-tax (Appeals), NFAC, Mum

Section 54F of the Income-tax Act, 1961 - Capital gains - Exemption of, in case of investment in residential house (Illustrations) - Assessment year 2016-17

Assessee along with other five family members had inherited land on which all six members constructed six flats which were occupied by each owner.

Assessee claimed exemption under section 54F against capital gain on transfer of his flat.

Assessing Officer denied exemption on ground that assessee owned six residential house properties though jointly.

Whether since there was no material to show that assessee was exclusively owner of other five flats which were occupied by other family members, he was entitled to exemption - Held, yes [Para 5.3] [In favour of assessee]

5.3 In view of the binding precedents referred above, we find that decision of the **Hon'ble Madras High Court in the case of Dr. Smt. P.K. Vasanthi Rangarajan v. CIT [2012] 23 taxmann.com 299/209 Taxman 628** is in favour of the assessee and not a single decision of the Jurisdictional High Court, which is adverse to the assessee, has been referred by the Ld. DR and therefore decision of the Madras High Court being favourable to the assessee, the claim of deduction u/s 54F of the Act need to allowed, as there is no material to show that assessee is exclusively owner of the other five residential properties / flats which are occupied by the other family members.

The grounds of appeal of the assessee are accordingly allowed.

6. In the result, the appeal filed by the assessee is allowed.

[2023] 155 taxmann.com 276

(Madhya Pradesh) dated 16.08.2023

Nitin Nema

v.

Principal Chief Commissioner of Income-tax

Section 68, read with section 148, of the Income-tax Act, 1961 - Cash credit (Illustrations) - Assessment year 2016-17 –

Revenue initiated **reassessment proceedings against assessee on ground that amount of Rs. 72.05 lakhs received by assessee from sale of 16 scooters had escaped assessment.**

Assessee challenged proceedings in a **writ petition on ground that income referred to in section 148A(d) was gross sale consideration and not income chargeable to tax.**

It was observed that **term 'income chargeable to tax' is not defined in Act and is different from 'income' defined under section 2(24).**

Further, **'income chargeable to tax' is arrived at after deducting permissible deductions from 'income', thus quantum of 'income' is invariably more than 'income chargeable to tax‘.**

Assessee had submitted details of items sold, amount received, computation of total income and computation of tax on total income to revenue during course of proceedings.

Whether revenue failed to understand fundamental difference between sale consideration and income chargeable to tax and Revenue's elementary mistake led to assessee's harassment compelling him to file present avoidable petition - Held, yes

Whether since **Court had been compelled to decide instant frivolous matter wasting its precious time and energy which could have been utilized in more pressing matters, revenue deserved to be saddled with exemplary cost and correspondingly, assessee would be entitled to compensatory cost** - Held, yes

Whether impugned order under section 148A(d) and notice under section 148 were to be quashed and set aside - Held, yes [Paras 6.1, 6.7, 6.8, 9, 9.1 and 10] [In favour of assessee]

6.1 Admittedly, the **expression 'income chargeable to tax' is not defined in the IT Act.**

However, the **scheme of the IT Act** specially the provisions **which deal with computation of business income make it abundantly clear that definition of expression 'income' and 'income chargeable to tax' are at variance to each other.**

The expression **'income' is inclusively defined under section 2(24) of IT Act whereas 'income chargeable to tax' obviously denotes an amount which is less than 'income'.**

The **'income chargeable to tax' is arrived at after deducting the permissible deductions under IT Act from 'income'.**

As **such quantum of 'income' is invariably more than the income chargeable to tax.**

6.7 Along with reply *vide* Annexure P-2, **the details of items sold and payment receipt, computation of total income and the computation of tax on total income was worked out and submitted to the Revenue.**

6.8 **It appears that while considering the said reply and before passing the impugned order under section 148A(*b*) of the IT Act, highly casual and perfunctory approach was adopted, turning a Nelson's eye towards the palpable and elementary aspect of clear distinction between consideration of sale and income chargeable to tax.**

9. From the aforesaid discussion **what comes out loud and clear is that the Revenue has failed to understand the fundamental difference between sale consideration on one hand and income chargeable to tax on the other.**

The **Revenue despite being assisted by thousands of experts in the field of finance and taxation, has committed such elementary mistake leading to harassment to the assessee who has been compelled to file the present avoidable piece of litigation. More so, this Court has been compelled to decide this frivolous matter wasting its precious time and energy which could have been utilized in more pressing matters.**

9.1 Thus, **the Revenue deserves to be saddled with exemplary cost and correspondingly the petitioner is entitled to compensatory cost.**

10. Consequently, this petition stands allowed in the following terms:

(I) The impugned order dated 25-3-2023 under section 148 A (*d*) of IT Act *vide* Annexures P-3 and P-4 are quashed.

(II) The notice dated 25-3-2023 *vide* Annexure P-5 under section 148 issued by the ITO Ward 1(1), Jabalpur is quashed.

(III) Revenue however, is at liberty to invoke section 148A, but only in accordance with law.

(IV) **Revenue is saddled with cost** of Rs. 25,000/- (Rupees Twenty Five Thousand Only), out of which Rs. 15,000/- (Rupees Fifteen Thousand Only) shall be credited in favour of the M.P. High Court Employees' Association, Jabalpur (S.B A/c No. 51930201000235, Union Bank of India, State Bar Council Branch, Jabalpur) and the remaining Rs. 10,000/- (Rupees Ten Thousand Only) shall be paid to the petitioner through digital transfer in his bank account within a period of 30 days failing which the case shall be listed before the Bench under Caption 'Direction' as PUD *qua* cost.

