VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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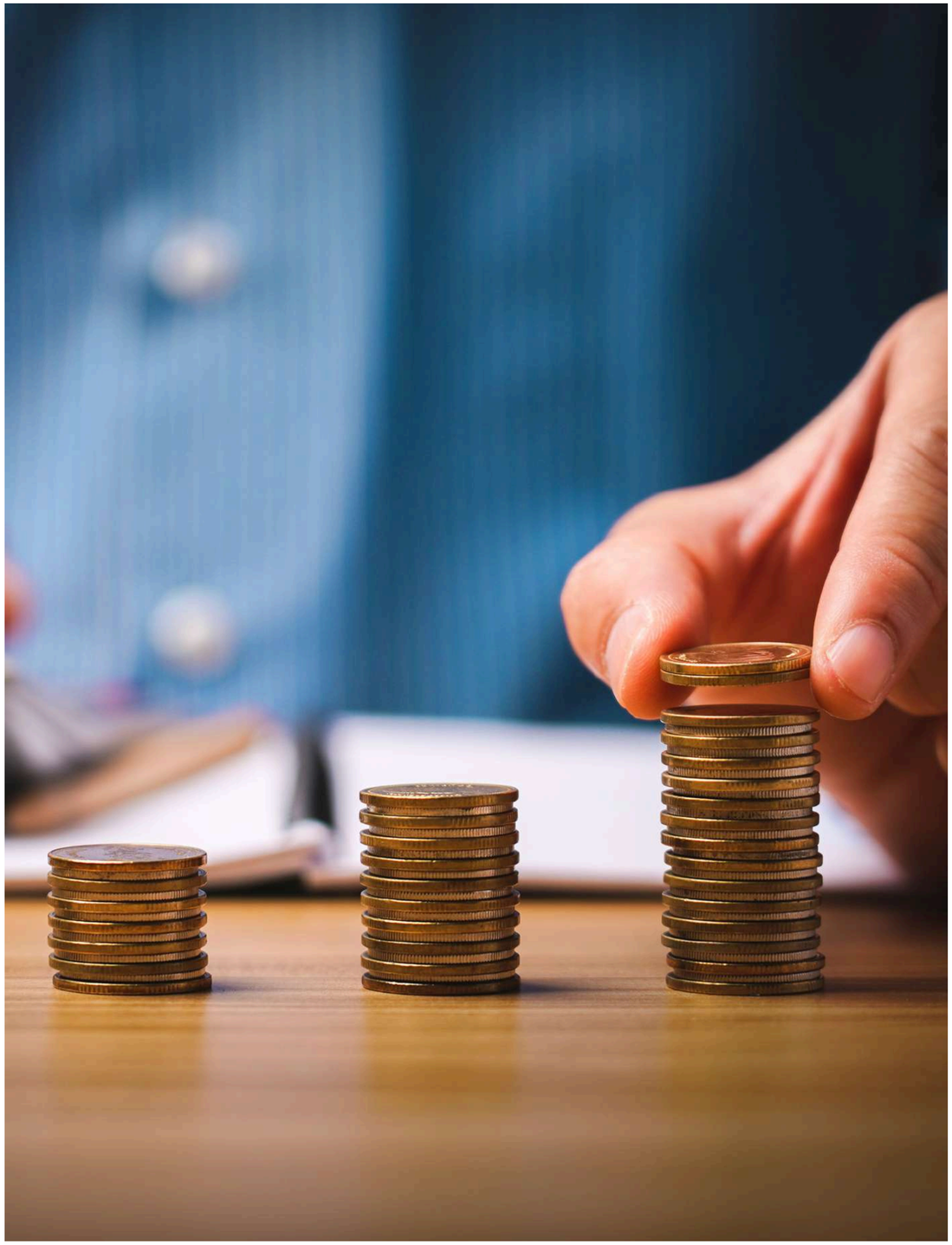
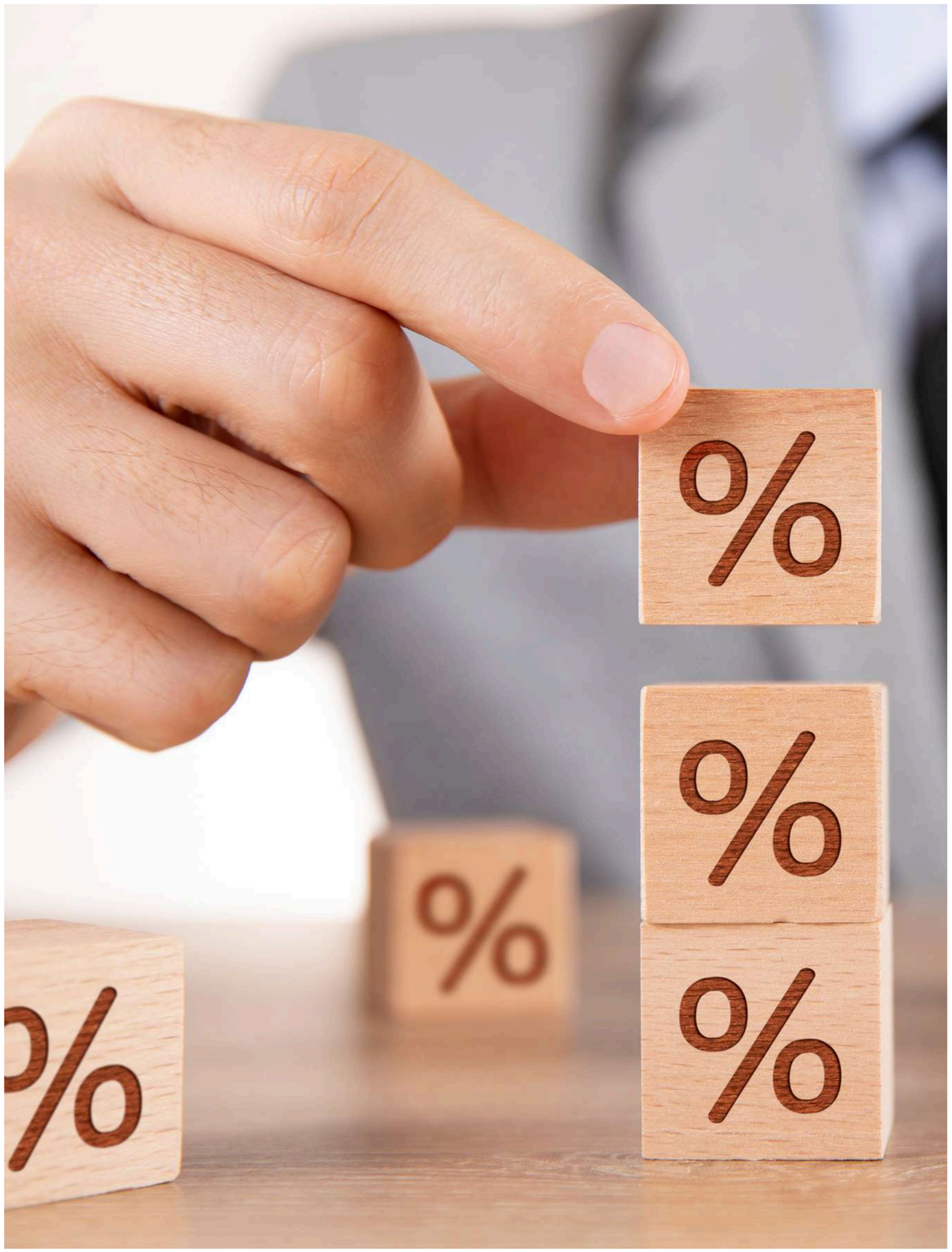
High Court Rulings

