VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Same Income cannot be taxed twice as it would amount to double taxation

Facts

The issue of additions made u/s 37 appears to have emanated in the backdrop of certain material which was gathered in the course of a search conducted in respect of the AMR Group of Companies. According to the appellant, that material would appear to have lent credence to an allegation of bogus expenses having been claimed by the respondent-assessee and quantified at INR 40 Crores. The Tribunal had come to observe that the alleged non-deduction of TDS on the payment so made, the submission of the assessee remained that it was wrongly alleged that TDS had not been deducted on the payments made to the two companies and in support copies of TDS certificates made to AMR and ECC, invoices raised by them, letter of intent and confirmation certificates for work done were furnished before the authorities below. It was specifically submitted that TDS had not only been deducted, but had also deposited on various dates between 20.12.2011 and 4.01.2012 in the case of AMR and between 18.10.2011 and 26.12.2011 in the case of ECC.

The alleged non-deduction of +96TDS) on the payment so made, the submission of the assessee remained that it was wrongly alleged that TDS had not been deducted on the payments made to the two companies and in support copies of TDS certificates made to AMR and ECC, invoices raised

by them, letter of intent and confirmation certificates for work done (dated 11.03.2016) were furnished before the authorities below. It was specifically submitted that TDS had not only been deducted, but had also deposited on various dates between 20.12.2011 and 4.01.2012 in the case of AMR and between 18.10.2011 and 26.12.2011 in the case of ECC.

Ruling

HC stated that we are informed that it had never claimed the expense of INR 40 Crores. In that view of the matter, the question of addition would not arise. We also bear in consideration the fact that the aggregate amount of INR 40 Crores had already been offered to tax by two of the constituent entities of the AMR Group of Companies and who had been also assessed. In view of the aforesaid, we find that the appeal fails to raise any substantial question of law.

High Court, Delhi in the case of PCIT vs One hub (Chennai) (P.) Ltd. vide [2024] 169 taxmann.com 475 (Delhi) on December 12, 2024

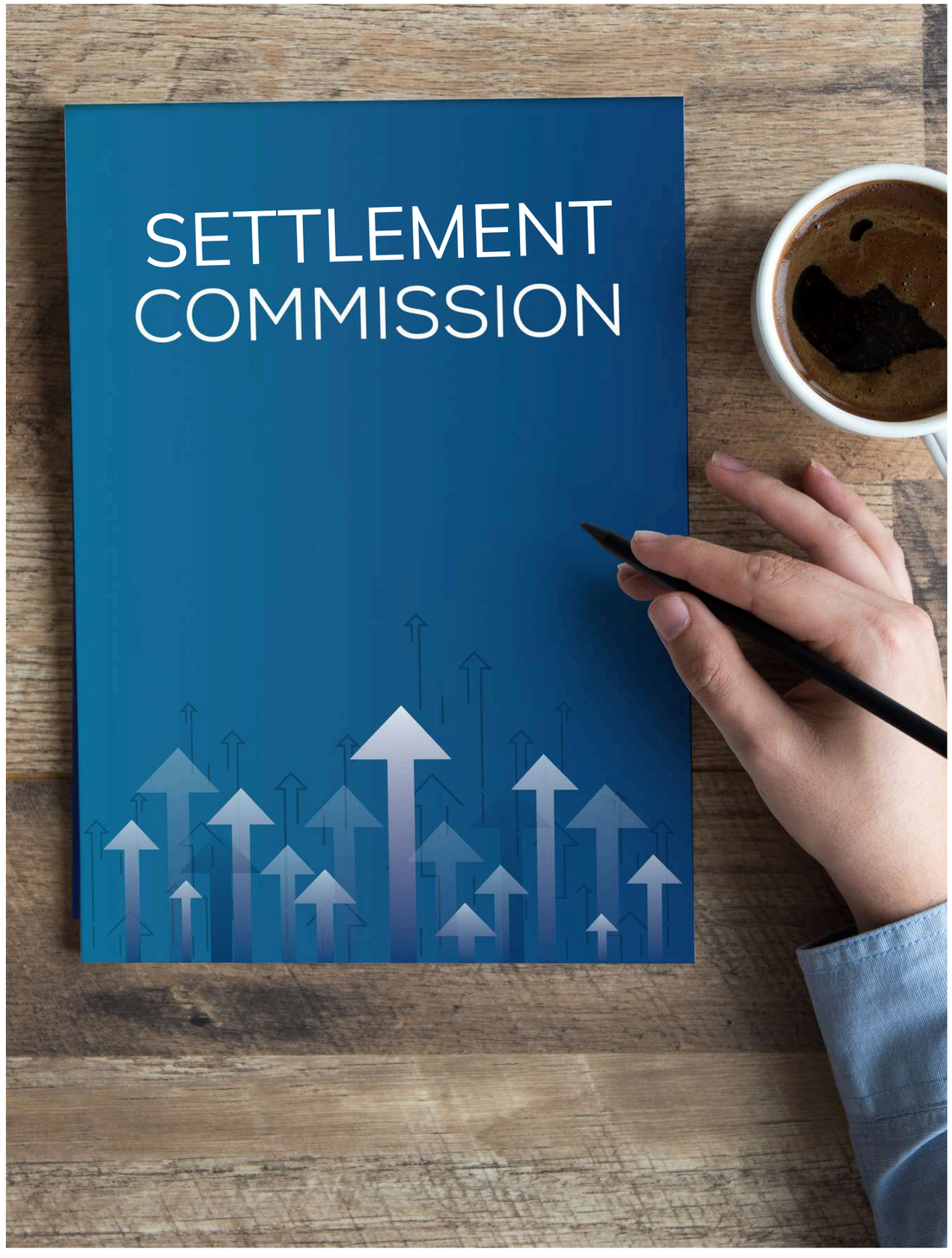
Partial acceptance of a settlement is not envisaged under Income Tax Act; thus, High Court was justified in rejecting writ filed by assessee only on said particular issue of deemed dividend