SARASWATI PETROCHEM PVT. LTD.

versus

INCOME TAX OFFICER, WARD 22(3)

W.P.(C) 10802/2018 dated 17.11.2023

17.1 The **first and foremost principle of law, to which the AO must be wedded**, is the **obligation cast on him to furnish material and information that helped him to form a belief that income,** otherwise chargeable to tax, **had escaped assessment.**

Admittedly, the AO **had in his possession a letter dated 12.03.2018 addressed to him by ITO (Nahan), which in turn contained the intimation supplied by ADIT (Inv)/Unit-4(2).**

It appears that the information furnished suggested that cash deposits had been made in the account bearing no. 083005000211 maintained with the ICICI bank by Ram Singh, the proprietor of Para Impex Chem, out of which monies were remitted via RTGS to the two bank accounts of the petitioner/assessee maintained with HDFC Bank.

Neither the letter nor the intimation of the ADIT(Inv)/Unit-4(2), New Delhi was furnished to the petitioner/assessee.

17.2 Although the petitioner/assessee has also flagged the issue that copies of the FIR and the chargesheet filed by CBI were not furnished to it, we do not lay much store by this assertion made in the behalf as, in the ordinary course, this information would have been made available to the petitioner/assessee, as it is not disputed by it that the names of its directors were included in the list of accused.

That said, as indicated above, the petitioner/assessee was entitled to receive copies or relevant extracts from the letter dated 12.03.2018 and the intimation of the ADIT (Inv)/Unit-4(2).

17.3 Furthermore, the **AO could have only considered the information concerning the period in issue, FY 2010-11 (AY 2011-12).**

However, the **remittances received via RTGS from** Para Impex Chem in the two bank accounts maintained by the petitioner/assessee with the HDFC Bank **concerned the preceding period, i.e., FY 2009-10 (AY 2010-11)**.

The **AO was also unaware of the 'nature' of the deposits in the two HDFC banks** received by the petitioner/assessee, which is evident from the following observations made by him: "…**may be in the guise** of Share Capital, including Share Premium, bogus sales to M/s Para Impex Chem, or Long term loans or all…".

17.4 Lastly, the **mere increase in the source of funds** from the previous AY amounting to Rs. 61,87,061/- in the form of share capital, security premium, share application money, and long-term unsecured loans **without corroborating evidence, in itself, cannot be the basis of the belief that income, otherwise chargeable to tax, had escaped assessment.**

17.5 It is evident that the **AO had, perhaps, no tangible material available with him to form a belief** that income, otherwise chargeable to tax, had escaped assessment.

The phraseology used by the AO reveals that **he „suspected"** that income chargeable to tax had escaped assessment.

Therefore, according to us, **this approach of the AO breached the other well established principle of law that suspicion and conjecture cannot form the basis for triggering reassessment proceedings qua an assessee.**

18. In our view, **the AO did not employ diligence while triggering the reassessment proceedings against the petitioner/assessee.**

It appears that because **AO realized that the information received by him from ITO (Nahan) via letter dated 12.03.2018 concerned the preceding period**, he **attempted to commence reassessment proceedings** under Section 147/148 of the Act **by simply comparing the „source of funds" reflected under various heads in the balance sheets for the preceding AY and the AY in issue.**

Furthermore, that there was **a gap in the enquiry** is evident from the following.

First, the respondent/revenue emphasized the fact that **information was sought from the petitioner/assessee via notice dated 20.03.2018 before it issued the impugned notice on 31.03.2018.**

The **notice dated 20.03.2018 could not have reached the petitioner/assessee** [and nothing to the contrary has been placed on record by the respondent/revenue] **as concededly, it did not bear the complete address of the petitioner/assessee.**

Second, **the AO did not even have the list of shareholders of the petitioner/assessee, as indicated in the „reason to believe".**

19. We are of the opinion that the **AO did not have the tangible material on record that could have persuaded him to form a belief** that income, otherwise chargeable to tax, had escaped assessment.

The **AO did not carry forward the enquiry process once he had received communication from ITO (Nahan).**

As noticed above, the **AO did not furnish either the letter dated 12.03.2018 received from ITO (Nahan) or the relevant intimation received from the ADIT(Inv)/Unit-4(2) New Delhi, along with the document containing „reason to believe.**

" **Had the AO furnished the documents, he would have been able to reach a firmer conclusion that crossed the threshold of suspicion and conjecture**.

20. Thus**, for the foregoing reasons, we are inclined to quash the impugned notice issued to the petitioner/assessee under Section 148 of the Act.**

21. It is ordered accordingly.

22. The writ petition is disposed of in the aforesaid terms.

23. Parties will, however, bear their respective costs.

[2023] 155 taxmann.com 553

(Bangalore - Trib.)[20-09-2023]

Bharat Electronics Ltd.

vs.

Asstt. Commissioner of Income-tax, LTU

IT Appeal No. 420 (Bang) OF 2023

Section 35, read with section 148, of the Income-tax Act, 1961 - Scientific research expenditure (Reopening of assessment) - Assessment year 2009-10

Notice under section 148 seeking to reopen assessment was served upon assessee **alleging escapement of assessment in regard to deduction towards provision for customer disallowances and disallowance under section 35(2AB)**

However, **it was found that in reply to a notice under section 142(1), assessee had filed details as asked for, particularly details of capital expenditure on which deduction under section 35(2AB) was claimed and details of provisions for customer disallowance created during year - Same were duly verified by Assessing Officer while completing assessment under section 143(3) and no new material came to knowledge of Assessing Officer subsequent to original assessment proceedings**

