VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

JULY 2022 EDITION

COMMUNIQUE

DIRECT TAX

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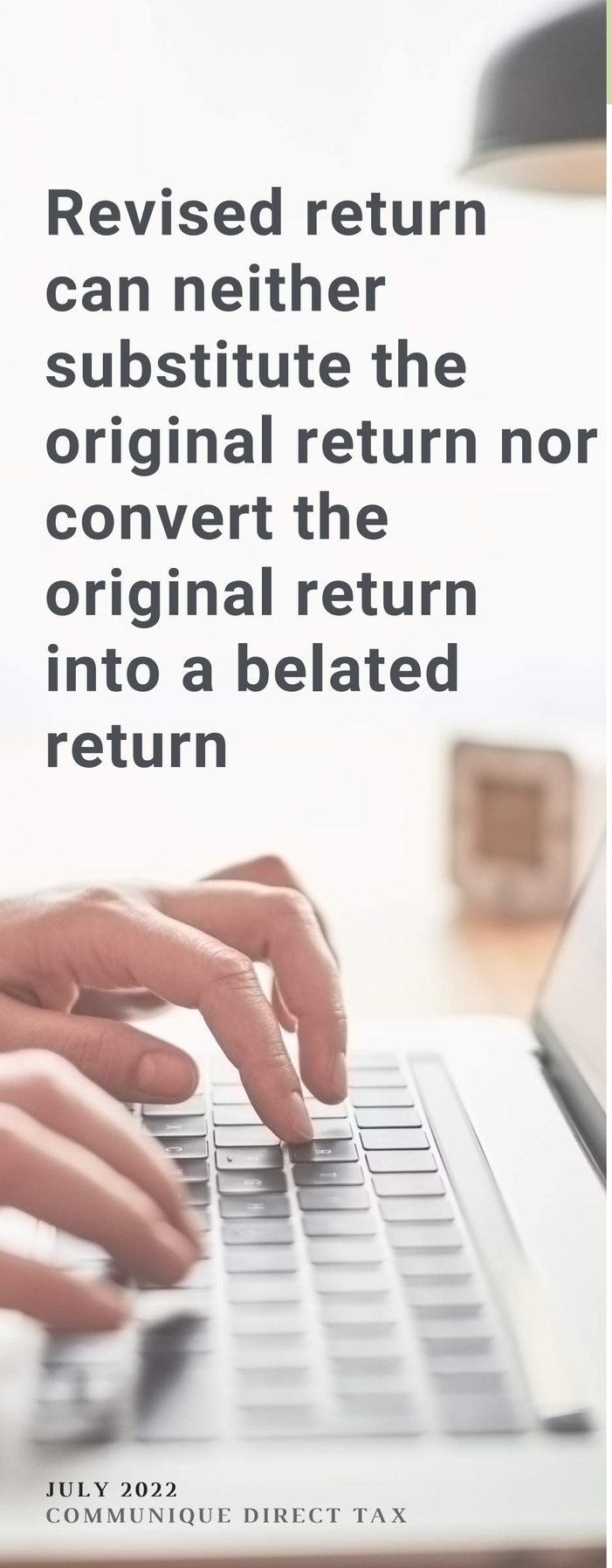
Inside this edition

Revised return can neither substitute the original return nor convert the original return into a belated return



JULY 2022
COMMUNIQUE DIRECT TAX

Facts

The respondent is a 100% export-oriented unit and engaged in the business of running a call centre and IT Enabled and Remote Processing Services who filed its return of income declaring loss of INR 15.48 crores and claimed exemption under Section 10B. Along with the original return, the respondent annexed a note to the computation of income in which the respondent clearly stated that the company is a 100% export-oriented unit and entitled to claim exemption under Section 10B of the IT Act and therefore no loss is being carried forward. Thereafter, the respondent filed a declaration before the AO stating that he does not want to avail the benefit under Section 10B and filed a revised return of income claiming carry forward of losses who rejected the withdrawal of exemption holding that the respondent did not furnish the declaration in writing before the due date of filing of return of income. Thereby, the AO made the addition in respect of denial of claim of carrying forward of losses under Section 72. The respondent filed an appeal before the CIT(A) who upheld the order passed by the AO making addition in respect of denial of claim of carrying forward of losses under Section 72. Aggrieved by the order passed by the CIT(A), the respondent filed an appeal before the ITAT, who decided the issue in favour of the respondent stating that the declaration requirement under Section 10B was filed by the respondent before the AO before the due date of filing of return of income as per Section 139(1) of the IT Act. ITAT allowed the respondent's claim for carrying forward of losses under Section 72. Feeling aggrieved and dissatisfied with the order passed by the ITAT, allowing the claim for carrying forward of losses, the Revenue preferred an appeal before the High Court, who by the impugned judgment and order, dismissed the said appeal. Hence, the Revenue is before this Court by way of present appeal.