Broken period interest allowable as deduction, if securities held as stock-in-trade sans Revenue loss

Facts

The appellant is engaged in the business of providing long term finance in the course of which, various securities are held as stock in trade. These securities are purchased from time to time, which carry interest. The purchase price includes the component of interest for the broken period. The securities which remain unsold at the end of the year are shown in the closing stock at cost. However, while computing the income, the assessee claims deduction on account of interest for the broken period in respect of unsold securities since according to assessee, the entire interest income accrues to the assessee on the fixed date falling after the end of previous year. However, the assessee offered the interest income in respect of such securities in the next year either when the securities were sold or when interest is received. For the AY 1991-92, the broken period interest amounted to INR 1.33 crores which included the sum of INR 95.06 lacs pertaining to earlier years. The AO rejected the claim of the assessee and disallowed the sum of INR 37.83 lacs (INR 1.33 crores – INR 95.06 lacs). Similarly, disallowances were made for the AY in question. The reason for disallowance was that broken period interest formed part of the price of the asset purchased, which has already been debited to Profit & Loss Account and, therefore, question of allowing deduction did not arise in view of the **SC judgment in the case of Vijaya Bank Ltd. vs. ACIT.**





Assessee was aggrieved by such view taken by the AO and carried the matter in appeal before the CIT(A), who also agreed with the AO and accordingly confirmed the order passed by the AO. Against such orders passed by the CIT(A), the appellant carried the matter to the Tribunal who also did not accept the contentions as urged on behalf of the assessee that the interest on securities is taxable as business income, since securities are held as stock in trade, as also that the interest which was paid on purchase of securities would be on revenue account, which would entitle the assessee to claim as revenue loss, being the consistent accounting method followed by the assessee, which according to the assessee, would entitle it to set-off such loss against its income. The Tribunal in rejecting the assessee's contention was of the view that when the securities are purchased by the appellant along with interest thereon, the price paid becomes the cost of the asset which is to be debited to P&L. The Tribunal observed that the assessee debited the entire cost of the purchase including broken period interest to P&L as per the commercial practice. Hence, if the security is sold, then profit would form part of the P&L as sales would be credited. It was observed that when such security was not sold, then as per the settled principle of accountancy, it has to be shown in the closing stock either at cost or market price whichever is lower. There is no other method of accounting for computing business profit.

Ruling

HC has placed reliance on the in **ITA No.278 of 1997** in **Citi Bank N.A. vs. CIT**

wherein similar issues had arisen for consideration of the Court, when the Court answered the questions in favour of the assessee. The order dt. 16-04-03 passed by the Division Bench was carried to the SC in the proceedings of **Civil Appeal No. 1549 of 2006 in CIT vs. Citi Bank.** The SC rejected the Revenue's appeal by its judgment dated 12-08-08 where the SC referring to the decision in **Vijaya Bank Ltd. vs. ACIT, Bangalore** as also the decision of this Court in American Express rejected the Revenue's appeal. following the decision of this Court in American Express International Banking Corporation and Citi Bank, the appeals filed by the appellant were allowed in favour of the assessee.