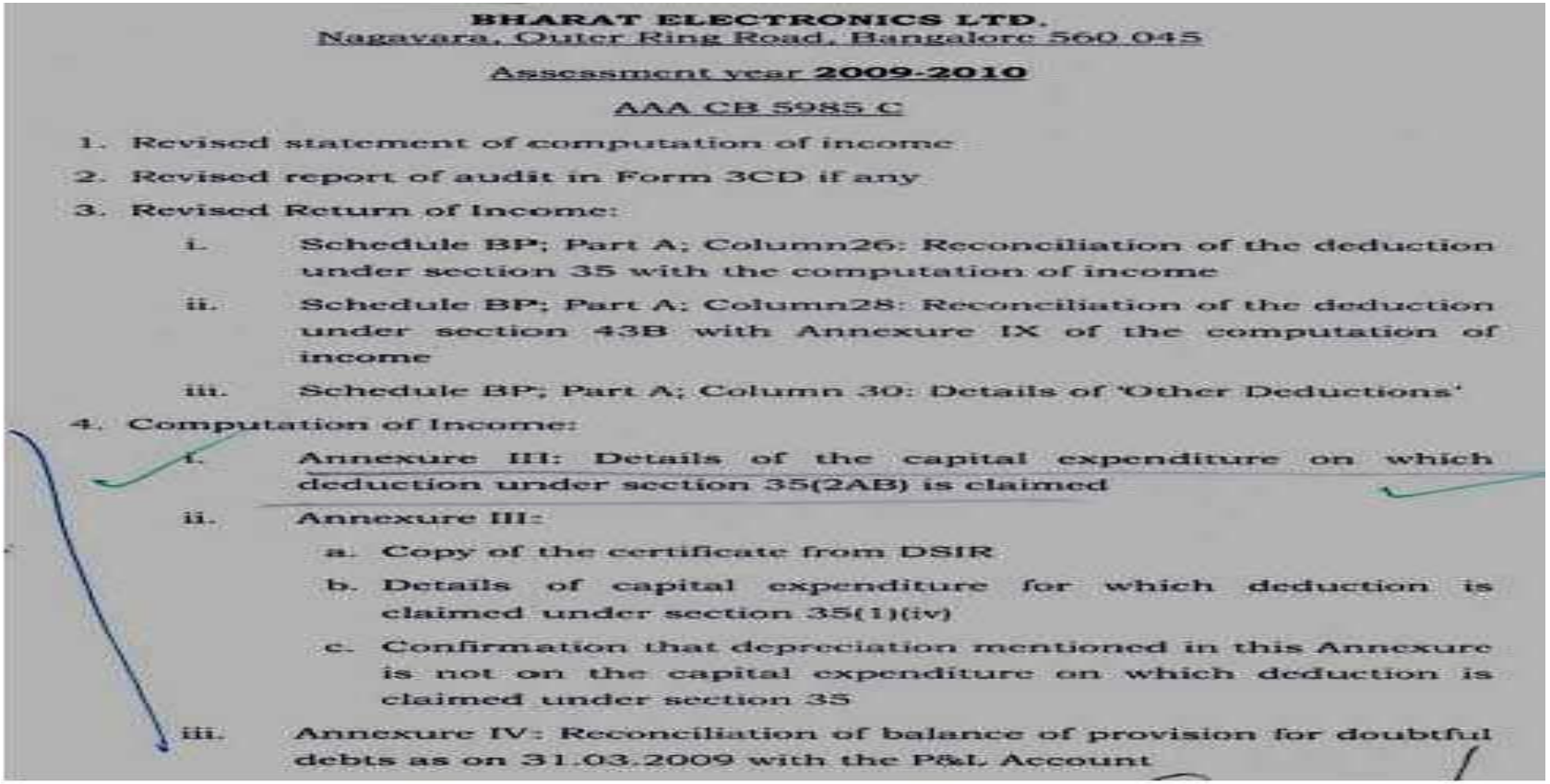
Whether therefore, reassessment proceeding initiated under section 148 **merely on basis of change of opinion, in absence of any new evidence/material in hands of revenue on same set of information which was available at time of original assessment, was void-ab-initio, bad in law and thus, entire proceedings were to be quashed -** Held, yes [Paras 10, 11 and 13] [In favour of assessee]

Upon examining the documents furnished by the assessee in support of the claim made out the original assessment was framed and in **the absence of any new material given to the knowledge of the assessing officer subsequent to the original assessment proceedings, reopening on the same set of facts was a clear case of change of opinion and the same is not, therefore, permissible.**

In this regard she has relied on very many following judgments including the judgment passed by the Hon'ble Supreme Court in case of ***CIT* v. *Kelvinator of India Ltd.* [2010] 187 Taxman 312:**

- ***Kelvinator of India Ltd.* (*supra*).**
- ***Deepak Extrusions (P.) Ltd.* v. *Dy. CIT* [2017] 80 taxmann.com 77 (Kar.)**
- ***Hewlett Packard Financial Services (India) (P.) Ltd.* v. *Dy. CIT* [2023] 152 taxmann.com 559/294 Taxman 25 (Kar.)**
- ***Mahindra Electric Mobility Ltd.* v. *ACIT* [IT Appeal No. 641 (Bang.) of 2017, dated 14-9-2018].**
- ***Provimi Animal Nutrition India (P.) Ltd.* v. *Pr. CIT* [2021] 124 taxmann.com 73/187 ITD 214 (Bang. - Trib.).**

10. In reply the **appellant duly filed the details as asked for** particularly the **details of capital expenditure on which deduction u/s. 35(2AB) is claimed and details of provisions for customer disallowance created during the year**, the same is also annexed to the paper book filed before us. The relevant extract whereof is reproduced hereinbelow:



BHARAT ELECTRONICS LTD.
Nagavara, Outer Ring Road, Bangalore 560 045

Assessment year **2009-2010**

AAA CB 5985 C

1. Revised statement of computation of income
2. Revised report of audit in Form 3CD if any
3. Revised Return of Income:
   - i. Schedule BP; Part A; Column26: Reconciliation of the deduction under section 35 with the computation of income
   - ii. Schedule BP; Part A; Column28: Reconciliation of the deduction under section 43B with Annexure IX of the computation of income
   - iii. Schedule BP; Part A; Column 30: Details of 'Other Deductions'
4. Computation of Income:
   - i. Annexure III: Details of the capital expenditure on which deduction under section 35(2AB) is claimed
   - ii. Annexure III:
     - a. Copy of the certificate from DSIR
     - b. Details of capital expenditure for which deduction is claimed under section 35(1)(iv)
     - c. Confirmation that depreciation mentioned in this Annexure is not on the capital expenditure on which deduction is claimed under section 35
   - iii. Annexure IV: Reconciliation of balance of provision for doubtful debts as on 31.03.2009 with the P&L Account

iv. Annexure IX: Justification for claiming deduction towards amortization of leasehold land

v. Annexure IX: Schedule V of Annual Accounts

vi. Annexure X: Confirmation that the expenditure on VRS was first disallowed in the respective assessments (Refer the Note in the Annexure that the amounts paid have been fully charged off in the respective years)

vii. Annexure XI: Reconciliation of the deduction under section 43B with the return of income (Schedule BP; Column 28)

viii. Justification for reducing provision for customer disallowance

ix. Details of the provisions for customer disallowance created during the year

5. 3 CD Report:

i. Annexure III; Depreciation Schedule:

a. Copy of the certificate for claiming enhanced depreciation under Rule 5(2)

b. Reconciliation of sale of assets with the cashflow statement

c. Clarification if the assets on which additional depreciation is claimed include those which are eligible for deduction under section 35(2AB)

ii. Annexure IX: Confirmation that interest has been paid for the delay in remitting TDS

6. BS and P&L Account:

i. Clarification if any carbon credit is claimed and if so, accounting treatment of the same

ii. Schedule 3: Treatment of Government grants for research to calculate the deduction under section 35(2AB)

iii. Schedule 5: Treatment of assets acquired for sponsored research in the calculation of depreciation as per Income-tax Act

iv. Schedule 13: Reconciliation of provision for contingencies towards long term contracts

v. Schedule 17:

   a. Reconciliation of various provisions debited to the Profit and Loss account with the computation of income

   b. Details of miscellaneous expenses

vi. Schedule 18: Note on deductibility of interest due to micro and small enterprises

vii. Schedule 20(B): Details of prior period expenses and justification for claiming the same as deduction

viii. Schedule 23; Para 5: Note on the impact of the change in the accounting policies on the taxable income

ix. Cashflow statement: Reconciliation of sale of assets with the depreciation schedule (Annexure III to the audit report in Form 3 CD)

भारत इलेक्ट्रॉनिक्स
BHARAT ELECTRONICS
भारत इलेक्ट्रॉनिक्स लिमिटेड
(भारत सरकार का उद्यम, रक्षा मंत्रालय)
पंजीकृत कार्यालय
आउटर रिंग रोड, नागवारा, बेंगलुर - 560 045, भारत
Bharat Electronics Limited
(A Govt. of India Enterprise, Ministry of Defence)
Registered Office :
Outer Ring Road, Nagavara
Bangalore-560 045. INDIA
फोन/Phone : +91 (080) 25039300 / 25039284
फैक्स/Fax : +91 (080) 25039233
वेब/Web : www.bel-india.com

BEL/IT/AY 2009-'10
20.07.2011
The Assistant Commissioner of Income Tax
Large Tax Payers Unit (LTU), JSS Towers,
100 Feet Ring Road,
Banashankari IIIrd Stage
BANGALORE 560 0085

Kind Attention: Mr.Satish Kumar Singh N.
Sub: Income Tax Assessment for the AY2009-'10
Ref: Notice U/s 142 dt. 07.06.2011

This has reference to your above referred Notice u/s 142 dt.07.06.2011 for the Income Tax Assessment for AY 2009-10.Further to our submission vide our letter dt.20.06.2011 and personal hearing attended on 20.06.2011 in your office we are submitting following scrutiny clarification as desired by you as per Sr. No. of your queries.

3. Revised Return of Income:

i) Schedule BP; Part A; Column 26:

In Column 26 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 123,42,89,000/- is shown as amount of deduction u/s 35 in excess of the amount debited to Profit and Loss account for expenditure on R&D.

As per Annexure III of Computation of Income total eligible expenditure U/s 35(2AB) of the Income Tax Act 1961,is Rs. 208,94,94,000/-(Rs 189,99,52,000/- is on account of Revenue and Rs. 18, 95, 42,000/- is on account of Capital Expenditure). U/s 35(2AB) of the IT Act 1961, deduction of 150% of total expenditures is available which comes to Rs. 313, 42, 41,000/-. Out of total Eligible expenditure u/s 35(2AB) only revenue expenditure for Rs. 189, 99, 52,000/- has been debited to P&L account. Balance of Rs.123,42,89,000/- (Rs. 313,42,41,000 less Rs 189,99,52,000/-) is shown as amount of deduction u/s 35(2AB) but not debited to P&L account.

ii) Schedule BP; Part A ; Column 28:

In Column 28 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 1,59,37,834/- is shown as deduction u/s 43B against pre-existed liability as on 01.04.2008 and paid during FY 2008-09.

