VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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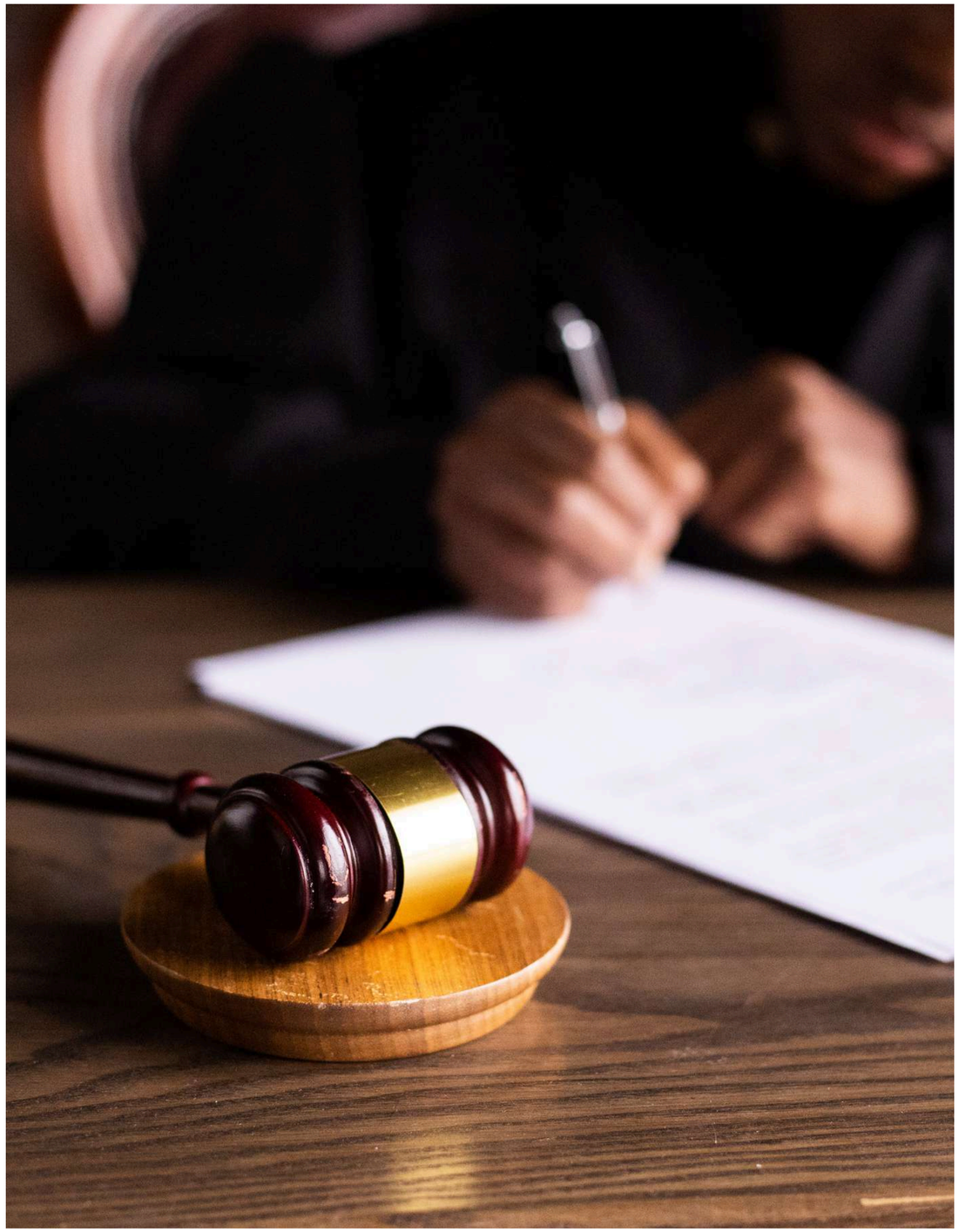


Reopening was initiated by the AO and matter was to be remanded back. Purchase of immovable property worth INR 1.21 crore was not disclosed in the ITR, and no reason was given in support of conclusion that escaped income was more than INR 50 lakhs.