Facts

The appellant has a 70% shareholding in two companies, namely M/s Delta Aggregators and Sand Pvt. Ltd. and M/s Delta Ms and Pvt. Ltd. A search and

seizure action u/s 132 was carried out on 13-10-17 at the business premises of the two companies as also at the residence of the appellant. During the pendency of the proceedings-initiated u/s 153A, the appellant, along with the two companies, preferred settlement applications before the Interim Board for Settlement. In this Writ Appeal, we are concerned only with the settlement application put in by the appellant in his personal capacity. That application was filed on 26-02-21, and the appellant admitted an undisclosed income of Rs. 44,00,000 towards remuneration earned outside the banking channels for the AY 2013-14 to 2018-19.

On the settlement application being entertained by the IBS, a report was called for in terms of Rule 9 of the Income Tax Settlement Commission (Procedure) Rules from the PCIT, Kochi. In the report that was submitted before the IBS, the Principal Commissioner opined that the appellant had not disclosed an additional income to the extent of Rs. 10,52,12,443/- for the AYs 2012-13 to2018-19. Although the appellant preferred a detailed objection to the said report, the proceedings before the IBS ultimately culminated in the final order which was impugned in the writ petition. By the said order of the IBS, the total income of the appellant was settled at Rs. 35,36,42,238/- together with applicable interest thereon. The appellant was also granted immunity from prosecution and from imposition of penalty under various provisions of the I.T. Act. The plea of the appellant for capitalisation of the amount offered as additional income was also allowed.



In the writ petition, the challenge of the appellant to the impugned order of the IBS was essentially confined to the finding of the IBS on the issue of deemed dividend, which the IBS found had to be treated as undisclosed income of the appellant.

Ruling

High Court held that in our view, even an erroneous finding in law by the Settlement Commission, in relation to one of many issues that arose in a case for settlement before it, would not suffice for setting aside the order of the Settlement Commission that settles a case. This is because, as rightly found by the learned Single Judge, the settlement envisaged under the settlement provisions under the I.T. Act is of a case as a whole and not in parts. A defect that vitiates a settlement must be one that vitiates the whole and not merely any part of the settlement. It follows, therefore, that if the defect pointed out by a person who challenges an order of settlement is merely that the Settlement Commission has chosen to take one of two possible views that can be legally taken in respect of an issue, then this Court would not be justified in interfering with that order of settlement passed by the Settlement Commission. In the spirit of settlement, and more so when the assessee does not choose to contest the rest of the terms of the settlement, the assessee cannot be permitted to contend so. A settlement partakes the nature of a negotiated contract, and there is always a certain "give and take" in every settlement. The test is to see whether on an overall assessment the parties to the settlement are satisfied.