Detail of same has been given in Annexure XI of Computation of Income for the year, which is as follow:

Customs Duty:	*Rs. 1,11,90,968/-*
Excise Duty:	*Rs. 3,94,287/-*
Sales Tax:	*Rs. 22,86,653/-*
Central Sales Tax:	*Rs. 1,32,160/-*
Service Tax:	*Rs. 7,33,962/-*
Tax on Works:	*Rs. 11,84,270/-*
Contribution to ESI:	*Rs. 15,534/-*
Total	***Rs. 1,59,37,834/-***

भारत सरकार
आयकर विभाग (एल.टी.यू.) बंगलूर
20 July 2011
SIGNATURE NOT VERIFIED

The above amount is based on Annexure –VI of Form 3CD of the tax Audit Report.

iii) Schedule BP; Part A; Column 30: Detail of 'Other Deduction' Rs.4,89,55,441/-
The total of other deduction has been taken from Computation of Income for the year. The detail of the same is enclosed at ***Annexure-1***

4. Computation of Income:

i) Annexure III : Details of Capital Expenditure on which deduction u/s 35(2AB) is claimed
List of Capital Items on which deduction u/s 35(2AB) has been claimed is given at ***Annexure-'2'.***

ii) Annexure III:

a. DSIR Certificate :
i) Copy of Certificates No. (i) TU/IV-RD/2680/2007 dated 06.08.2007 and (ii) TU/IV-RD/1211/2007 dated 19.11.2007 received from DSIR is enclosed at ***Annexure-'3'***
ii) Copy of 3CM ref no; TU/IV-15(14)/35(2AB)/3CM/2010 dt.26.08.2010 received from DSIR is enclosed at ***Annexure-'4'***

b. Detail of Capital Expenditure for which deduction is claimed u/s 35(1)(iv)
No Capital expenditure has been claimed u/s 35(1)(iv).

c. Confirmation that depreciation mentioned in this Annexure is not on the Capital Expenditure on which deduction is claimed under section 35:
Depreciation of Rs. 15,59,67,000/- which is shown in Annexure III of the Computation of Income is on account of the Capital items used for R&D purpose has been excluded in the Computation of Net Revenue Expenditure claimed u/s 35(2AB).This is reflected in Para'4' to Schedule 21 of Annual Report. U/s 35(2AB) of the Income Tax Act 1961, net revenue expenditure other than depreciation of Rs.15,59,67,000/- has been claimed in the Return.

iii) Annexure IV: Reconciliation of balance of provision for doubtful debts as on 31.03.2009 with the P&L Account:
The reconciliation of Provision for Doubtful Debts as on 31.03.2009 is as follow:

Particulars	Amount in Rs Thousand
Opening Balance as on 01.04.2008 (As Per Schedule 9 of Annual Report)	3233914
Add: Provision created during the year (As Per Schedule 17 of Annual Report)	727650
Less: Bad Debts & Advance written off charged to Provision (As per Schedule 17 of Annual Report)	263690
Less: Provision withdrawn –others (As per Schedule 14 of Annual Report)	214308
Closing Balance as per Schedule 9 of Annual Report	3483566

iv) Annexure IX: Justification for claiming deduction towards amortization of leasehold land:

Amortization of leasehold land is a periodical expenditure during the lease tenure and revenue in nature. It is allowable expenditure under the provisions of sec 37 of the Income Tax Act 1961.

v) Annexure IX: Schedule V of Annual Accounts:
Schedule V (Fixed Assets) of Annual Accounts is enclosed at **Annexure-'5'**. The detail of Leasehold land i.e. the opening balance, amortization during the year and closing balance is given in the separate line item in the schedule.

vi) Annexure X: Confirmation for claiming expenditure on VRS paid during FY 2004-05:

During FY 2004-05(AY 2005-'06) VRS paid by the Company is Rs 31,17,63,980/-. The amount has been added back in the respective year Return of Income. A copy of the Computation of the above referred year is enclosed at **Annexure '6'**. U/s 35DDA of the Income Tax Act 1961, 1/5th of amount paid as VRS is allowed for 5 years including the year of payment. Accordingly 1/5th of the amount of VRS paid for the FY 2004-05 (AY 2005-'06) has been claimed during the year being the 5th Instalment as per Annexure-X of the Computation of Income.

vii) Annexure XI: Reconciliation of deduction U/s 43B with Return of Income (Schedule BP; Column 28):

In Column 28 of Part A to Schedule BP of ITR 6 of the Revised Return for AY 2009-10 Rs 1,59,37,834/-/- is shown as amount of deduction u/s 43B for pre-existed liability u/s 43B as on 01.04.2008 and paid during FY 2008-09.
Detail of same has been given in Annexure XI of Computation of Income for the year, which is as follow:

Customs Duty:	Rs. 1,11,90,968/-
Excise Duty:	Rs. 3,94,287/-
Sales Tax:	Rs. 22,86,653/-
Central Sales Tax:	Rs. 1,32,160/-
Service Tax:	Rs. 7,33,962/-
Tax on Works:	Rs. 11,84,270/-
Contribution to ESI:	Rs. 15,534/-
Total	**Rs. 1,59,37,834/-**

The above amount is based on Annexure –VI of Form 3CD of the tax Audit Report.

viii) Annexure XII: Justification for reducing provision for Customer Disallowance:

Customer Disallowances (LD) are contractual obligations and provision is made based on terms and conditions of contracts concluded. This is a crystallized liability and revenue expenditure allowable u/s 37 of the Income Tax Act, 1961. This has been upheld in Assessee's own case in ITA No 632/96 by the ITAT, Bangalore Bench for AY 1992-93.

ix) Details of the provisions for Customer Disallowance created during the year:

Unit wise detail of the Net Provisions for Customer Disallowance created during the year is as below:

Sl No	Name of Unit	Amount in Rs
1	Bangalore Complex	242374063
2	Ghaziabad	105228839
3	Navi Mumbai	3303027
4	Machilipatnam	16782114
5	Panchkula	15646954
6	Kotdwara	12143104
7	Hyderabad	97603411
8	Chennai	(8308142)
	Total	484773370

Further details of the provisions for Customer Disallowance are given at **Annexure-7**

***B. Reason for increase in Customer Disallowance in the Revised Return**: As desired by you furnished below the reason for increase in Customer Disallowance by Rs. 32, 24,545/- :*

The Company has claimed Customer Disallowance of Rs. 48, 15, 48,825/- in the Original Return filed by the Company on 17.09.2009 based on the information received from the Unit. Subsequently it was observed that BEL-Ghaziabad Unit has inadvertently reported Provision for Customer Disallowance for Rs.10,20,04,294/- instead of Rs. 10,52,28,839/-.Hence in the Revised Return filed by the Company, claim for Provision of Customer Disallowance was rectified to Rs. 48, 47,73,370/- instead of Rs. 48,15,48,825/- after incorporating the above mentioned changes.

For the balance queries, you may kindly allow us some more time to submit the information.

Thanking you,

Yours faithfully

(Sanjoy Kumar Pal)
Dy. General Manager (Fin &Tax)

Encl. As above

11. Thus it appears from the above that **both the alleged issues relating to escaping assessment as raised in the reopening proceeding initiated u/s. 148 of the Act, were duly verified by the assessing officer while completing the assessment u/s. 143(3) of the Act** and **no new material came to the knowledge of the Assessing Officer subsequent to the original assessment** proceeding is reflecting in recording reasons or in the notice u/s. 142(1) of the Act by the Ld.AO.

Thus the facts which was available during the regular assessment and duly verified and examined by the Ld.AO, **reopening on the same set of facts is nothing but a clear case of change of opinion** as submitted by the Ld.AR appears to be acceptable.

13. We find that in the case in hand, the **allegation of the assessing officer to disclose fully or truly of material facts for assessment for the year** under consideration or the income chargeable to tax has escaped assessment for the year under consideration **has no legs to stand upon.**

Moreso, **once the issue has already been dealt with during the original assessment proceeding and only upon due application of mind and upon examination of the same**, the Ld.AO passes an order in the original assessment, **the Assessing Officer cannot exercise the power to review or reassess the same.**

The same, in this case, **is a change of opinion which cannot be appreciated, which is a product of uncanalised and unguided power exercised by the Assessing Officer in the garb of reassessment.**

We also find that the ratio laid down by the Hon'ble Apex Court in the present facts and circumstances of the case, to this effect that **the reopening of the assessment on the basis of mere change of opinion cannot be per se reason to reopening**, has been duly followed in all the other judgments relied upon by the Ld.AR.

Thus on identical facts and circumstances of the matter, respectfully relying on the judgments cited by the Ld.AR, **we find the reassessment proceeding initiated u/s. 148 of the Act merely on the basis of change of opinion, in the absence of any new evidence/material in the hands of the revenue on the same set of information which was available at the time of original assessment, is found to be void-ab-initio, bad in law and thus, the entire proceeding is quashed.**

[2023] 156 taxmann.com 392

(Bangalore - Trib.)[20-09-2023]

Bellary Iron-Ores (P.) Ltd. vs. ITO

IT Appeal Nos. 1540 (Bang.) of 2018

& 15 (Bang.) of 2019

[ASSESSMENT YEARS 2014-15 AND 2015-16]

Where interest accrued on fixed deposits was subjected to prohibitory order by CBI, such interest could not be treated as income until assessee actually received it from bank

I. Section 5, read with section 194A, of the Income-tax Act, 1961 - Income - Accrual of (Interest on fixed deposits) - Assessment year 2014-15

Assessee-company was engaged in business of extraction, processing, manufacturing and sale of iron-ore

Whether since interest accrued on fixed deposits of assessee was subjected to prohibitory order by CBI, same could not be treated as income until assessee actually received it from bank, even though it was subject to TDS - Held, yes [Para 8] [Partly in favour of assessee]

8. Being so, in our opinion, **the lower authorities has committed an error in bringing the interest accrued on FD which is subject to prohibitory order by CBI Hyderabad** into tax in these assessment years under consideration and the same has to be taxed in assessment year when it was actually received by the assessee or right to receive accrued to the assessee.

In other words, **the assessee has to pay the tax on the same on actual accrual of right to receive this impugned interest by the assessee in any assessment year and not in these assessment years.**

Accordingly, this ground of appeal of the assessee is partly allowed.

FACTS-I & II

The assessee-company was engaged in the business of extraction, processing, manufacturing and sale of iron-ore.

The company also owns wind mills generating power.

During the year under consideration, the assessee-company had not carried out mining activities since the mining came to be suspended by the order of Apex Court from the year, 2010 onwards.

The CBI Court had placed prohibitory orders on the fixed deposits (FDs) of the assessee. The assessee-company had accounted interest as income on such FDs up to 31-3-2013 i.e., assessment year, 2013-14. As the uncertainty persisted and the bank could not pay the amount either to the assessee, the assessee did not account for the interest income in its books of account.

But the banks have made TDS under section 194A on the notional interest.

The Assessing Officer brought to tax the notional interest on the said fixed deposits.

Further, the Assessing Officer disallowed an amount of Rs. 62 lakhs as expenditure related to exempt income applying section 14A, read with rule 8D.