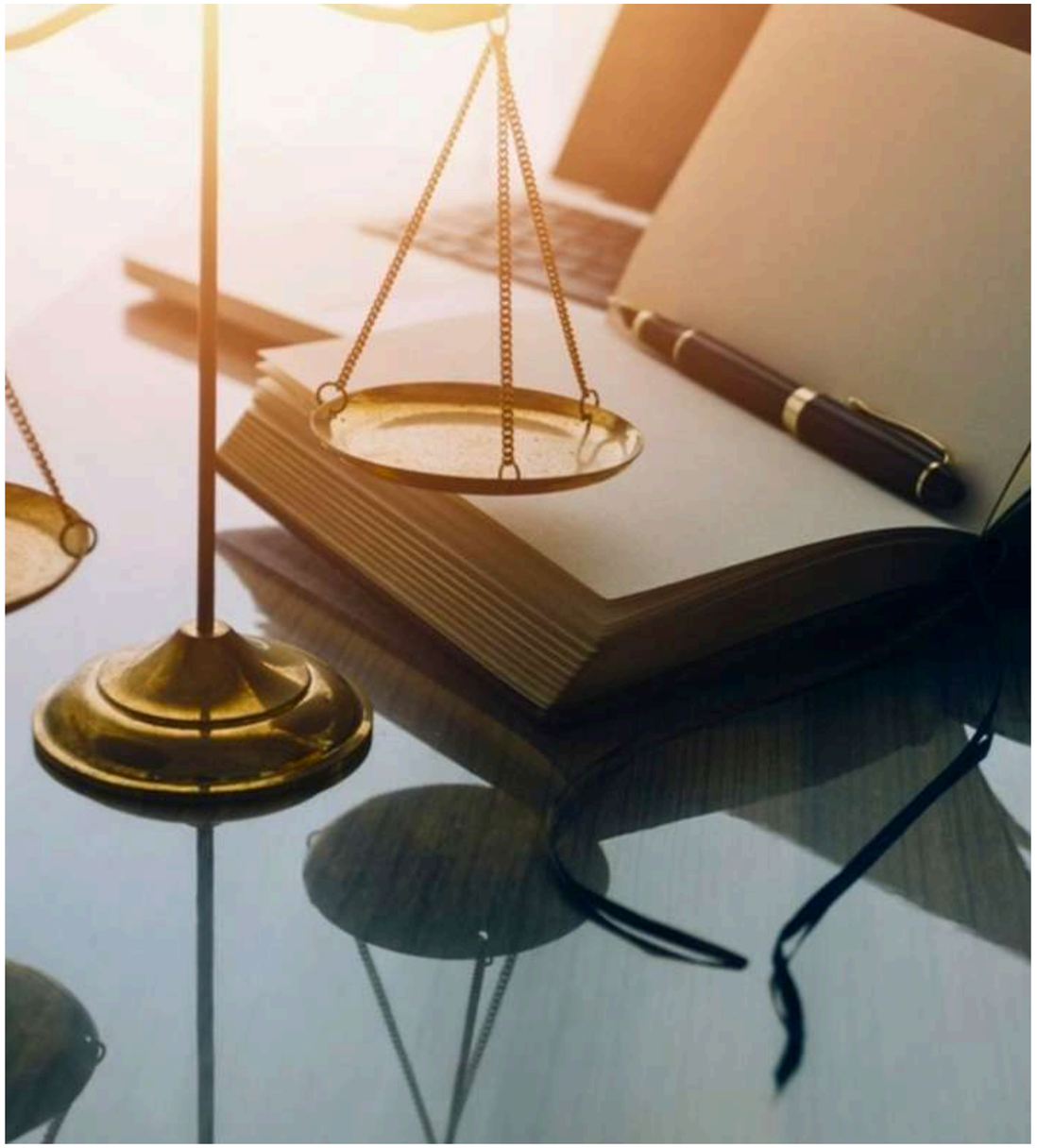
Facts

A notice u/s 148 was issued wherein as per the information available, it was noticed that during the FY 2016-17, the petitioner has purchased immovable property worth INR 1.21 crores. The petitioner submitted reply to SCN along with all the necessary documents in support. The AO though passed a detailed order, however, unfortunately no reason whatsoever has been given in support of the conclusion that the escaped income is more than INR 50 lacs. The petitioner held that the AO cannot shirk away from his responsibility of deciding the case on the material available on record by simply observing that "at the preliminary stage, the contention of the petitioner is not acceptable and the same requires a detailed examination". The petitioner placed reliance on the judgment of the **Hon'ble SC in Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan (2010) 9 SSC 496.**

Ruling

Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions, this HC examined the legal basis for imposing the obligation. While considering this aspect the Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice."