The settlement, in other words, must fail or succeed as a whole. A partial acceptance of a settlement is not envisaged under the I.T. Act, and the courts must defer to that scheme of statutory finality envisaged for settlement under the I.T. Act while exercising the jurisdiction of judicial review under Article 226 of the Constitution.

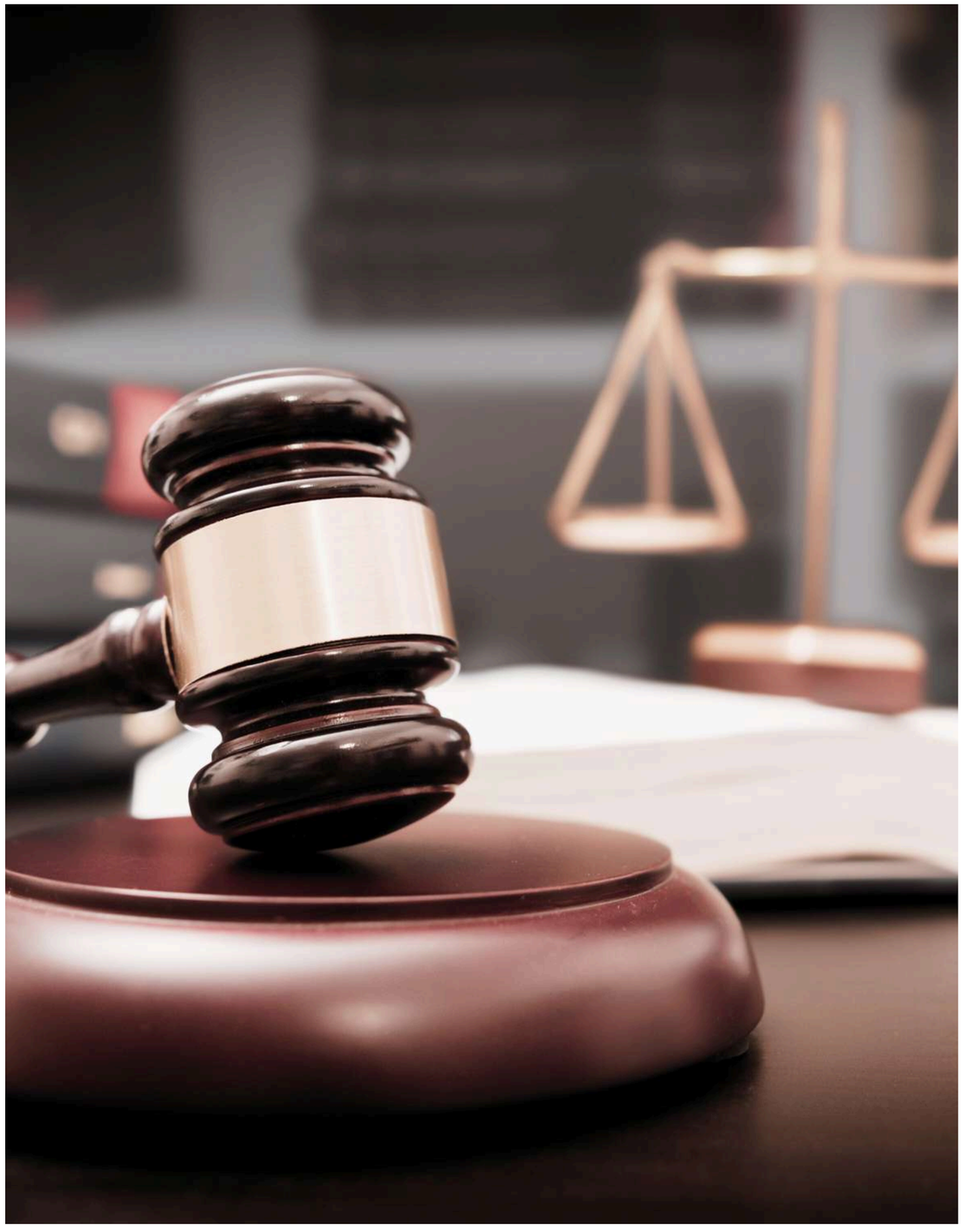
We, therefore, see no reason to interfere with the impugned judgment of the learned Single Judge, and for the reasons stated in the said judgment as supplemented by the reasons in this judgment, the Writ Appeal fails, and is accordingly dismissed.