Ruling

SC in the present case held that in view of the above discussion and for the reasons stated above, we are of the opinion that the HC has committed a grave error in observing and holding that the requirement of furnishing a declaration under section 10B is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory which is erroneous and contrary to the unambiguous language contained in Section 10B (8). SC thereby hold that for claiming the benefit under section 10B, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the appellant. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the respondent shall not be entitled to the benefit under Section 10B on non-compliance of the twin conditions as provided under the said section. The present appeal of the Revenue was accordingly allowed.

Source: SC in the case of PCIT vs Wipro Ltd. vide [2022] 140 taxmann.com 223 (SC) dated July 11, 2022

SC upholds search proceedings by Income-tax Department to un-layer the suspected layering of money and sets aside HC order quashing the search warrant

Facts

The respondent during the FY 2016-17 transferred a sum of INR 6 crores on 01-06-16 and INR 4 crores on 21-06-16 to M/s Goan Recreation Clubs Private Ltd. The respondent secured the loan by way of a mortgage of the property forming part of Survey No. 31/1-A situated in Village Bambolim, Distt. North Goa. It was an admitted fact that the respondent became the Director of the Company on 18-05-16 and then ceased to be so on 23-06-16. Further, the fact that the amount of INR 10 crores was repaid on different dates starting from 06-10-16 till 31-03-17 and after repayment of the loan, mortgage was released on 10-07-17. The Company paid interest as well. The respondent filed his income tax return showing the interest income of INR 42.52 lacs which has been taxed as well. The assessment was finalized under Section 143(3). After recording reasons to believe in the satisfaction note, search was conducted. The reasons recorded were produced before the High Court who held that the quick repayment of the loan shows that the investment was not meant to earn steady interest income. All this goes on to suggest that the investment and nature of transaction entered into by the petitioner was akin to the familiar modus operandi being employed by the entry operators to provide an accommodation entry to bring the unaccounted black money to books for brief period to run the business till sufficient fund is generated by running the business or some fund from any other unaccounted source came later on. That is the angle of the investigative process underway in which fund trail of the money paid by the petitioner is being investigated. HC held that none of the reasons to believe to issue authorization meeting the requirement of Section 132(1)(a), (b) and (c) have been found and therefore, the warrant of authorization issued by the Revenue was quashed. Consequently, all actions taken pursuant to such warrant of authorization were ordered to be rendered invalid. Thereafter, the Revenue preferred an appeal before SC.

Ruling

In the light of facts referred to above, SC held that the sufficiency or inadequacy of the reasons to believe recorded cannot be gone into while considering the validity of an act of authorization to conduct search and seizure. The belief recorded alone is justiciable but only while keeping in view the Wednesbury Principle of Reasonableness. Such reasonableness is not a power to act as an appellate authority over the reasons to believe recorded. Further, SC restated and elaborated the principles in exercising the writ jurisdiction in the matter of search and seizure under section 132 and held that High Court was not justified in setting aside the authorization of search dated 07-08-18. Consequently, the appeal filed by the Revenue is allowed and the order passed by the High Court is set aside. As a consequence, thereof, the Revenue would be at liberty to proceed against the appellant in accordance with law.

Source: SC in the case of PCIT vs Laljibhai Kanjibhai Mandalia vide [2022] 140 taxmann.com 282 (SC) dated July 13, 2022

NBFC's claim for written off bad debts cannot be rejected merely on the ground of change in method of accounting from mercantile to cash