Since the order passed by the AO is bereft of any cogent or plausible reasons, the same is set aside by the HC and the matter is remanded back to the AO to decide the same afresh in accordance with law. HC stated that if the AO still concludes that notice u/s 148 is necessary, then he shall record detailed reasons for arriving at such conclusion. The AO is directed to decide the case as expeditiously as possible maximum by 31-08-2025.



Source: High Court, Himachal Pradesh in the case of Neena Singh Thakur vs PCIT vide [2025] 174 taxmann.com 732 (Himachal Pradesh) on May 14, 2025

Where AO issued a notice u/s 148 to reopen assessment without prior approval of Principal Chief Commissioner or any other authority specified u/s 151(ii), impugned notice was liable to be set aside.

Facts

The petitioner is a senior citizen aged 72 years has his own company dealing in auto parts and derives his income mainly from salary. The petitioner filed his return of income for the AY 2016-17 declaring total income of INR 73.35 lacs. A notice u/s 148 was issued under the statutory regime relating to reassessment as in force prior to 31-03-21. By the letter dated 25-06-22, the petitioner denied the purchase of shares amounting to a total of INR 1.70 crores from Asian Bulls Capital Private Limited. The petitioner claimed that in FY 2016-17, he had purchased 3000 shares of Vedanta Ltd. for INR 2.56 lacs, and 4000 shares of Vedanta Ltd for INR 4.99 lacs and payment was made through banking channels. Out of these shares, 3000 shares were sold in the same year for INR 7.53 lacs and the resultant STCG of INR 4.97 lacs was declared in his return of income. The ld. AO was not persuaded with the explanation provided by the petitioner and passed an order dated 29-07-22 u/s 148A(d), holding that it was a fit case for reopening the assessment proceedings u/s 147/148. Thereafter, the AO issued a notice u/s 148 accompanied with the order u/s 148A(d). It is apparent from the notice that it was not issued with the prior approval of the Principal Chief Commissioner of Income Tax (PCCIT) or any other authority specified u/s 151(ii). Such approval is mandatory for issuance of a notice issued u/s 148 beyond the period of three years from the end of the relevant AY.

Ruling

High court held that in the recent decision of Communist Party of India (Marxist) v. ITD vide [2025] 174 taxmann.com 925 (Delhi), this Court had referred to the earlier decisions including the decision rendered by the Bombay High Court in J M Financial & Investments Consultancy Services (P.) Ltd. v. ACIT [W.P. No. 1050 of 2020] and Siemens Financial Services (P.) Ltd. v. Dy. CIT [2023] 154 taxmann.com 159 (Bombay); the Madras High Court in Ramachandran Shivan v. ITO [W.P. No.8570 of 2023]and other connected matters and the Orissa High Court in Ambika Iron and Steel (P.) Ltd. v. Pr. CIT [2023] 452 ITR 285 (Ori.) had noted that the question as to which is the specified authority whose approval is mandatory, would depend on whether the notice u/s 148 was issued within a period of three years from the end of the relevant AY or thereafter. In view of this, the impugned notice as well as the proceedings were set aside.

High Court, Delhi in the case of Bhagwan Sahai Sharma vs DCIT vide [2025] 174 taxmann.com 916 (Delhi) on May 14, 2025

Where the CIT(A) set aside demand raised, it was obligatory on part of the AO to refund amount so recovered towards discharge of demand raised in reassessment order during pendency of appeal before CIT(A).

Facts

The petitioner, registered Co-operative Society, engaged in facilitating credit services and collection of deposit and giving loans exclusively to its members, has been assessed to tax treating cash deposit of INR 2.10 crores in the Allahabad Bank Account as unexplained during the FY 2015-16. The assessment was undertaken u/s 147 by issue of notice u/s 148. Treating the entire aforesaid deposit as unexplained cash u/s 69A, reassessment proceeding was concluded u/s 147 r.w.s. 144 and 144B raising a demand to the tune of INR 350 crores. Aggrieved thereby, the petitioner preferred an appeal before the CIT(A) which was transferred to NFAC.