High Court, Kerala in the case of Thomas Philip vs PCIT vide [2024] 169 taxmann.com 694 (Kerala) on December 12, 2024

Final assessment order in name of non-existent amalgamated entity was without jurisdiction where assessee informed the department about amalgamation of two companies

Facts

The principal ground as raised on behalf of the assessee before the CIT (A) was that the assessment order was made in the name of M/s. SPE Networks - India Inc. (SPENI) which had stood amalgamated with Sony Pictures Networks India Private Limited (SPNI). The assessee accordingly had informed the department by its letter which has been referred to in the impugned order, as addressed to the Assessing Officer opting not to file any objections in the name of SPENI before the Dispute Resolution Panel



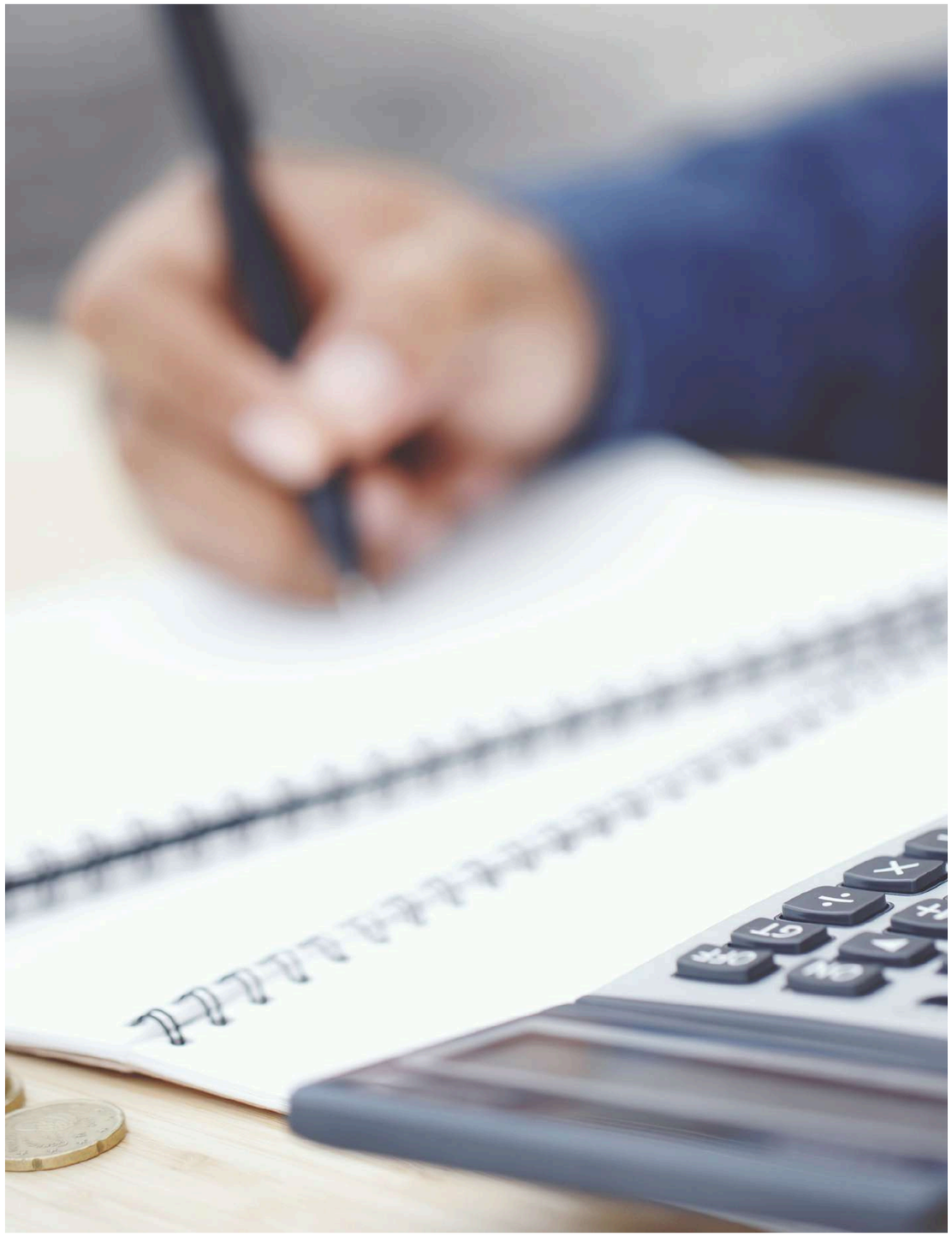
and also requesting to pass the final assessment order in the name of SPNI, as SPENI is no more in existence. However, despite such intimation, the Assessing Officer had proceeded to pass the final assessment order in the name of SPENI i.e. M/s. SPE Networks - India Inc. u/s. 143(3) r.w.s 144(3). This order of assessment was assailed by the assessee before the CIT (A) and has succeeded before the CIT(A), on the ground that the impugned assessment order was passed against a non-existent entity. The assessee contended that the proceedings stood squarely covered by the decision of the **Supreme Court in PCIT, New Delhi v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR613 (SC).** The Tribunal has observed that as there was a clear intimation by the assessee informing the Assessing Officer, as also the Transfer Pricing Officer about the amalgamation between SPENI and SPNI under Sections 391 to 394 of the Companies Act effective from 1 April 2015 and that the Assessing Officer could not have proceeded to pass the assessment order against a non-existent entity. The Tribunal has in fact observed that apart from the first communication dated 02-01-17, there was a subsequent communication dated 27-01-17. The Tribunal observed that such factual position as pointed out by the assessee was not assailed by the department.