On appeal, the Commissioner (Appeals) upheld the addition made by the Assessing Officer. On the assessee's appeal to the Tribunal :

HELD I & II

Interest Income accrued on the fixed deposits

The income accrued to the assessee, without the actual right to receive the same, cannot be brought to tax. The basic conception is that **he must have acquired a right to receive the income**. **There must be a debt owed to him by the parties concerned with whom the assessee made deposits for interest. Unless and until there is a creation of right in favour of the assessee, debt due by somebody it cannot be said that he had acquired a right to receive the income or that income, has accrued to him (E.D. Sasoon & Co. Ltd. v. CIT [1954] 26 ITR 27 (SC)). [Para 6.1]**

While determining the income of the assessee in particular assessment year, **the legal consequences of the transaction must be kept in mind and should be taken as guiding factor for arriving at a decision from the point of view of the incomes as well.**

This is because of fact that **what is sought to be taxed under Income-tax Act is that commercial profits and not theoretical or notional income, unless the statute otherwise provides for imposing the tax on a notional basis by legislative fiction.**

The **real nature and character of the transaction must be determined** in the light of treatment of the contract and the rights and obligations of the parties flowing therefrom unguided by the nomenclature of the transaction.

For this purpose, rely on the judgment **of Supreme Court in the case of National Cement Mines Industries Ltd. v. CIT [1961] 42 ITR 69 (SC). [Para 6.2]**

Further, it was held by the Supreme Court in the case of **CIT v. Kamal Behari Lal Singha [1971] 82 ITR 460** that the income that is taxable or not must be determined only to the reference of legal position of the recipient. [Para 6.4]

Further, the co-ordinate Bench of Kolkata in the case of Dy. CIT v. EMC Ltd. [2020] 117 taxmann.com 340/183 ITD 380 (Kol. - Trib.) held that the right to receive the retention money is accrued only after the obligations under the contract are fulfilled and the assessee had no vested right to receive the same in the year in which it is retained, therefore, it would not amount to an income of the assessee for that year. [Para 6.7]

Further Accounting Standard (**AS-9) with respect of revenue recognition clearly provides that if there is significant uncertainty in ultimate collection of the revenue, then the revenue recognition is postponed** and in such cases **revenue should be recognized only when it becomes reasonably certain that ultimate collection will be made.** [Para 6.8]

Thus, it is apparent that **interest income of the assessee can be recognized only when there is no uncertainty and significant scope to receive the same.**

Therefore, in the case of assessee, **accrued interest on bank deposit** on which prohibitory order placed by CBI Hyderabad **cannot be treated as interest income of the assessee during these two assessment years, until the assessee has actually received it from the bank though it was subject to TDS.**

This view is **fortified by the order of Tribunal in the case of Selvi J. Jayalalitha v. ACIT [2016] Taxpub (DT) 4642 (Chennai -Trib.)/ITA No. 1288/Mad/2008, WTA No. 20/Mad./2008 in assessment years 2000-01 and 1997-1998, dated 30-9-2016. [Para 6.9]**

Further, issue **relating to the deduction of TDS under section 194A** of this impugned interest on FDs has been **decided by the High Court in WP No. 112471/2019 (T-IT) vide order dated 21- 9-2021 holding that the entitlement of interest accruing on the FDs to the assessee would be dependent on the result of the pending Court/CBI proceedings** and consequently, till the conclusion of the said court proceedings, the interest accruing on the FD cannot be considered as income for the purpose of deduction of TDS under section **194A and directed the bank not to deduct TDS on the interest of FDs.**

However, it cannot be treated as absolving the assessee of its liability to pay tax on the interest accruing on the FD if the petitioner becomes entitled to the same after conclusion of the court proceedings. [Para 6.10]

Being so, it is opined that the lower authorities has committed an error in bringing the interest accrued on FD which is subject to prohibitory order by CBI into tax in these assessment years under consideration and the **same has to be taxed in assessment year when it was actually received by the assessee or right to receive accrued to the assessee.**

In other words, the **assessee has to pay the tax on the same on actual accrual of right to receive this impugned interest by the assessee in any assessment year and not in these assessment years**. [Para 8]

[2023] 149 taxmann.com 399 (SC)

SUPREME COURT OF INDIA

Principal Commissioner of Income-tax, Central-3

v.

Abhisar Buildwell (P.) Ltd.*

M.R. SHAH AND SUDHANSHU DHULIA, JJ.

CIVIL APPEAL NO. 6580 OF 2021 & OTHS.‡

APRIL 24, 2023

INCOME TAX : In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A

Section 153A, read with sections 132 and 143, of the Income-tax Act, 1961 - Search and seizure – Assessment in case of (Conditions precedent) –

Whether object of section 153A is to bring under tax undisclosed income which is found during course of search or pursuant to search or requisition; therefore, only in a case where undisclosed income is found on basis of incriminating material, Assessing Officer would assume the jurisdiction to assess or reassess total income for entire six years block assessment period even in case of completed/unabated assessment- Held, yes

Whether in case of search under section 132 or requisition under section 132A, Assessing Officer assumes jurisdiction for block assessment under section 153A and that all pending assessments/reassessments shall stand abated - Held, yes –

Whether in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A - Held, yes –

Whether, however, completed/unabated assessments can be reopened by Assessing Officer in exercise of powers under section 147/148 subject to fulfilment of conditions as envisaged/mentioned under section 147/148 and those powers are saved - Held, yes [Paras 8, 12 to 14] [In favour of assessee]

4.1 The submissions on behalf of the assessees in a tabulated form thus are as under:

S. N .	Particulars	Assessment u/s 143(3) pending and abated	Reassessment u/s 147 pending and abated	Unabated assessments
i.	No Incriminating found in material search.	AO entitled to assess entire income, a pending regular assessment stood abated.	Scope of assessment u/s 153A must be restricted to grounds of reopening of assessment, which was pending on date of search and stood abated as a result of search. AO not entitled to go beyond scope of pending assessment.	No assessment u/s 153A in absence of any incriminating material. Originally concluded assessment which has attained finality cannot be disturbed more so when no material found in search.
ii.	No incriminating material found in search. Information/document from sources other than search available with AO	AO entitled to assess entire income, as pending regular assessment stood abated.	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b)additional specific information coming to knowledge AO through modes other than search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.	Assessment u/s 153A in absence of any incriminating material may be dropped. Post dropping of proceedings u/s 153A, Revenue may, basis other information, proceed u/s 147 and/or 263 subject to satisfaction of jurisdictional conditions under the said provisions.