During pendency of the appeal, the ITO initiated recovery proceeding and issue notice of attachment u/s 226(3) to the bankers of the petitioner-Society and accordingly, on the instruction of the ITO, the bankers issued a demand draft of INR 63.92 lacs in favour of the Department. The appeal before the NFAC was later decided in favour of the petitioner.

Ruling

From perusal of the record and having diligently considered the rival contention and submission of the parties, this HC was unable to refer to any provision of the Income Tax Act and Rules framed thereunder for the petitioner to approach the AO grant of refund of recovered amount during the pendency of appeal after the petitioner came out successful in the appeal. Therefore, this Court accedes to the submission at the Bar that upon disposal of appeal, the demand raised in the assessment order dated 29-03-22 passed u/s 147 being set aside, it is obligatory on the part of the authority concerned to refund the amount to the petitioner. Therefore, this Court had accepted the writ petition of the petitioner-Society and had directed the Department to refund the amount recovered towards discharge of demand as raised in the aforesaid reassessment order within a period of seven days hence, failing which the amount so withheld, shall carry interest at the rate of 6% per annum from the date of recovery till the date of actual restoration/refund. Accordingly, the writ petition stands disposed of.

Source: High Court, Orissa in the case of Puri Commercial Co-operative Society vs ITO vide [2025] 174 taxmann.com 848 (Orissa) on May 14, 2025

Notional rent to be determined as 'Income from house property' on vacant unsold flats held as stock-in-trade, however, no addition could be made to any AY prior to AY 2018-19 on such notional rent.

Facts

The petitioner is an individual and engaged in the business of civil construction and builders and developers and had filed his return of income, declaring total income at INR 3.85 crores from sale of flats amounting to INR 18.59 crores and other income of INR 0.36 crores after debiting various expenses and claiming deduction under Chapter VIA amounting to INR 1.75 lacs. The petitioner's case was selected for limited scrutiny since the petitioner has not declared income from house property for unsold shops/flats which remained vacant during the year under consideration. The ld. AO then passed the assessment order u/s 143(3) dated 21-12-17, thereby determining total income at INR 3.89 crores after making an addition of INR 3,82,200 u/s 23(4)(b) 23(1) on the annual rental value of INR 5,46,000 after the standard deduction @ 30% amounting to INR 1,63,800. Aggrieved the petitioner was in appeal before the first appellate authority, who upheld the addition, aggrieved with which the petitioner is in appeal before the Tribunal.

Ruling

HC held that the subsequent decision of the Tribunal in Dimple Enterprises has held that the ALV of unsold flats which is held as stock-in trade should be determined as per the Municipal Rentable Value and added the same as 'Income from house property'. Further, HC also stated that it is now a settled proposition of law post the decision of the Ansal Housing Finance and Leasing Co. Ltd., that notional rent must be determined on vacant unsold flats held as stock-in-trade as 'Income from house property', the issue now remains for adjudication is what should be the rental value that the ld. AO will have to apply for determination of the notional rent.