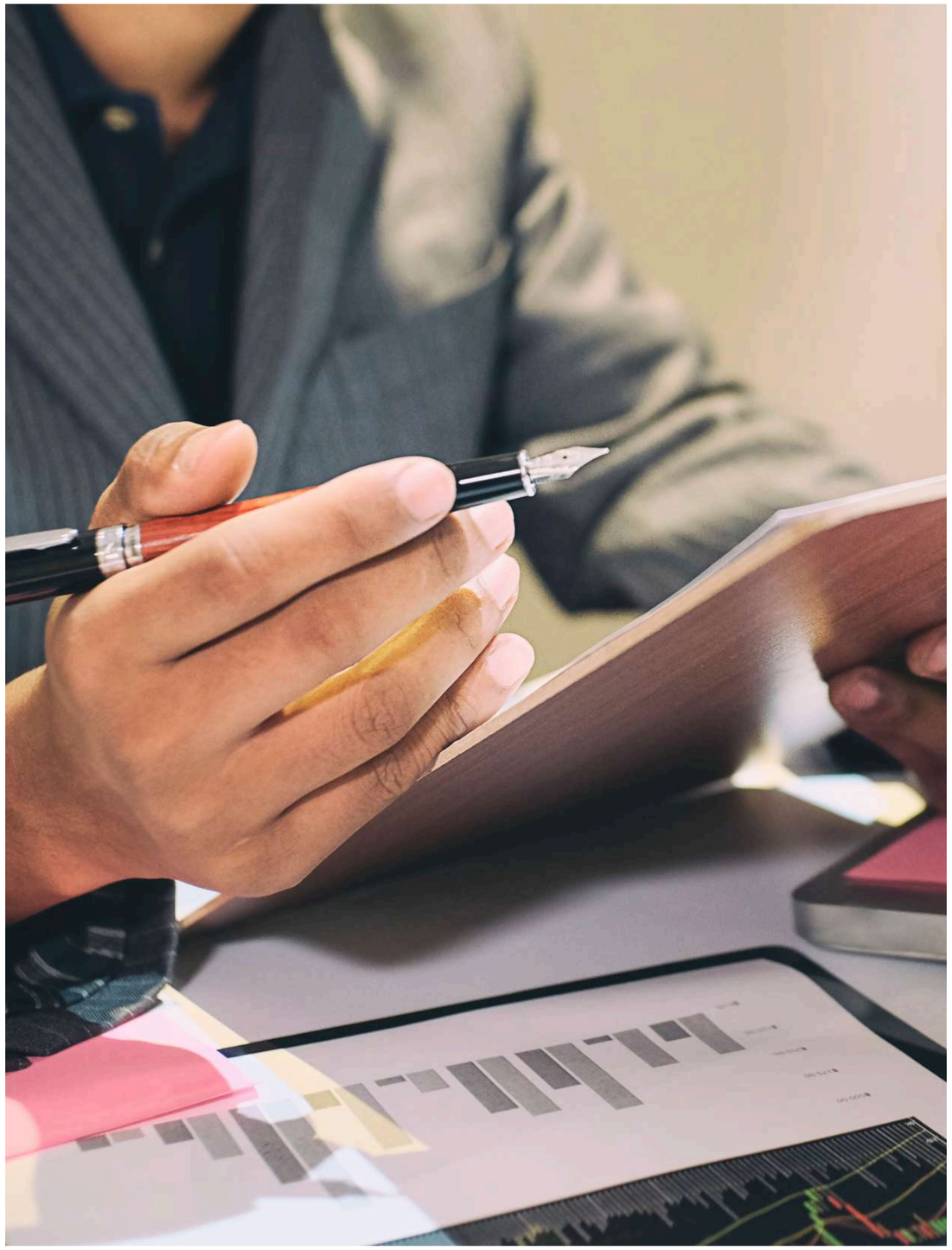
Ruling

In our view, the findings, as recorded by the Tribunal in paragraph 4 rejecting

the Revenue's appeal following the decision of the Supreme Court in PCIT, New Delhi v. Maruti Suzuki India Ltd. High Court also held that in a recent decision of this Court in **Uber India Systems Private Limited v. ACIT & Ors. [Writ Petition (L.) No. 23562 of 2024],** in similar circumstances, this Court has allowed the writ petition filed by the assessee, wherein the proceedings were initiated against a non-existent entity following the decision of the Supreme Court in Maruti Suzuki India Ltd. as also the decision in **Teleperformance Global Services (P.) Ltd. v. ACIT, Central Circle 25(1), New Delhi [2021] 127 taxmann.com 46/281 Taxman 331/435 ITR 725 (Bombay)** as rendered by this Court. In the light of the above discussion, in our opinion, the appeal would not give rise to any question of law.

High Court, Bombay in the case of PCIT vs Culver Max Entertainment (P.) Ltd. vide [2024] 169 taxmann.com 586 (Bombay) on December 19, 2024





Where assessee-trust filed its return of income belatedly but within time allowed u/s 139(4A), Commissioner (Appeals) erred in not allowing claim u/s 11, as per CBDT Circular No.173/193/2019-ITA-I dated 23-4-19