Facts

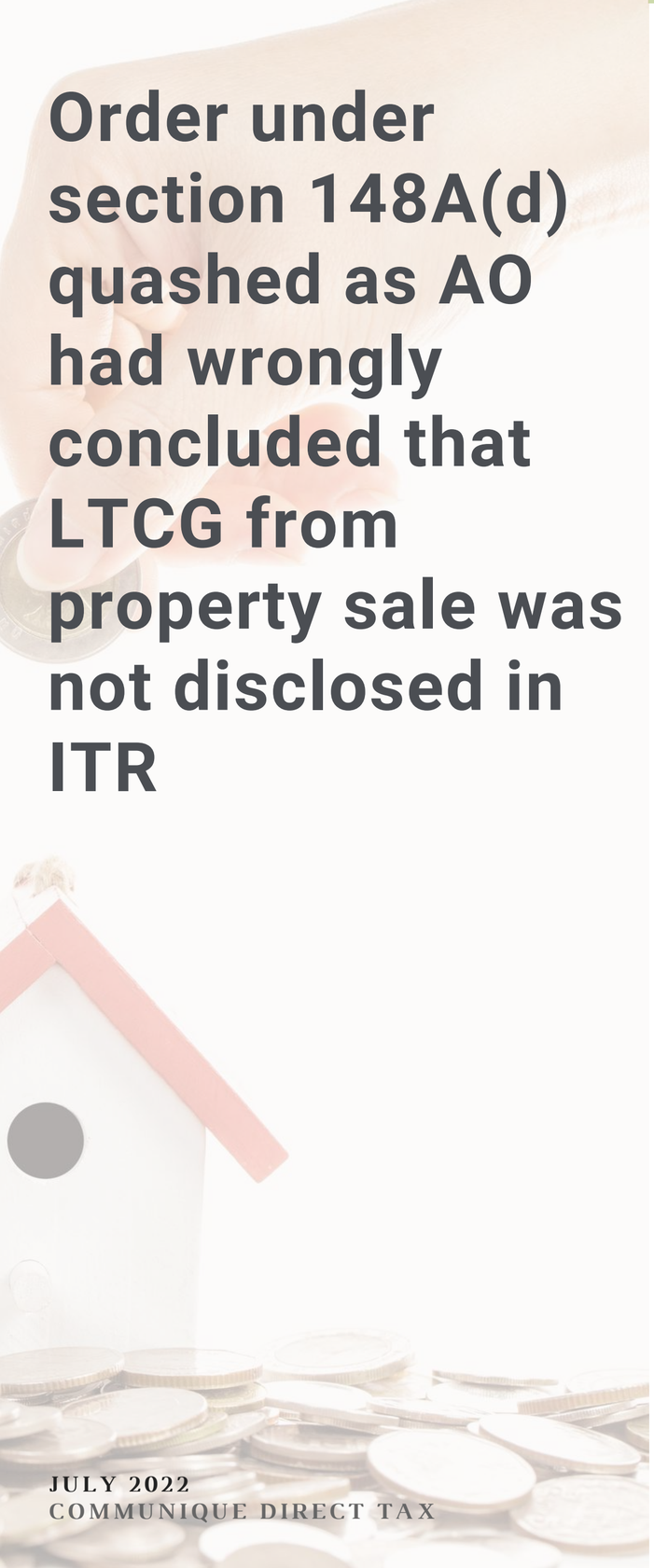
The Appellant Company was assessed to a sum of INR 20.70 lacs on ground of lease agreement entered into between the appellant and M/s. Orson Electronics as lessee to transfer the right to use of certain equipment's by way of lease. The first installment of lease amount was received by the appellant and further installments due were also accounted for as income in the respective years, as per the mercantile system of accounting although the lessee defaulted in payment of further installments. However, in view of the dispute with the lessee, the appellant filed a winding up petition against the lessee as the prospects of recovery of lease rentals were quite bleak and the appellant considering that the same could not be recovered in the foreseeable future decided to write off the amount of INR 20.70 lacs as bad debt. In the re-assessment, the writing off was not allowed by the AO observing that in view of the pendency of the dispute of the appellant before the HC, the appellant had not foregone its right to claim the lease rentals and that the write off was premature. The appellant filed an Appeal before the CIT(A) who partly allowed the appeal directing the AO to allow deduction of an amount of INR 20.70 lacs to be written off in the books of account observing that the lease rentals offered as income on mercantile basis can be definitely said to have become bad from the business point of view of the appellant and the appellant's subsisting right to recover the amount and the pendency of the matter before the HC was not a valid ground to postpone writing off of the amounts in question which had been offered for taxation in the earlier years. Aggrieved by the said order, the Revenue filed an appeal before the Tribunal who allowed the Revenue's Appeal and reversed the order of the CIT(A) holding that the appellant was maintaining mercantile system of accounting and if such reversal was allowed, then it would be a clear violation of the method of accounting adopted by the appellant and even if the claim of the appellant in respect of bad debt may be correct, the same could not be considered as the appellant had accounted for lease rentals and has also claimed depreciation. Aggrieved by the aforesaid order of the Tribunal, the appellant has filed the present appeal.

Ruling

HC held that no fault can be found wherein the lease rentals offered as income by the appellant on mercantile basis had become bad and the appellant had decided to write it off and did write off the same in its books of accounts in terms of the amended Section 36(1). HC stated that in fact, what emerges from Note-5 of making a special mention is that a prudent practice has been adopted by a limited company of informing its shareholders about the remote possibility of recovery of the said amounts and the decision to reverse and that the same would be accounted for as and when received. In our view, the finding of the Tribunal that the claim of the appellant in respect of bad debt cannot be considered, is without any basis. Once, a business decision has been taken to write off a debt as a bad debt in its books which decision as discussed above, is bona fide, that in our view, should be sufficient to allow the claim of the appellant. The method of accounting has no relevance to the issue. In our view, the Tribunal has misdirected itself in proceeding to give precedence to accounting principles over clear statutory provisions. Evidently, the written off lease rental amount has not been reversed from the income entry in Schedule-16 which is a clear case of writing off a bad debt in accordance with the provision of Section 36(1)(vii). The Tribunal has erred in rejecting the claim of the appellant for deduction of bad debt written off under Section 36(1)(vii) of the Act. The substantial question of law framed in this appeal is accordingly answered in favour of the appellant and against the Revenue. The order of the Tribunal was therefore set aside and the AO was directed to allow the claim of bad debt of INR 20.70 lacs and pass an appropriate Assessment Order in accordance with the aforesaid decision.