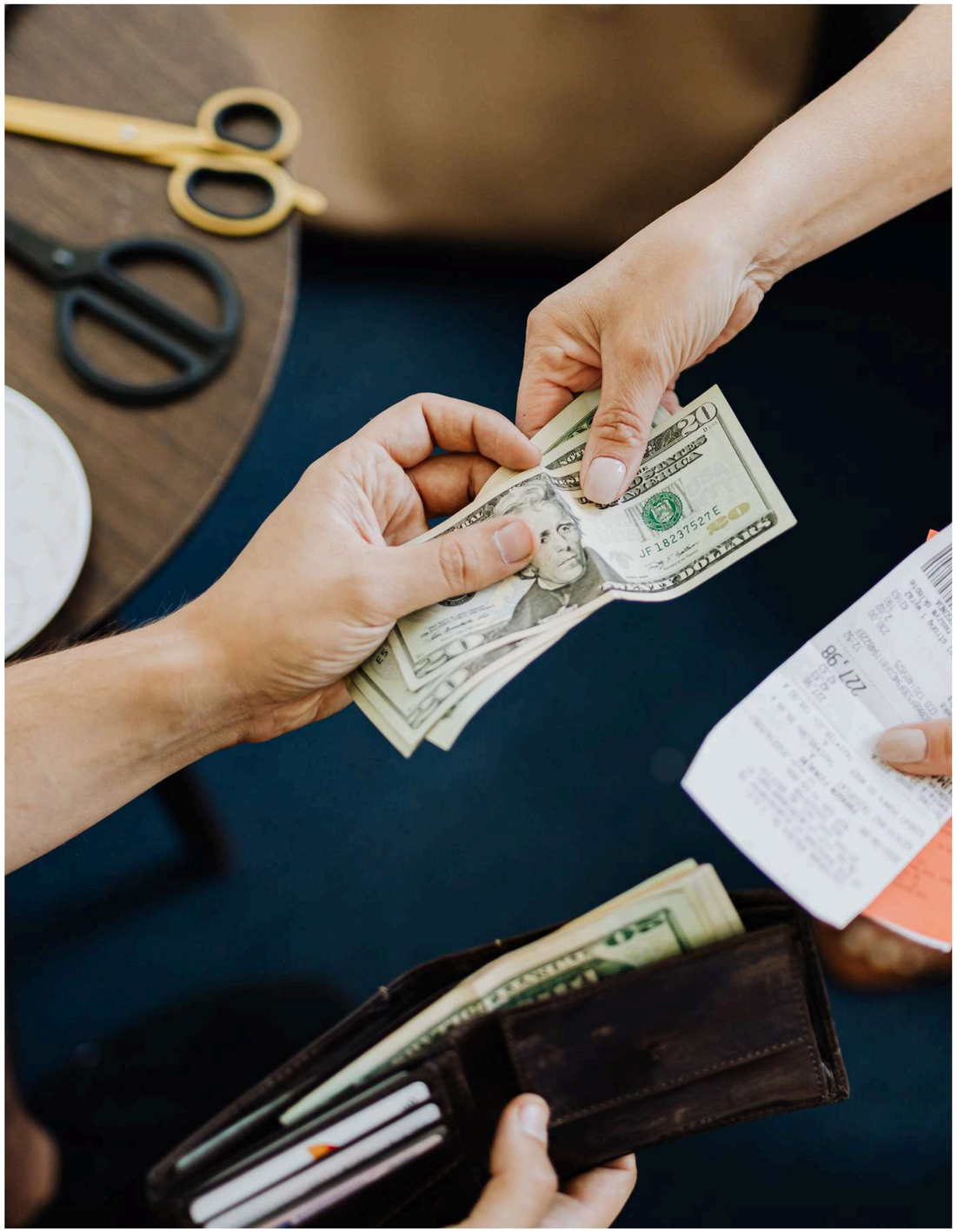
Reliance has been placed on the decision of the Hon'ble HC, Bombay in the case of CIT v. Tip Top Typography [2014] 48 taxmann.com 191, which has relied on the full bench decision of the Hon'ble Delhi High Court in the case of CIT v. Moni Kumar Subba [2011] 10 taxmann.com 195, where it has been reiterated that for determination of ALV u/s. 23(1)(a), the same has to be in accordance with the municipal laws after duly considering the inflated or deflated rent based on extraneous circumstances, if any, which in any case cannot exceed the standard rent as per the Rent Control Legislation applicable to the said property. It has also specified various methods of valuation for arriving at the hypothetical rent. The coordinate bench in the case of Inorbit Malls has also relied on the decision of the Tip Top Typography for determining the ALV for computing the notional rent. By respectfully following the proposition laid down in this case, HC directed ld. AO to determine the notional rent in accordance with the principles emphasized in the said decision. In the result, the appeal filed by the petitioner was partly allowed.

Source: ITAT, Mumbai in the case of Ramesh Dungarshi Shah vs DCIT vide [2025] 174 taxmann.com 589 (Mumbai - Trib.) on May 14, 2025

Explained cash deposits made during demonetization period with prior withdrawals duly recorded in audited cash book cannot be added u/s 68.

Facts

The petitioner filed return declaring total income of INR 8.12 lacs. The case was selected for limited scrutiny on account of large cash deposits. In the assessment order, the AO had made addition of INR 2.68 lacs (i.e. differential amount in the opening cash and the deposits during the year) and added to the returned income u/s 68. Further during the assessment proceedings, the petitioner submitted that amount of INR 24.40 lacs was withdrawn during the period from May 2016 to October 2016 from the bank accounts to support the temporary financial needs of close relatives. However, no documentary evidence in support of the claim was furnished. The ld. AO considered the reply but not found tenable and therefore determined the net taxable income at INR 35,19,680. Aggrieved with the above order, the petitioner preferred an appeal before the NFAC who sustained the addition made by the AO. Thereafter, the petitioner filed an appeal before the Tribunal.