Source : High Court of Bombay in HDFC Bank Ltd. (formerly, Housing Development Finance Corporation Ltd.) vs DCIT vide ITA No. 58 of 2006 on November 13, 2024

HC allows business loss holding the same to be genuine and not a sham transaction

Facts

The Assessee is engaged in the business of manufacturing and sale of automotive parts and components and had had filed its return in respect of AY 2014-15 declaring a loss of INR 28.10 crores.The assessee was incorporated on 23-11-11 and thus, the FY 2013-14 was effectively the second year of its operations.The AO had found that the loss as declared had arisen on account of transactions of purchase and sale of tools and

dies, which were used for cars manufactured by Honda Car India Ltd. (hereafter HCIL). The assessee company was an OEM (original equipment manufacturer) supplier to HCIL and there is no dispute that the Assessee required the dies for manufacturing the automotive parts, which were to be supplied to HCIL. The Assessee had procured tools and dies for automotive parts from two entities - an Indian company, named, Honda Trading India Pvt. Ltd. (hereafter HTIPL) and a company in Thailand named Tri Inter Thailand Company Ltd. (hereafter TITC). There is no cavil as to the transactions relating to the purchase of dies from the said two entities. However, the AO had doubted the transactions of sale of the said dies to HCIL at a price lower than the purchase consideration paid by the Assessee. Admittedly, the Assessee had sold the said dies to HCIL, which were thereafter handed over to the Assessee for manufacturing the automotive parts. According to the Assessee, bulk of the loss was related to the dies procured from TITC, which the Assessee quantified at INR 14.51 crores.

The ld. AO had found that the said transaction was a sham transaction and the assessee's loss from the said transaction was, thus, an artificial loss. The said conclusion was founded on the basis that HTIPL was a "sister concern" of HCIL and there was no necessity for the Assessee to have first sold the tools and dies to HCIL and then receive it back for manufacture of the parts. The assessee appealed the assessment order before the CIT(A) [on various issues including the issue regarding disallowance of loss of INR 23 crores on account of transaction of sale and purchase of dies.

It is material to note that the Assessee had declared a total loss of INR 28.10 crores and part of the said loss had been disallowed by the AO including the loss on account of the transaction of sale and purchase of the dies. Thus, the assessed loss was reduced to INR 3.89 crores which was upheld by the ld. CIT(A). However, the learned ITAT had accepted that the loss incurred by the assessee company was a genuine loss. It had allowed the Assessee's appeal.

Ruling

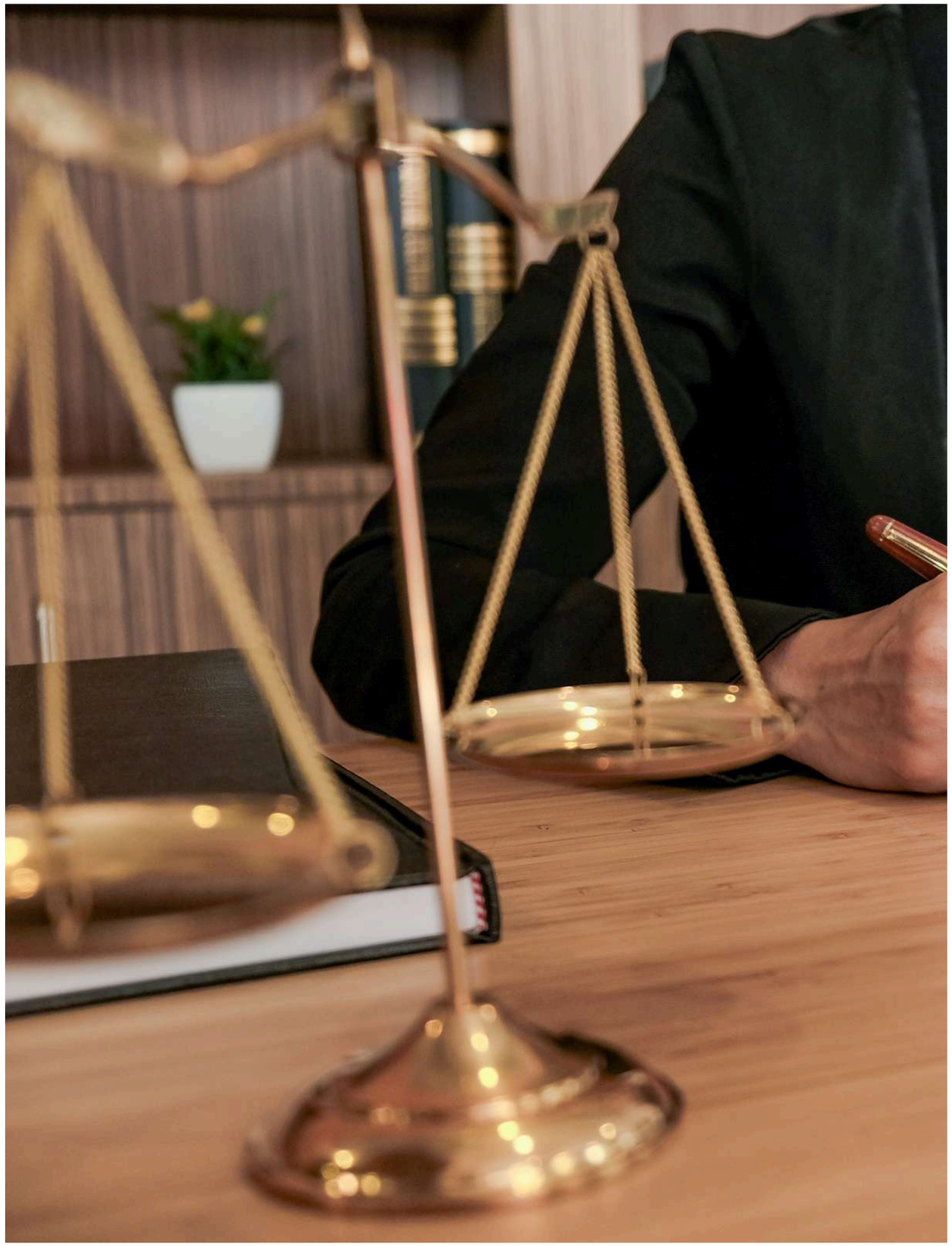
HC find no infirmity with the decision of the learned ITAT. It is settled law that the AO cannot supplant its view as to the commercial expediency of transactions in place of that of the Assessee. In the present case, the AO's decision to disallow the loss is based on surmises and assumptions. The fact that the Assessee had purchased some of the dies from HTIPL, which may be an affiliate of HCIL, did not in any manner indicate that the loss suffered by it was not genuine.