Source: HC, Bombay in the case of L.K.P. Merchant Financing Ltd vs DCIT vide [2022] 140 taxmann.com 548 (Bombay) dated July 18, 2022

Order under section 148A(d) quashed as AO had wrongly concluded that LTCG from property sale was not disclosed in ITR



Facts

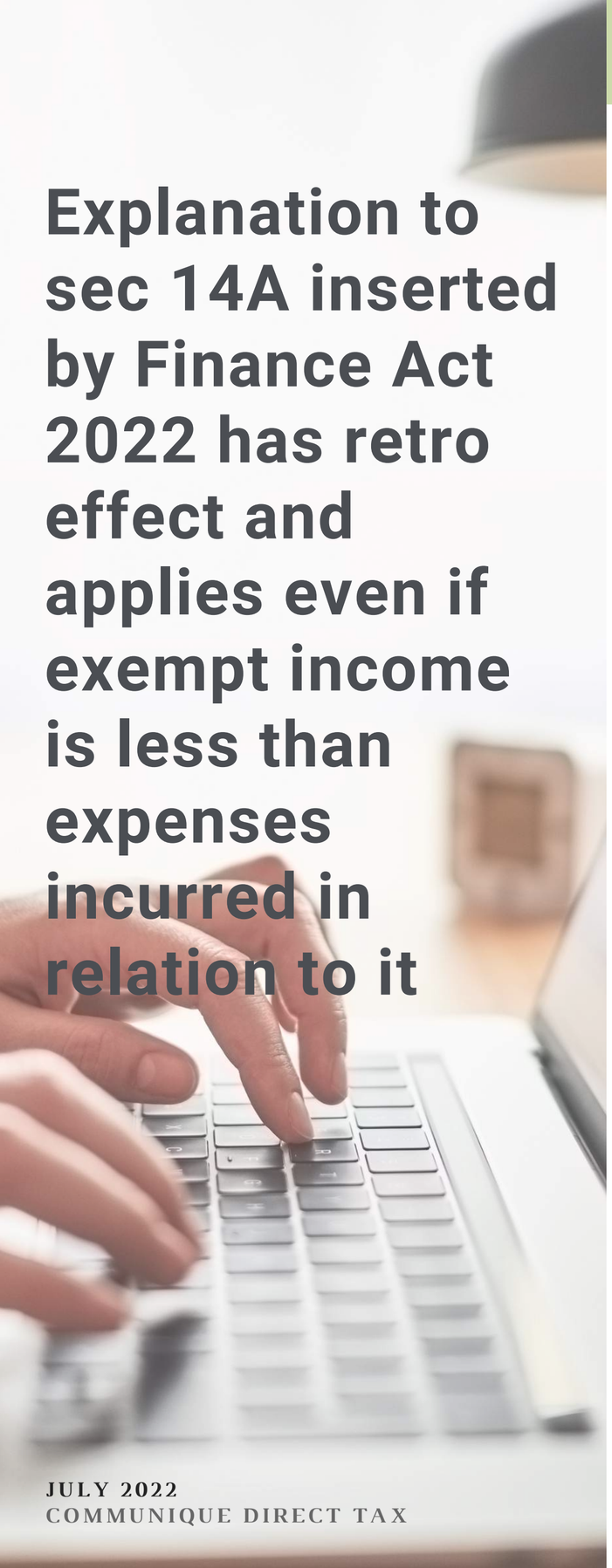
Present writ petition has been filed challenging the order dated 30th June, 2022 passed under section 148A(d) and the consequential notice dated 30th June, 2022 issued under section 148. Ld. Counsel for the appellant submitted that the reassessment proceeding in this case is clearly a case of 'change of opinion'. In support of his submission, he also drew Court's attention to the original assessment proceedings, which culminated in an order under sections 143(3) and 154. Further, he also added that on perusal of the paper book, it reveals that the issue which is sought to be reopened in the proceeding under Section 148 had been discussed, deliberated and verified by the AO at the time of original assessment proceedings. It seems that the AO had applied its mind and then passed the assessment order in favour of the appellant. However, while passing the impugned order under Section 148A(d), the Assessing Officer has wrongly concluded that the appellant had not disclosed the sale of the property and long-term capital gain in the ITR filed or was accepted by the Assessing Officer.

Ruling

IHC held that the impugned order and notice dated 30th June, 2022 issued under Section 148A(d)/148 are set aside and the matter is remanded back to the Assessing Officer for fresh consideration in accordance with law within four weeks. Accordingly, the present writ petition along with pending application stands disposed of.

Source: HC, Delhi in the case of Seema Gupta vs ITO vide [2022] 140 taxmann.com 463 (Delhi) dated July 19, 2022

Explanation to sec 14A inserted by Finance Act 2022 has retro effect and applies even if exempt income is less than expenses incurred in relation to it