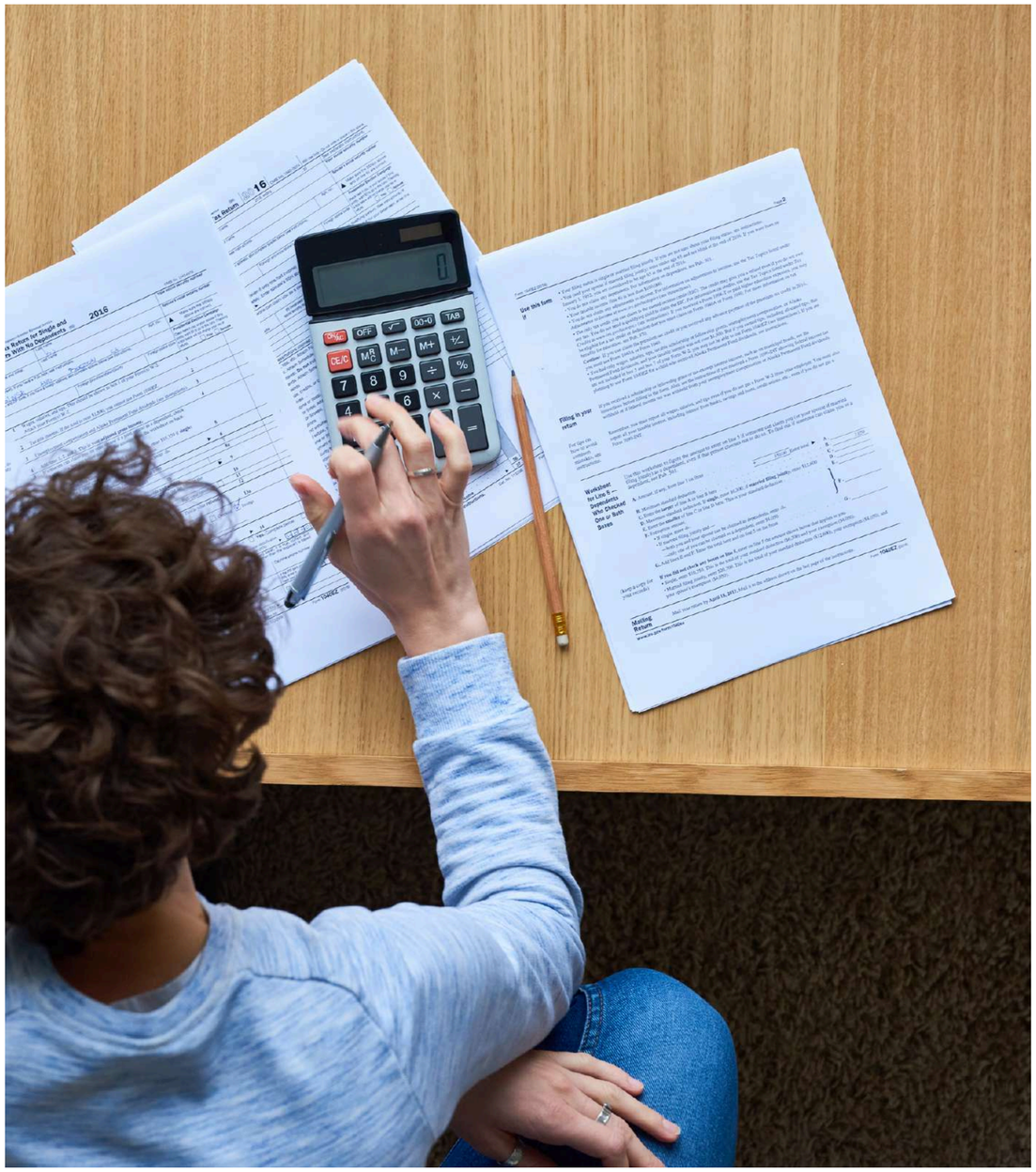
Facts

The assessee is a Trust, which enjoyed section 12A registration and filed its Return for AY 2018-19 belatedly on 30-11-18 declaring total income of Rs. NIL and claimed refund of Rs. 1,96,656. However, the CPC while processing the return u/s. 143(1) computed the total income at Rs. 2,14,33,895 and raised demand of Rs. 92,83,542 instead of refund as claimed by the assessee. The reason for disallowing the exemption claimed u/s. 11 was that the assessee didn't filed its ITR, and Audit Report in Form 10B on or before due date as per the Act. On appeal, the Ld. CIT(A) noted that the assessee had filed the return on 30-11-18, whereas the due-date for filing of return u/s. 139(1) was 30-09-18 and Audit Report in Form 10 was filed only on 31-10-18 due date for the relevant AY was on 30-08-18 (since as per provisions of Sec.44AB of the Act, Audit Report had to be filed one month prior to the due date of filing of ITR). The Ld. CIT(A) also noted that the competent authority has condoned the delay in filing of the Audit Report u/s. 10B vide order dated 30-01-24. But since, the assessee filed the ITR after the due date u/s 139(1), he upheld the action of the CPC denying the exemption claimed u/s 11. Against this impugned action of the Ld. CIT(A), the assessee is before us. The Ld.AR assailing the action of the Ld. CIT(A)

brought to our notice that CBDT Circular No.F.No.173/193/2019-ITA-I dated 23.04.2019, which clarifies that if an assessee Trust files its return belatedly but within time allowed u/s.139(4A) of the Act, then the AO/CPC must allow the claim u/s. 11 of the Act.