It is material to note that neither HTIPL nor TITC are affiliate entities of the Assessee. There is also no allegation that the Assessee is affiliated to HCIL. It is, thus, apparent that the transaction for sale and purchase of dies

was a pure commercial transaction entered into by the Assessee in its commercial wisdom. The fact that the Assessee had incurred a loss in the said transaction is also not disputed. There is no allegation that the Assessee was paid any undisclosed consideration from the parties in a clandestine secret transaction to reverse the loss. We find that the AO had made the additions solely on the basis of what the AO thought was commercially expedient, an area which the AO was not required to tread.

In the present case, the Assessee has also justified its commercial decision by reflecting the enhanced turnover and the profits earned by it from its business from HCIL. However, it would be apposite to add that even if the Assessee had not been able to earn profits in later years, the same would make no difference. It is not necessary that every business decision made by an assessee yields profit. The area of examination is only confined to whether the transactions entered into by the assessee are genuine and not whether they are commercially expedient. The appeal was unmerited and accordingly, dismissed.

Source : High Court of Delhi in PCIT vs M/s G Tekt India Pvt. Ltd. vide ITA No. 463/2024 on November 14, 2024



No TDS on payments to State Government; Disallowance u/s 40(a)(ia) unwarranted

Facts

The assessee is engaged in the business of development, maintenance of Mahaonline portal for providing web-based services by the Government to Citizens, Government to Business and other portal services of the Government of Maharashtra.

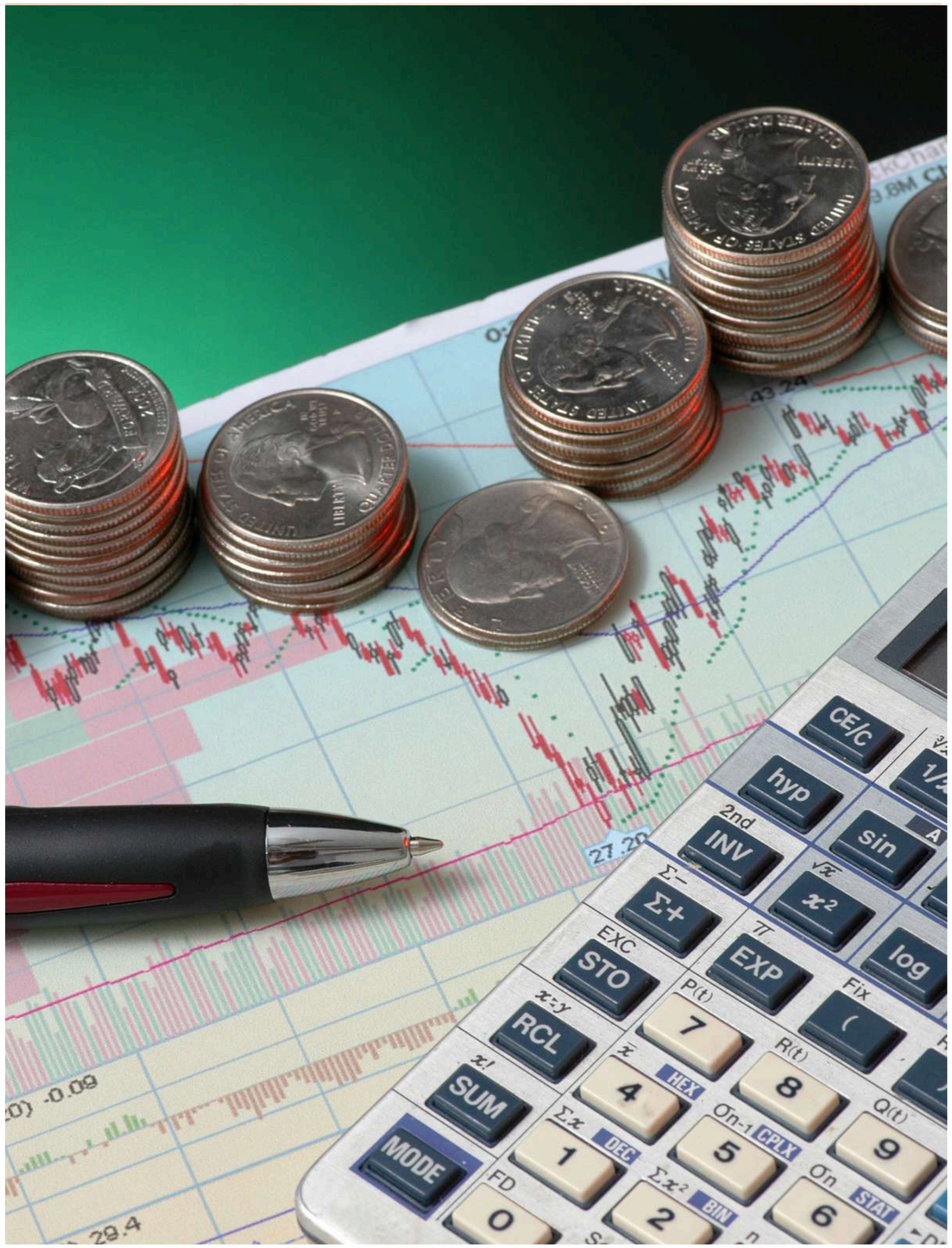
For the AY under dispute, assessee filed its return on 13-10-17 declaring income of INR 8.11 crores under the Normal Provisions and book loss of INR 6.79 crores u/s. 115JB. In the course of assessment proceedings, the AO, while verifying the details of various expenditures debited to the P&L account, observed that certain amount has been paid by the assessee during the year without deducting tax at source, though, such payments are subject to TDS provisions. Being of the view that the assessee has failed to comply with the TDS provisions qua the aforesaid payments made, the AO invoked the provisions of Section 40(a)(ia) and disallowed an amount of INR 31.35 lacs being 30% of the total payment made of INR 1.04 crores. Though, the assessee contested the aforesaid disallowances before first appellate authority, however it was unsuccessful.