Ruling

ITAT considering the submissions and material placed on record, observed that the present case was reopened based on cash deposits in its bank account and petitioner had explained the sources of cash deposits. The AO has accepted the same, however rejected the cash deposits out of cash withdrawals. Before ITAT, ld. AR of the petitioner brought to the notice that during the year, he had withdrawn cash of INR 24.40 lacs and redeposited out of withdrawals. ITAT also observed that the petitioner has submitted that the cash withdrawal from the bank accounts were duly recorded in the books of account maintained in regular course of business and it was lying with the petitioner himself and as per the cash book, the petitioner has an opening cash balance of INR 24.40 lacs as on 08-11-16 which was duly deposited in the bank accounts by the petitioner. The ITAT considered that there were enough cash withdrawals made by the petitioner during the year and there are re-deposits traceable like cash withdrawn on different dates as shown in the aforesaid chart and re-deposited the same. Therefore, there are sufficient cash withdrawals to support the submissions of the petitioner, it is settled position of law that the deposits are traceable to the recent withdrawals, the same cannot be rejected. Accordingly, ITAT allowed the grounds raised by the petitioner.

Source: ITAT, Pune in Balasaheb Popatrao Phadol vs ITO vide [2025] 173 taxmann.com 589 (Pune - Trib.) on April 09, 2025

Reasonable opportunity of being heard before passing a rectification order u/s 154 is a must where AO intends to enhance assessment or reduce refund or otherwise increase liability of petitioner.

Facts

The petitioner had filed ITRs for three AYs, which ITRs were later selected for scrutiny and assessment orders u/s 143(3) was duly passed against the petitioner. The AO later has passed the impugned rectification orders u/s 154for all the three years by making the following enhancement/disallowances as noted by the ld. CIT(A):

- AY 2016-17: Denied the brought forward of loss of INR 43.08 crores.
- AY 2017-18 and AY 2018-19: Denied MAT credit of INR 6.64 crores and INR 2.74 crores respectively.

Aggrieved by the aforesaid action of the AO, the petitioner preferred respective appeals before the ld. CIT(A) who was pleased to confirm the action of the AO. Aggrieved, the petitioner is before the Tribunal and has raised the aforesaid additional ground challenging the very jurisdiction of the AO to have passed the rectification order without following the statutory procedure stipulated therein.