Facts

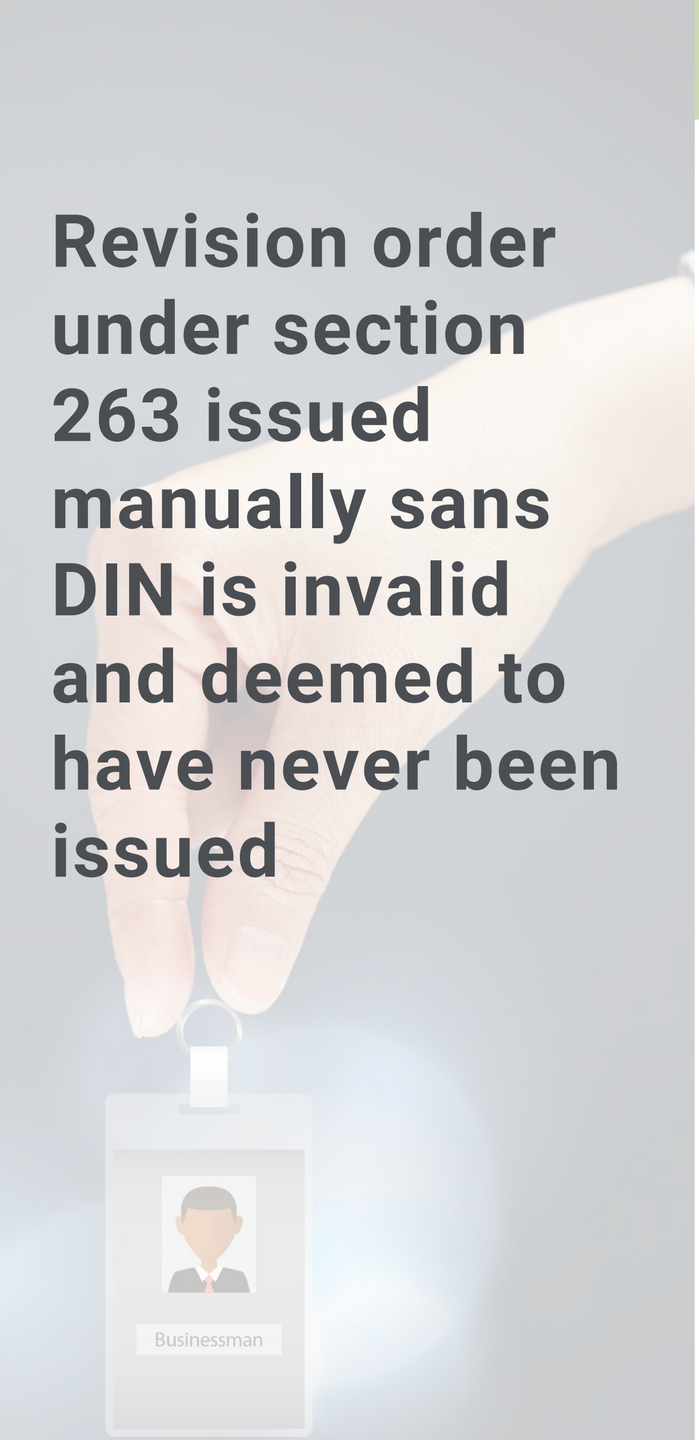
During the assessment proceedings, the AO noticed that apart from other income the appellant during the year earned tax exempt dividend income of INR 3.71 crores arisen on the investments made by the appellant. However, the AO noticed that the own funds of the appellant were not sufficient to meet the investments in question. AO, therefore, applied the provisions of section 14A read with rule 8D of the Income Tax Rules and computed the expenditure relatable to the aforesaid tax-exempt dividend income at INR 10.62 crores. Since the appellant in its computation of income had suo-moto disallowed an amount of INR 2.25 crores on account of expenditure relatable to the tax-exempt dividend income earned by the appellant, the AO, therefore, disallowed the balance amount of INR 8.37 crores and added back the same into the income of the appellant and computed the taxable income accordingly. Being aggrieved by the above order of the AO, the appellant filed appeal before the CIT(A) who while relying upon the decision of the hon'ble Delhi High Court in the case of PCIT versus Moderate Leasing and Capital services Private Limited, held that the disallowance under section 14A cannot exceed the total tax-exempt income earned during the year and accordingly restricted the disallowance to the extent of exempt income earned. Being aggrieved by the above action of the CIT(A), the revenue has come in appeal before us.

Ruling

ITAT in view of the above facts, held that the explanation to section 14A inserted by Finance Act 2022 being clarificatory in nature has retrospective effect and stated that the impugned order of the CIT(A) is therefore not sustainable in the eyes of law and the same is accordingly set aside. ITAT therefore restored the order of the Assessing Officer and allowed the Revenue's appeal.