Ruling

On the strength of the aforesaid Circular, the Ld. AR submitted that since the assessee is registered u/s.12AA, in order to claim benefit of exemption u/s 11, the requirement of Law was only to file the return of income within the time allowed u/s.139 of the Act and the CPC as well as Ld CIT(A) erred in prescribing the time limit as the due date u/s. 139(1). According to him, such time restriction can't be placed by CPC/CIT(A) and deny the benefit of exemption u/s 11. In other words, if the assessee has filed its RoI within the time allowed u/s 139, (i.e. even if it is filed belatedly before the time allowed u/s 139(4A)), then the CBDT circular has directed CPC to rectify its orders passed u/s 143(1)(a) as well as demands raised be also rectified. Since CBDT Circular is binding on the Income Tax Authority, ITAT held that the Ld. CIT(A) erred in not following it, since assessee has filed its ITR/RoI well before time allowed u/s 139(4A). Therefore, the impugned order of the Ld. CIT(A) is set aside and this issue was restored back to the file of the Ld. CIT(A) with a direction to pass rectification order as per the CBDT Circular NO.173/193/2019-ITA-I dated 23-04-19. The appeal filed by the assessee was therefore allowed for statistical purposes.



ITAT, Chennai in the case of K M Educational & Rural-development Trust vs ITO vide [2024] 169 taxmann.com 617 (Chennai - Trib.) on December 04, 2024

Deduction for residential property purchased in the name of the spouse would not disentitle deduction u/s 54F, as, for purpose of section 54F, new residential house need not be purchased by assessee in his own name.

Facts

The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO by which he has disallowed the claim of deduction u/s 54F of Rs.44,27,994/- and added the same to the total income of the assessee.

The AO noted that assessee has sold an immovable property during the relevant year for consideration of Rs.50,40,000 which was received in cash and that sale proceeds has been deposited into his and his wife's bank account. Further, he noted that the assessee has claimed a deduction of Rs. 44,27,994 being the capital gain investment into residential property purchased by his wife. Therefore, the AO issued SCN to the assessee 'as to why' he should not treat the deduction claimed u/s. 54F to the tune of Rs. 44,27,984 as LTCG of the assessee for AY 2012-13. The assessee in order to justify the claim of deduction brought to his notice that a residential house was purchased by him on 18-01-12 in the name of his wife and that this house is the only residential property of theirs. Inother words, it was asserted that the assessee didn't have any other residential property other than the propertyit purchased in his wife's name. However, the AO noted that assessee's wife is also assessed to tax and independently files her RoI.

ITAT Rulings

And that the assessee has sold the immovable property for a consideration of Rs.50,40,000 and has admitted capital gains to the tune of Rs. 47,00,589 and has claimed deduction u of Rs. 44,27,994 and the balance amount of Rs. 2,72,595 was offered to tax. According to the AO, the amount of deduction claimed u/s 54F was not allowable since the residential property in question was purchased in the name of assessee's wife who is also assessed to tax separately. Hence, he held that the assessee's claim of exemption u/s 54F on account of purchase of property in his wife's name is not allowable and therefore, he disallowed the deduction claimed and added it to the total income. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who dismissed the same. Aggrieved, the assessee is in appeal before this Tribunal.

Ruling

ITAT is of the opinion that assessee's claim of deduction u/s 54F ought to have been granted to assessee as held by the Hon'ble Madras High Court in the case of CIT v.Natarajan though in the context of sec 54, which section in pari materia with sec.54F. And it is noted that predominant judicial view in this regard is that for the purpose of sec.54F, new residential house need not be purchased by the assessee in his own name. Since the assessee has purchased the residential property in his wife's name, deduction need to be allowed and for such a proposition, ITAT relied on the decision of High Court Delhi in the case of CIT v. Kamla Wahal reported in [2013] 30 taxmann.com34/214 Taxman 287/351 ITR 4 (Delhi) wherein it was held

held that the new residential house need not be purchased by the assessee in his own name nor is itnecessary that it should be purchased exclusively in his name. Having regard to the rule of purposive construction and the object which Section 54F seeks to achieve and respectfully agreeing with the judgment of this Court, ITAT answered the substantial question of law in favour of the assessee.

ITAT, Chennai in the case of Vidjayane Durairaj -Vidjayane Velradjou vs ITO vide [2024] 169 taxmann.com 625 (Chennai - Trib.) on December 04, 2024

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