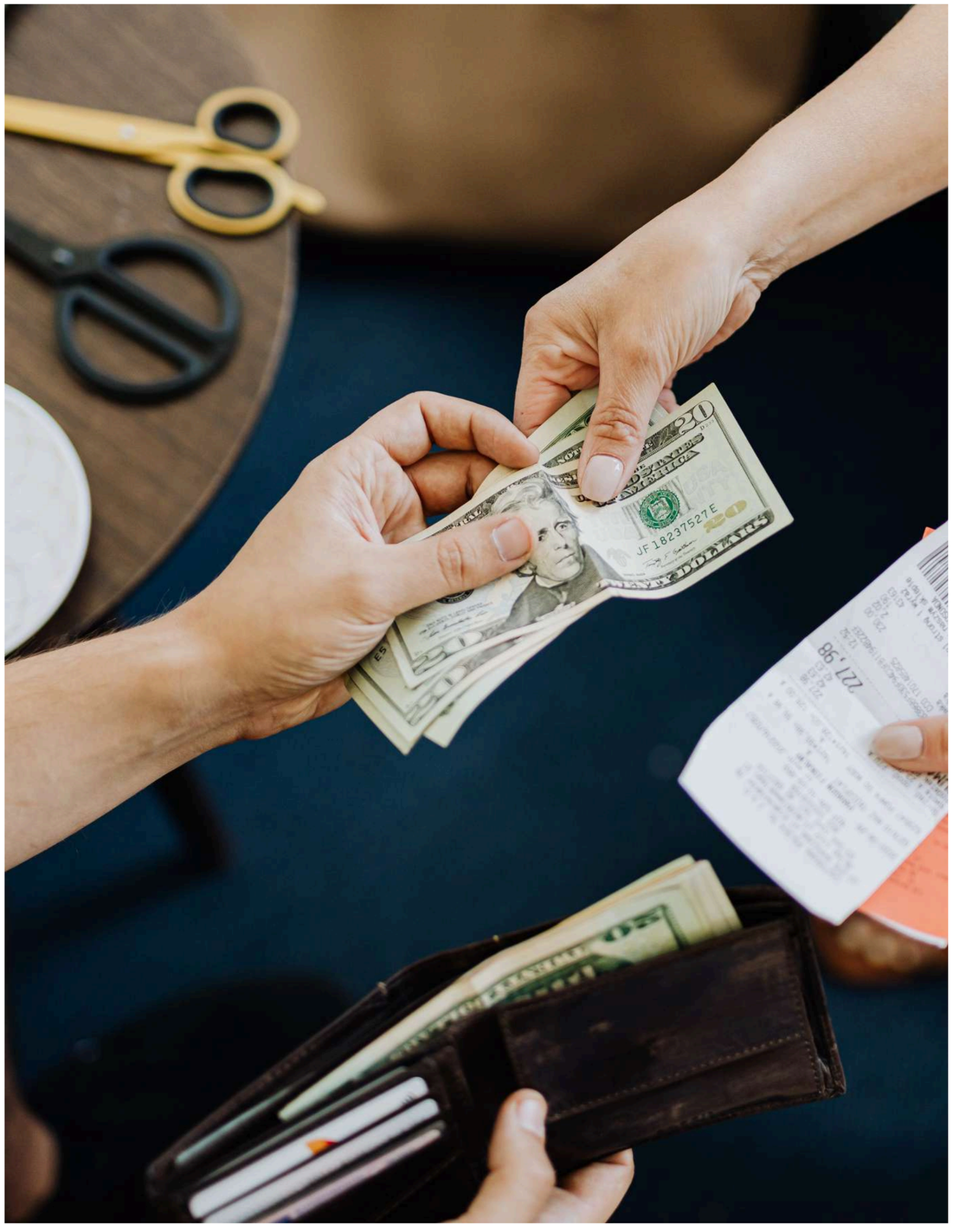
Source : ITAT, Chennai in the case of ILJIN Automotive (P.) Ltd. vs ACIT vide [2025] 174 taxmann.com 1114 (Chennai - Trib.) on May 26, 2025

Ruling

ITAT held that such a contention cannot be raised by the AO, when the statute provides a procedure to be followed before passing a rectification order, then the AO can't brush aside such a requirement of law, and act on his own, whimsically, which is bad in the eyes of law being an arbitrary action which offends Article 14 of the Constitution of India. Further, ITAT held that the principles of "audi alteram partem" (the right to be hear) lies at the very heart of procedural fairness and no one can be condemned without being given an opportunity to present one's case. Question about prejudice caused due to non-observance of this principle couldn't be raised when such principle is incorporated in statutory proceedings. In the present case, since section 154(3) incorporates the principle of natural justice, the department cannot contend that there was no prejudice caused to the petitioner. Further, ITAT rejected the plea raised in the Remand Report that reduction of loss is as per section 155(4) since the ld. DR couldn't convince the bench.

ITAT held that in the cases in hand, there is pe-se violation of natural justice incorporated in section 155(3) and therefore, the impugned rectification order passed by the AO for all the three years is set aside. Further, the additional grounds raised were allowed being academic in nature and therefore not adjudicated.