Source: HC, Delhi in the case of ACIT vs Williamson Financial Services Ltd. vide [2022] 140 taxmann.com 164 (Guwahati) dated July 06, 2022

Revision order under section 263 issued manually sans DIN is invalid and deemed to have never been issued



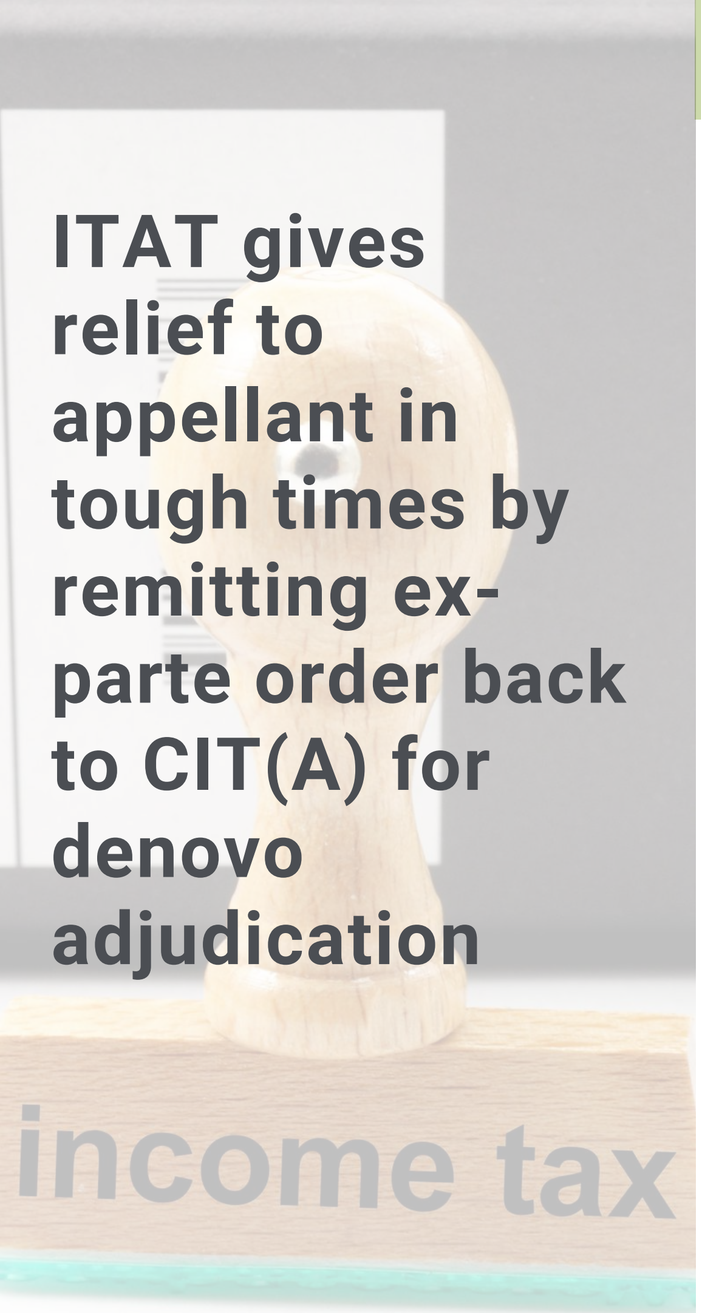
Facts

The appellant is a charitable trust registered under section 12AA with effect from 27-10-05. The trust operates under the Tata Cancer Hospital looking after the treatment of cancer patients with main objectives to promote prevention, early diagnosis, treatment, rehabilitation and research for cancer patients. The appellant filed its return of income on 29-09-16 reporting total income for INR Nil. The case of appellant was selected for scrutiny for which statutory notices were issued and were compiled by the appellant. Assessment was completed under section 143(3) determining total income at Rs. NIL. Subsequently, Ld. CIT(E), Kolkata initiated revisionary proceeding under section 263 proposing to revise the aforementioned assessment order for which a show cause notice was issued on the appellant to which response was submitted within the allotted time frame. The Ld. CIT(E) passed the impugned order rejecting the contentions of the appellant. The appellant thereafter preferred an appeal before the Tribunal stating the fact that the impugned order passed under section 263 did not contain any Document Identification No. (DIN) nor any reason for non-issuance of DIN along with the impugned order. The appellant stated that the impugned order is without any DIN which is in violation of the very basic object of CBDT Circular No.19/2019 dated 14-08-19. He further stated that non-issuance of DIN has not been acknowledged in the body of the impugned order so as to clarify the reason for its non-issuance. He submitted that the whole objective of the said CBDT Circular requiring a mandatory quoting of DIN in all the communications of the department is to maintain the audit trail which otherwise gets lost. In order to tackle this ambiguity, the said circular vide para 4 renders such orders without a DIN as “invalid or deemed to have never been issued”.

Ruling

ITAT noted the facts of the case and held that it is an undisputed fact that the impugned order has been issued manually which does not bear the signature of the authority passing the order. Further, from the perusal of the entire order, in its body, there is no reference to the fact of this order issued manually without a DIN for which the written approval of CC/DGIT was required to be obtained in the prescribed format in terms of the CBDT circular. We also note that in terms of para 4 of the CBDT circular, such a lapse renders this impugned order as invalid and deemed to have never been issued. The additional ground was therefore decided in favour of the appellant by holding that the order passed by the Ld. CIT(E) is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT circular no. 19 of 2019. Having so held on the legal issue raised by the appellant in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the appellant was allowed in terms of above observations and findings.