S. N .	Particulars	Assessment u/s 143(3) pending and abated	Reassessment u/s 147 pending and abated	Unabated assessments
iii.	Incriminating material found during search only on issue 'A'. No other information/material available or found from any external sources.	AO entitled to assess entire income, as pending regular assessment stood abated. AO also entitled to assess entire income and not just issue A.	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A detected during search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.	Assessment u/s 153A to be restricted to Issue A relating to which incriminating material is found during search. Original concluded assessment which has attained finality cannot be disturbed, in context of issues in relation to which no documents are found in search.
iv.	Incriminating material found during search only on Issue 'A' Other information/material available or found from any external sources (not in search) in respect of Issue 'B'.	AO entitled to assess entire income including Issue A and/or Issue B.	Scope of assessment u/s 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A detected during search; and (c) issue B for which information available. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.	Assessment u/s 153A could only be done in respect of issue A relating to which incriminating material is found during search. On conclusion of assessment u/s 153A, Revenue may, basis other information, proceed u/s 147 and/or 263.

4.2 Learned counsel for the respective assessees have relied upon the following decisions of this Court as well as various High Courts in respect of their submission that **no addition can be made in respect of completed assessment in absence of incriminating material:**

Sl. No.	*Name of case*	*Citation*
1.	*CIT* v. *Sinhgad Technical Education Society*	[2017] 84 taxmann.com 290/250 Taxman 225/397 ITR 344 (SC) : (2018) 11 SCC 490
2.	*Pr. CIT* v. *Saumya Construction (P.) Ltd.*	[2017] 81 taxmann.com 292/[2016] 387 ITR 529 (Guj.)
3.	*Pr. CIT* v. *Dipak Jashvantlal Panchal*	[2017] 88 taxmann.com 611/397 ITR 153/2017 (2) TMI 862 (Guj.)
4.	*CIT* v. *Continental Warehousing Corporation (Nhava Sheva) Ltd.*	[2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.)
5.	*Pr. CIT* v. *Delhi International Airport (P.) Ltd.*	[2022] 140 taxmann.com 440/443 ITR 382 (Kar.)
6.	*Kabul Chawla* (*supra*)	
7.	*Pr. CIT* v. *Meeta Gutgutia*	[2017] 82 taxmann.com 287/248 Taxman 384/395 ITR 526 (Delhi)
8.	*Chintels India Ltd.* v. *Dy. CIT*	[2017] 84 taxmann.com 57/249 Taxman 630/397 ITR 416 (Delhi)

9.	*Sri. S.M. Kamal Pasha* v. *Dy. CIT*	[IT Appeal No. 155 of 2017, dated 2-8-2022]/2022 (8) TMI 966 (Karnataka)
10.	*Pr. CIT* v. *Jay Infrastructure and Properties (P.) Ltd.*	[Tax Appeal No. 740 of 2016, dated 10-10-2016]/2016 (10) TMI 1022 (Gujarat)
11.	*Smt. Jami Nirmala* v. *Pr. CIT*	[2021] 132 taxmann.com 267/[2022] 284 Taxman 141/ [2021] 437 ITR 573 (Orissa)
12.	*Smt. Smrutisudha Nayak* v. *Union of India*	[2022] 136 taxmann.com 162/286 Taxman 119/[2021] 439 ITR 193 (Orissa)
13.	*CIT* v. *Veerprabhu Marketing Ltd..*	[2016] 73 taxmann.com 149/388 ITR 574 (Cal.)
14.	*Pr.CIT* v. *Salasar Stock Broking Ltd.*	[G.A. No. 1929 of 2016, ITAT No. 264 of 2016, dated 24-8-2016] 2016 (8) TMI 1131 (Calcutta)
15.	*Pr. CIT v. Smt. Daksha Jain*	[D.B. IT Appeal No. 125 of 2017, dated 4-7-2019]/2019 (8) TMI 474 (Rajasthan)
16.	*Dr. A.V. Sreekumar* v. *CIT*	[2018] 90 taxmann.com 355/253 Taxman 428/404 ITR 642 (Ker.)

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material.

The lead judgment is by the Delhi High Court in the case of *Kabul Chawla* (*supra*), which has been subsequently followed and approved by the other High Courts, referred to hereinabove.

One another lead judgment on the issue is the decision of the Gujarat High Court in the case of *Saumya Construction* (*supra*), which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove.

Only the Allahabad High Court in the case of *Pr. CIT* v. *Mehndipur Balaji* 2022 SCC Online All 444/[2023] 147 taxmann.com 201/ [2022] 447 ITR 517 has taken a contrary view.

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla* (*supra*) and the Gujarat High Court in the case of *Saumya Construction* (*supra*), taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law.

At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act.

The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition.

Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment.

As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments.

It does not provide that all completed/unabated assessments shall abate.

If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla* (*supra*) and the Gujarat High Court in the case of *Saumya Construction* (*supra*) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

14. In view of the above and for the reasons stated above, it is concluded as under:

(*i*)	that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
(*ii*)	all pending assessments/reassessments shall stand abated;
(*iii*)	in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
(*iv*)	in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs

Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021