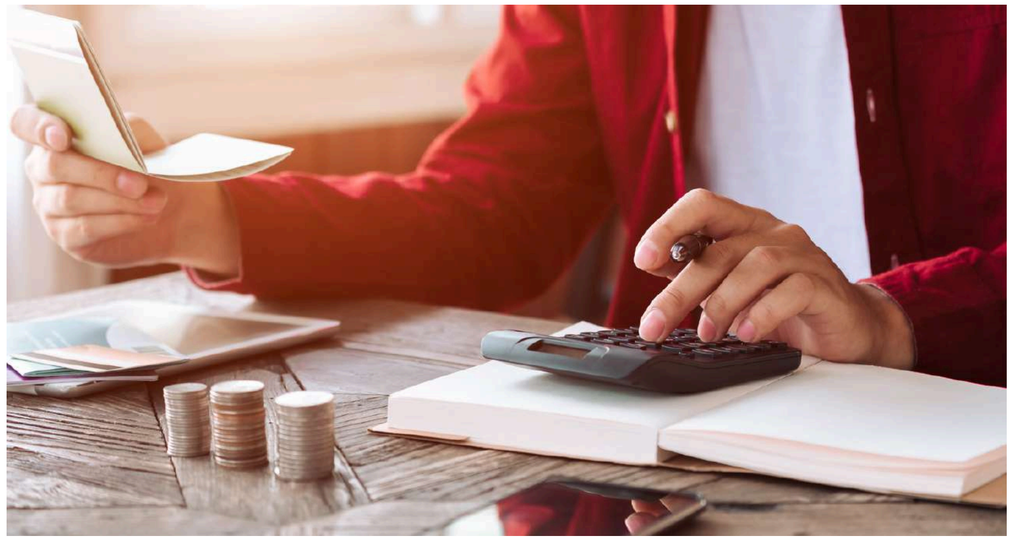
Agricultural land cannot be taken out of purview of section 56(2)(x). Where petitioner purchased a property for a sum of INR 42.72 lacs, however, SDV was INR 1.15 crores, since value of property was disputed, AO had to make a reference to DVO for purpose of valuing same.



Facts

The petitioner filed the declaring a loss of INR 1,24,010 for the AY 2018-19. Subsequently, the case was selected for limited scrutiny to examine whether the purchase value of a property was less than the value determined by the stamp valuation authority u/s 56(2)(x). During assessment proceedings, the AO noted that the petitioner purchased a property for INR 42.72 lacs, whereas the SDV of the same was INR 1.16 crores. The petitioner contended that the land in question, located at Ghanshyam Nagar Sosa, Kundal, Mahesana, was agricultural at the time of purchase on 21-09-17 which was later converted to non-agricultural use after obtaining permission from the Collector on 23-10-17, and the property was registered on 26-03-18. The petitioner submitted that since the property was agricultural land at the time of purchase, it did not qualify as a "capital asset" as per section 2(14), and therefore, section 56(2)(x) was not applicable. The petitioner stated that the nature of land at the time of purchase and its use as agricultural land excluded it from the purview of section 56(2)(x). However, the AO held that although the land was purchased as agricultural, the petitioner's intention was always to use it for non-agricultural purposes, as evident from the early application and subsequent conversion. The AO placed reliance on the SC's decision in Smt. Sarifabibi Mohmed Ibrahim v.

CIT [1993] 70 Taxman 301/204 ITR 631 in which it was held that agricultural status depends on actual use and intention, and not merely on classification in revenue records. Since the land was not used for agricultural purposes and was bought with a clear intention to convert it, it qualified as a capital asset. Accordingly, the officer held that the provisions of section 56(2)(x) were attracted, and the difference of INR 72.91 lacs between the purchase consideration and the SDV was liable to be taxed as "income from other sources". In appeal, CIT(A) dismissed the appeal against which the petitioner had preferred an appeal before the ld. Tribunal.



Ruling

ITAT placing reliance in the case of Dilip Manibhai Prajapati v. Income-tax Officer [2024] 164 taxmann.com 224 (Ahmedabad - Trib.) [28-06-2024] held that where petitioner purchased agricultural land at price lower than stamp value of land, however FMV of land determined by DVO was within 10% of purchase price, showing no significant difference from purchase consideration, no addition u/s 56(2)(x) was warranted. The ITAT in the above order held that from bare perusal of section 56(2)(x), where in any person receives an immovable property for purchase consideration which is less than the SDV, the difference is liable to be taxed in his hands subject to the condition that the difference does not exceed INR 50,000 or 10% of the consideration whichever is more. Further, the 3rd proviso to the section clearly provides that where the SDV of the immovable property is disputed by the petitioner on grounds mentioned in section 50C(2), the AO may refer its valuation to the Valuation Officer. ITO further stated that there is merit in the contention of the petitioner that where the SDV of the propertyis disputed, the AO must make a reference to the DVO for the purpose or valuing the same and accordingly, ITAT referred the matter to the file of the AO with a direction to refer the matter to DVO. Accordingly, the appeal of the petitioner was allowed for statistical purposes.

Source : ITAT, Ahmedabad in the case of Clayking Minerals LLP vs ITO vide [2025] 174 taxmann.com 1111 (Ahmedabad - Trib.) on May 27, 2025

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