Source: ITAT, Kolkata in the case of Tata Medical Centre Trust vs CIT (Exemption) vide [2022] 140 taxmann.com 431 (Kolkata-Trib.) dated July 18, 2022



ITAT gives relief to appellant in tough times by remitting ex-parte order back to CIT(A) for denovo adjudication

Facts

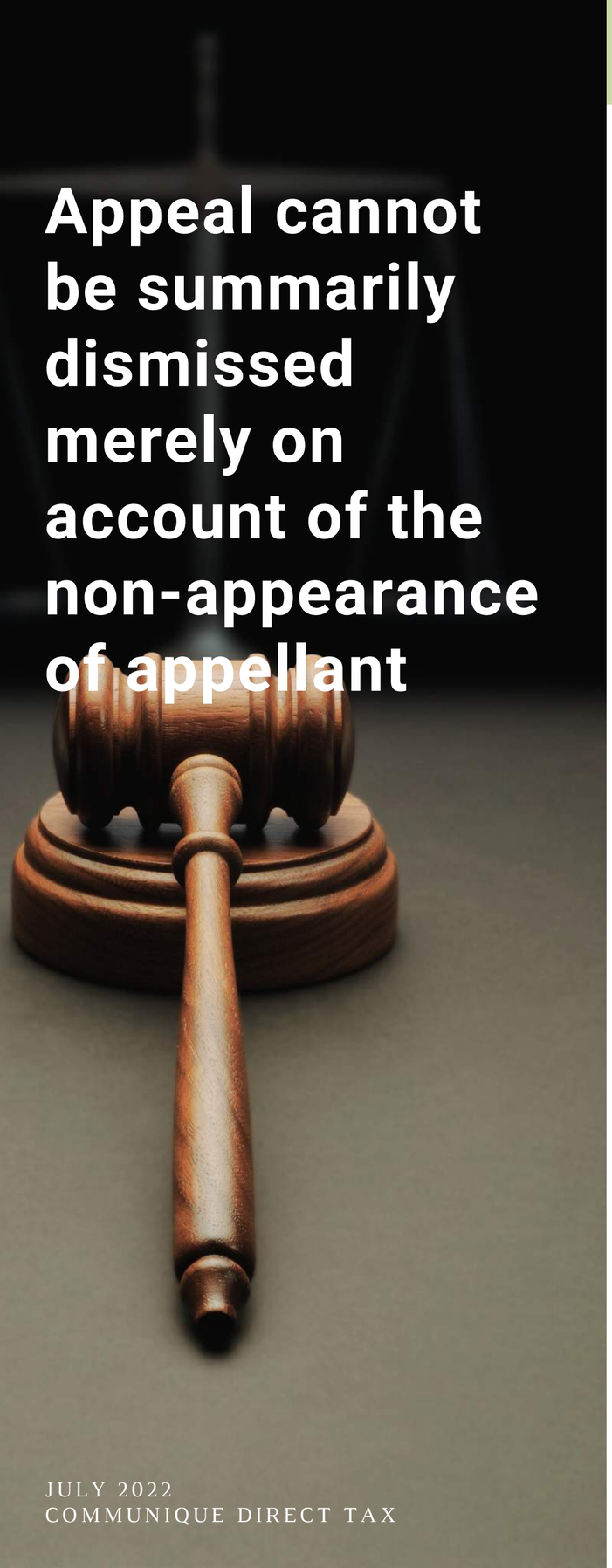
The business of the appellant had come to a virtual halt and was on the verge of closure of business. As per the board resolution dated 15-12-21, that the Managing Director of the Company had also resigned and an Additional Director had to be inducted to ensure smooth functioning of the company. Learned counsel for the appellant, however, assured and submitted before the CIT(A) that in the event of the appellant being given one more opportunity of appearing before the CIT(A), the appellant will ensure scrupulous compliance with the notices of the CIT(A) and an expeditious disposal of appeals on merits. We, were thus urged to remit the matter to the file of the CIT(A) for fresh adjudication after given one more opportunity of hearing to the appellant.

Ruling

ITAT held that having regard to the undertaking given by the learned counsel for the appellant and having regard to the fact that the appellant was indeed traversing through a very difficult patch of time, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication de novo on merits after given one more opportunity of the appellant, in accordance with the law and by of the speaking order. The appellant, however, is cautioned to ensure that at least this time the appellant will duly co-operate and expeditious disposal of the remanded proceedings and scrupulous comply with the notices of hearing. In view of these discussions, as also bearing in mind the entirety of the case, we deem it fit and proper to remit the matter to the file of the CIT(A) for fresh adjudication as above. In the result, all the appeals are allowed.

Source: ITAT, Mumbai in the case of Samira Habitats India Ltd. vs DCIT vide [2022] 140 taxmann.com 401 (Mumbai-Trib.) dated July 19, 2022

Appeal cannot be summarily dismissed merely on account of the non-appearance of appellant



Facts

The appellant has not filed return of income since the company was under liquidation. Based on the information received from Non-Filer Monitoring System, the case of the appellant was re-opened under section 147. The assessment was completed under section 144 with assessed income at INR 1.25 crores. The Income Tax Department had collected information from various sources such as Annual Information Return, Central Information Branch, Tax Deduction at Source (TDS) statement that the appellant had deposited cash aggregating INR 62.50 and as per 26AS, had received income from contractors of INR 10.62 crores. The AO held that as the appellant has neither complied with any of the aforementioned issued notices nor attended before the undersigned in respect of the re-assessment proceedings, it can be constituted as that the appellant is not willing to comply with the statutory notices and is not in possession or any supporting evidences and made the addition of INR 11.25 crores as unexplained income under section 68. The appellant preferred an appeal before the Ld. CIT(A) who simply dismissed the appeal summarily without even referring to the elaborate statement of facts and specific issues raised in the grounds of appeal.