- Before the Tribunal, ld. counsel appearing for the assessee submitted that payments amounting to INR 43.20 lacs and INR 34.55 lacs are not subject to TDS Provisions as payments have been made to Government

of Maharashtra. He submitted while deciding the issue the Coordinate Bench has held that since payments were made to Government, TDS Provisions would not get attracted. Thus, he submitted, the issue is squarely covered in favour of the assessee.

- He submitted, as regards the payment of INR 19.86 lacs to Village Level Entrepreneurs, in the year under consideration, the amount in dispute was neither paid nor credited to the payee. He submitted, when invoices were received from the concerned vendors and actual payment was made in subsequent years, assessee did comply with TDS Provisions. In this context, he drew our attention to the sample copies of TDS Certificates issued in Form No. 16A.
- In so far as alleged payment of INR 6.72 lacs towards project expenses-outsourcing cost DOP, he submitted, the amount was never paid as the provision created was reversed subsequently. Therefore, there was no question of deducting tax at source.

So far as payment of other expenses of INR 0.16 lacs is concerned, ld. counsel submitted that the amount is aggregate of three payments alleged to have been made by the assessee without deduction of tax. Explaining further, he submitted that actual payment made towards repairs and maintenance was to the extent of INR 1.37 lacs on which the assessee had duly deducted tax at source. He submitted, balance amount of INR 0.05 lacs was never paid. Further, the assessee had incurred travel expenses of INR 0.60 lacs on which tax was duly deducted at source. The excess of amount



of INR 0.05 lacs was never paid. He submitted, the payment of INR 0.05 lacs alleged to be in the nature of fees to external consultants is actually payment towards telephone bill. In this context, he drew our attention to Page No. 32 of the Paper Book, wherein, the copy of invoice of Idea is placed. Thus, he submitted, there was no requirement of deduction of tax at source.

Ruling

ITAT have considered rival submissions and perused the material on record. Having factually examined the issue relating to the disallowance made u/s 40(a)(ia), ITAT found that the amounts of INR 43.20 lacs and INR 34.55 lacs, part of which have been disallowed by the AO u/s 40(a)(ia) of the Act, have actually been paid by the assessee to the Maharashtra Government. Therefore, such payment would not get covered under the TDS Provisions. In so far as payment of INR 19.86 lacs to Village Level Entrepreneurs is concerned, the assessee has furnished before us documentary evidence to demonstrate that in the year under consideration neither the amount in dispute was paid nor credited to the concerned vendors. The assessee has further demonstrated that as and when, the amount was paid in subsequent years, TDS provisions have been fully complied with. In so far as the amount of INR 6.72 lacs alleged to have been paid towards various expenses/outsourcing of cost DOP. The assessee has demonstrated before us that though the provision was made for the amount in dispute, however, it was never paid or credited. On the

contrary, the provision made was subsequently reversed. No contrary evidence has been brought on record by the Revenue to controvert the aforesaid factual position. In view of the aforesaid, we have no hesitation in holding that the payments made do not attract the TDS provisions in the year under consideration. Therefore, the disallowance made u/s. 40(a)(ia) is unsustainable. In so far as alleged non deduction of tax at source on payments alleged to have been made of INR 0.16 lacs, on factual verification it is observed that out of the said amount, the assessee has made payment of INR 0.05 lacs only towards payment of telephone bill, whereas, the balance amount was never paid. Thus, in our view, no disallowance even in respect of payment made of INR 0.16 lacs can be made u/s. 40(a)(ia). Thus, the AO is directed to delete the entire disallowance and the appeal is accordingly allowed.

Source : ITAT, Mumbai in Mahaonline Ltd. Directorate of Information Technology vs CIT(A) vide ITA No.4065/ Mum/2023 on November 22, 2024

Mere change of ownership does not disentitle undertaking from benefits u/s 80IA(4)

Facts

The assessee company is engaged in the business of generation and distribution of power. During the FY 2016-17, the assessee purchased a solar division from its holding company i.e. M/s. Lanco Infratech Ltd under slump sale transfer vide business transfer agreement dt. 23-02-17. The

assessee filed its return of income for the year declaring loss of INR 138.87 crores. Later on, noticing a mistake in the return of income, the assessee filed a revised return of income on 06-09-18 declaring 'Nil" income after claiming deduction u/s 80IA of INR 1.04 crores. Thereafter, the assessee has filed another revised return of income wherein a suo motto disallowance of INR 6.82 lacs was made towards provision for gratuity and leave encashment and declared business income at INR 1.10 crores which was claimed as eligible for deduction u/s 80IA hence, the assessee declared 'Nil' taxable income. In the scrutiny assessment, the AO denied the claim of deduction u/s 80IA on the ground that the assessee does not fulfil the conditions laid down in the provisions of section 80IA(3)(ii) r.w. Explanation 2 to section 80IA. Being aggrieved, the assessee challenged the action of the AO before the ld. CIT(A), but could not succeed.