Ruling

ITAT held that the issues implicit in the statement of facts do raise specific “points for determination” calling for adjudication by the learned CIT(A). While an appellant indeed has, under section 250(2)(a), “the right to be heard at the hearing of the appeal”, such a right of the appellant cannot be put against the appellant inasmuch while the appellant is to be essentially extended a fair and reasonable opportunity of hearing before an appeal can be disposed of, the non-exercise of this right by the appellant cannot be a reason enough for the CIT(A)'s not dealing with the points so raised before him on merits. The exercise of the “right to be heard at the hearing of the appeal” by “the appellant, either in person or by an authorized representative condition”, under section 250(2)(a), is not a condition precedent for the disposal of appeal on merits in accordance with the scheme of Section 250(6). ITAT held that in our considered view, irrespective of the non-appearance of the appellant before the CIT(A), the CIT(A) ought to have dealt with the issues so raised by the appellant on merits and by way of speaking order and in accordance with the law. We, therefore, deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication on merits, in the light of the above observation and also deem it appropriate to direct the learned CIT(A) to provide the appellant yet another fair and reasonable opportunity of hearing. ITAT added that as the matter is being remitted to the file of the learned CIT(A) for adjudication on merits, the grievances of the appellant, on merits, do not call for any adjudication at this stage. In the result, the appeal of the appellant is allowed.

Source: ITAT, Mumbai in the case of Marvel Industries Ltd. vs DCIT vide [2022] 140 taxmann.com 430 (Mumbai-Trib.) dated July 19, 2022

Amount disallowed under section 14A r.w.r 8D is not to be added to net profit for computing book profit under section 115JB for MAT purposes

INCOMETAX

Facts

The appellant company is engaged in software development and its various undertakings have been recognized under software technologies Park scheme and unit no. 2 situated at Pune and Unit no.3 situated at Bangalore and are eligible to claim benefit under section 10A. The appellant filed its return of income at INR 93.93 crores. The assessment order under section 143(3) of the Act was passed at a total income of INR 21.98 crores. Book profit of the appellant was determined at INR 17.78 crores.

The additions were made on the under mentioned grounds:

- During the course of assessment proceedings, the appellant treated the lease rental income as business income whereas the learned AO treated it as rental income wherein INR 3.17 crores was treated as rental income and after granting statutory deduction at the rate of 30%, an amount of INR 2.22 crores was taxed under the income from house property.
- The learned AO computed disallowance under section 14 A of INR 3.83 lacs as per Rule 8D
- The adjustment on account of Arm's Length Price of international transaction of INR 5.84 crores was also made.
- The appellant preferred an appeal before the ld. CIT(A) who disallowed the appeal. The appellant preferred an appeal before the Ld. Tribunal.

Ruling

IThe Tribunal strongly submitted that there is no contradiction in the findings of the Ld. CIT(A). The Ld. CIT(A) has very categorically stated that provisions of Sec. 56(2)(iii) are not applicable on the facts of the case. Tribunal placing reliance on the order passed by Hon'ble SC in the case of CIT Vs Shambu Investment Pvt. Ltd. 249 ITR 47 held that "where prime object of the appellant under the agreement was to let out the portion of the said property to various occupants by giving them additional right of using the furniture and fixtures and other common facilities for which rent was being paid month by month. Income derived from the said property is an income from property and should be appellant as such."

- The Tribunal held there is a separate mechanism provided for adjustment to the book profit of this kind of expenditure placing reliance on the order decided by Special bench in case of ACIT vs. Vireet Investment Pvt. Ltd. 58 ITR (T) 313 holding that the lower authorities are not correct in adding notional expenditure as computed under section 14A of INR 3.82 lacs and increasing the book profit by that sum under Section 115JB. In the result, this ground is allowed.
- The Ld. Tribunal stated that in fact the learned CIT(A) has categorically, after including/excluded certain comparable computed the arithmetic mean of the comparable companies at 18.30%, compared with the margin of the appellant as computed by the TPO at 20.34% and as the margin of the appellant is higher than the margin of the comparable, deleted the transfer pricing adjustment. Tribunal held that the learned assessing officer is not aggrieved with any of the comparable included or excluded by the learned CIT(A). Therefore, the said ground raised by the CIT(A) is dismissed.

Source: ITAT, Mumbai in the case of ACIT vs Geometric Software Solutions Co. Ltd. vide [2022] 140 taxmann.com 647 (Mumbai-Trib.) dated July 29, 2022

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