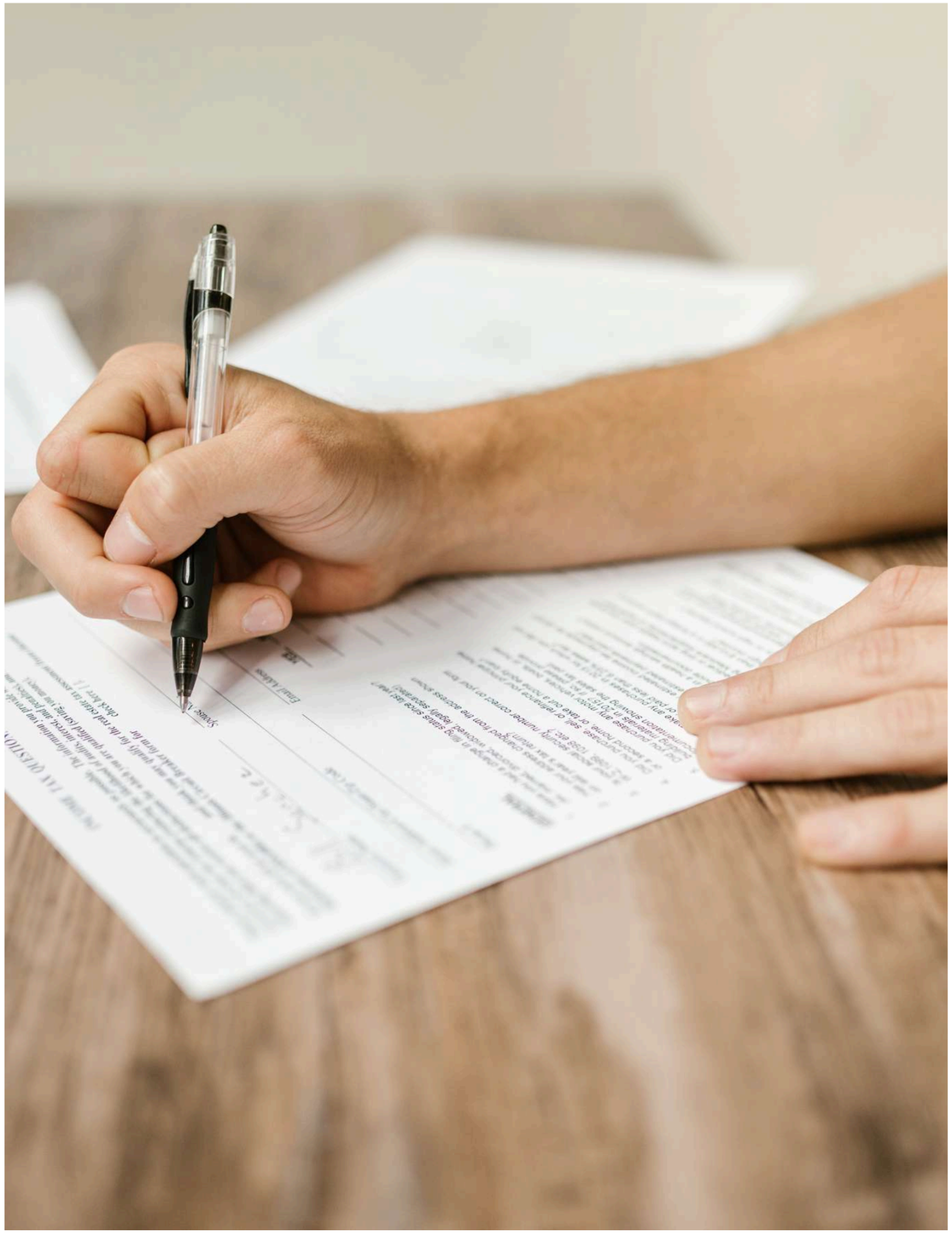
Before the Tribunal, the ld. AR of the assessee submitted that the assessee has acquired the solar power division from its holding company, by way of slump sale as an ongoing concern basis. He has referred to the business transfer agreement dt. 23-02-17 and submitted that as per clause (2) and (2.1) of the agreement, the nature of the transaction has been specified as slump sale and transfer of business undertaking on a going concern basis and thus, there is no split of any business undertaking in the process of transfer of the business undertaking under slump sale. The ld. AR has contended that it is only a change of ownership of the business undertaking being transferred as going concern and therefore, the undertaking would

continue to be eligible for deduction u/s 80IA as it was prior to the said transfer under slump sale.

He has accordingly referred to the CBDT Circular No.1/2013 dt. 17-01-13 and submitted that an identical issue relating to the export of computer software has been examined by the CBDT and the same has been clarified in Para 2(iv) of the said circular wherein the CBDT has clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed for the unexpired period at the rate as applicable for the remaining years subject to fulfilment of the prescribed conditions. Thus, the learned AR has submitted that when there is no change in the undertaking in the process of slump sale except the change of ownership, then the claim of deduction u/s 80IA cannot be denied merely on the ground of change of ownership.

Ruling

ITAT held that is now a settled proposition that, mere change of ownership cannot be a ground to deny the benefit of section 80IA(4) so long as the undertaking under consideration remains intact and same without any change in the Plant & Machinery or business already in existence. The conditions, as stipulated u/s 80 IA(3)(iii) contemplate a situation of forming an undertaking by splitting up or reconstruction of existing business as well as transfer of Plant & Machinery already used to a new business but, none



of those transaction/incidents are part of the acquisition of the business undertaking by the assessee under consideration. Accordingly, in view of the facts and circumstances ITAT is of the considered opinion that, the disallowance of deduction u/s 80IA(4) to the assessee by the AO and confirmed by the ld. CIT(A) is highly unjustified and not sustainable. Hence, we allow the claim of the assessee u/s 80IA(4)(iv). In the result, appeals filed by the assessee are allowed.

Source : ITAT, Hyderabad in the case of Lanco Solar (Gujarat) Private Limited vs ITO vide ITA Nos. 905 & 906/Hyd/2024 on November 27, 2024

No obligation to file Form 10IC where Taxpayer's option of u/s 115BAA accepted

Facts

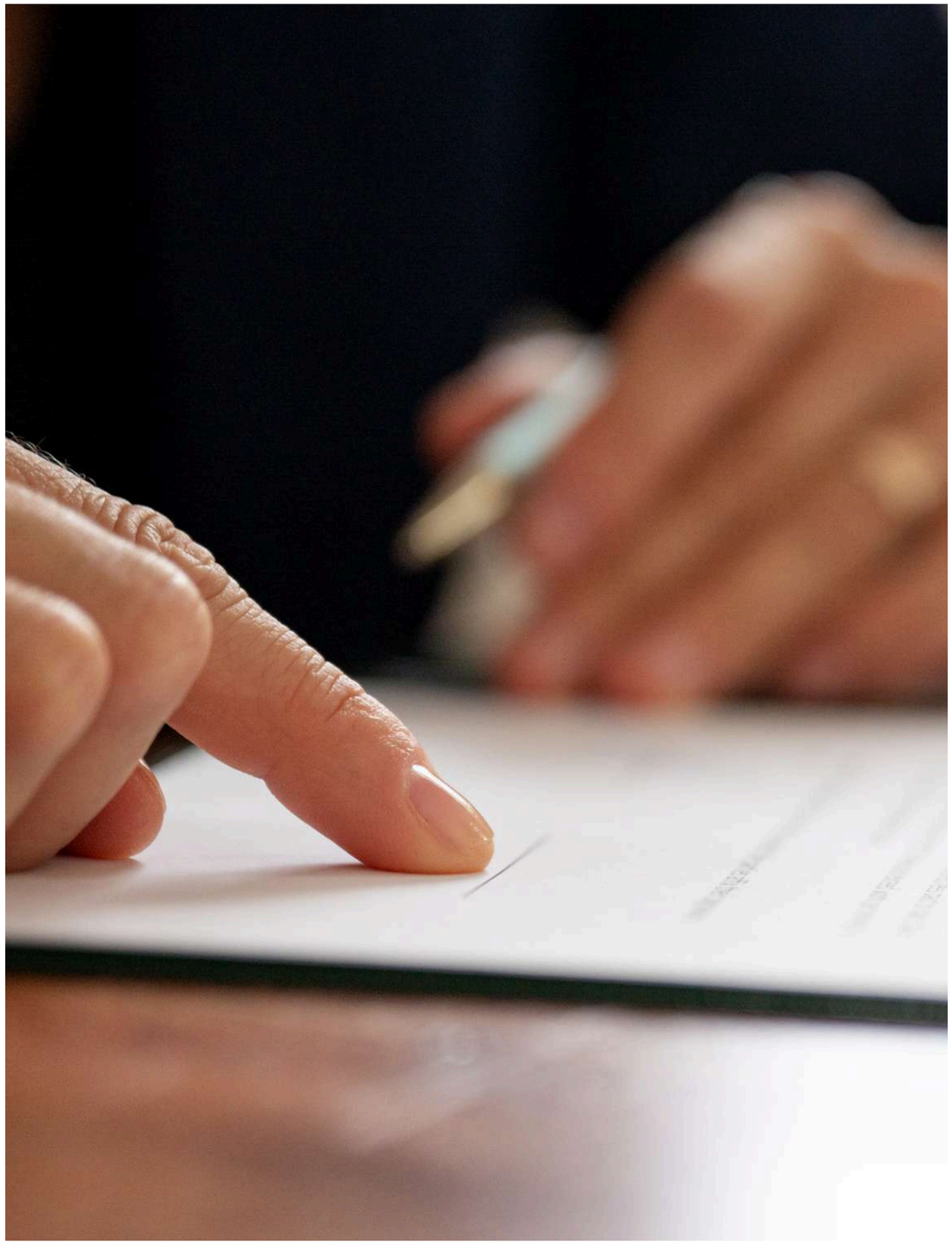
The assessee company is engaged in the business of manufacturing of garments which also has branch operations in Johannesburg, South Africa and had filed its return of income for AY 2021-22 electronically on 11-03-22, declaring total income at INR 2.19 crores. An intimation u/s 143(1) of the Act was issued by the Centralized Processing Center (“CPC”) on 17-10-22 in which the total income returned by the assessee was increased from INR 63.49 lacs to INR 75.75 lacs. The tax liability was also increased as the CPC while processing the return of income, has denied the benefit of provision of section 115BAA. Aggrieved, the assessee preferred appeal before the Ld. CIT(A) who the CPC while processing the return of income, has denied the

benefit of provision of section 115BAA. Aggrieved, the assessee preferred appeal before the Ld. CIT(A). Challenging the denial of relief by the Ld. CIT(A), the assessee preferred appeal before the Tribunal.

Ruling

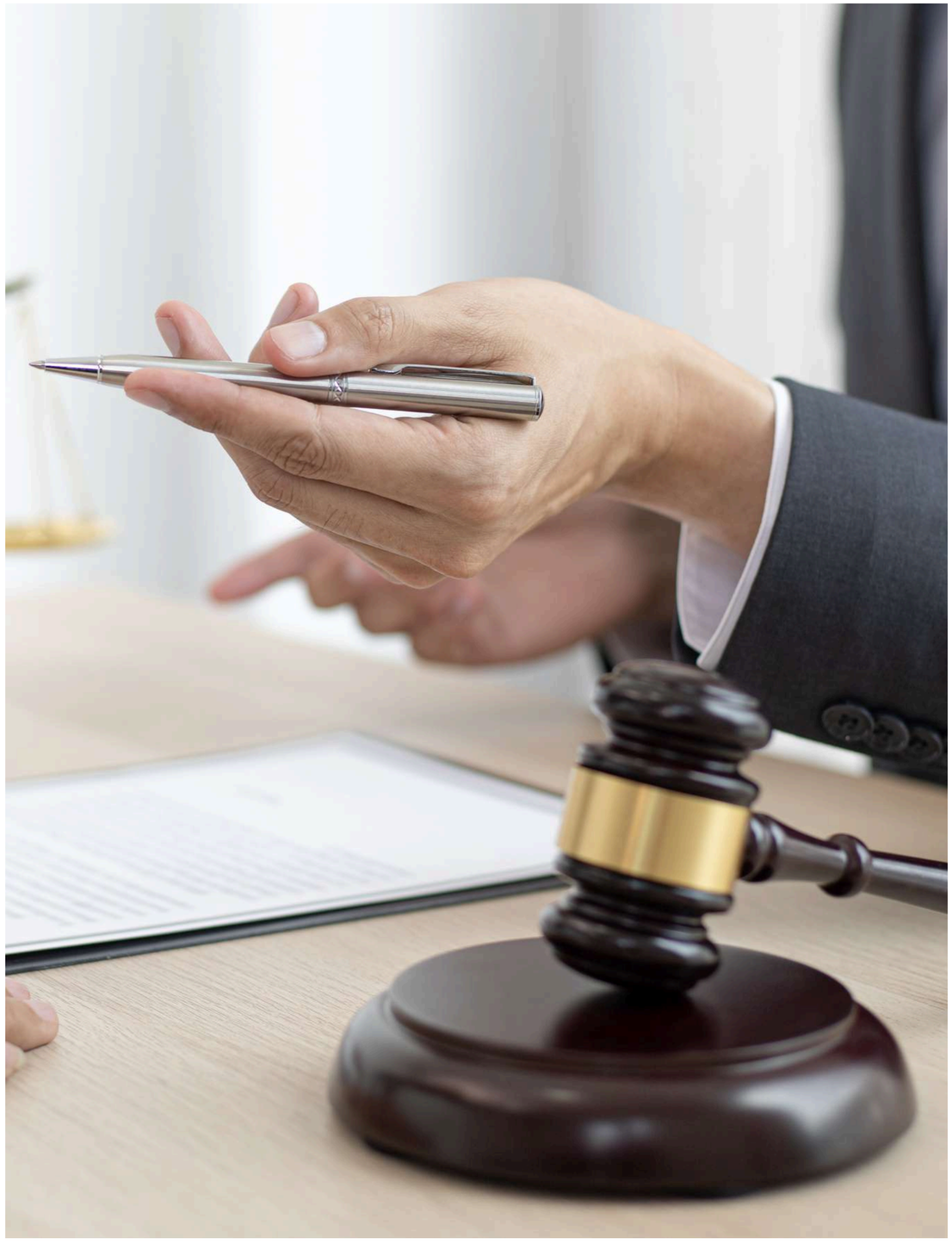
ITAT held that once the assessee loses its right to deviate from the option exercised in the earlier year, no further obligation by way of filing Form 10IC can be fastened. This is so for the reason that if the assessee is allowed to not exercise the option by not filing prescribed Form 10IC, it will mean that the assessee has a gateway to not exercise the option in the subsequent AYs. This is plainly contrary to the express language of the Act which will defeat the plain intent and purpose of fastening the obligation on the assessee for availing the benefit of section 115AAB. Thus, where the option has already been exercised in AY 2020-21, such option exercised in the preceding AYs cannot be allowed to be deviated for non-filing of the prescribed Form 10IC.

Thus, in accord with the position of law, ITAT remitted the matter back to the file of AO. The AO shall verify as to whether the claim of the assessee to avail benefit of section 115BAA of the Act in previous year relevant to AY 2020-21 has been duly acknowledged and concurred by the ITD. Where the Income tax Department has duly accepted the stand of the assessee seeking exercise of option u/s 115BAA in AY 2020-21, the obligations fastened by section 115BAA will continue and shall not be dependent on



filing or non-filing of Form 10IC or belated filing thereof in AY 2021-22 per se. It shall be open to the assessee to produce corroborative evidences qua the AY 2020-21 in support of its stand towards exercise of section 115BAA in that year and furnish such further explanations as may be considered expedient to support its case. The AO shall pass the order in accordance with law. In the result, the appeal of the assessee is allowed for statistical purposes.

Source : ITAT, New Delhi in Indo British Garments Pvt. Ltd. vs DCIT vide ITA No.2400/Del/2024 on November 29, 2024



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