VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

September 2024

Inside this edition

High Court Rulings

Revision of Form 3 under Direct Tax VSV Act, 2020 due to omission of set off/carry forward of losses and unabsorbed depreciation in Schedule D, would not negate relief granted by AO.

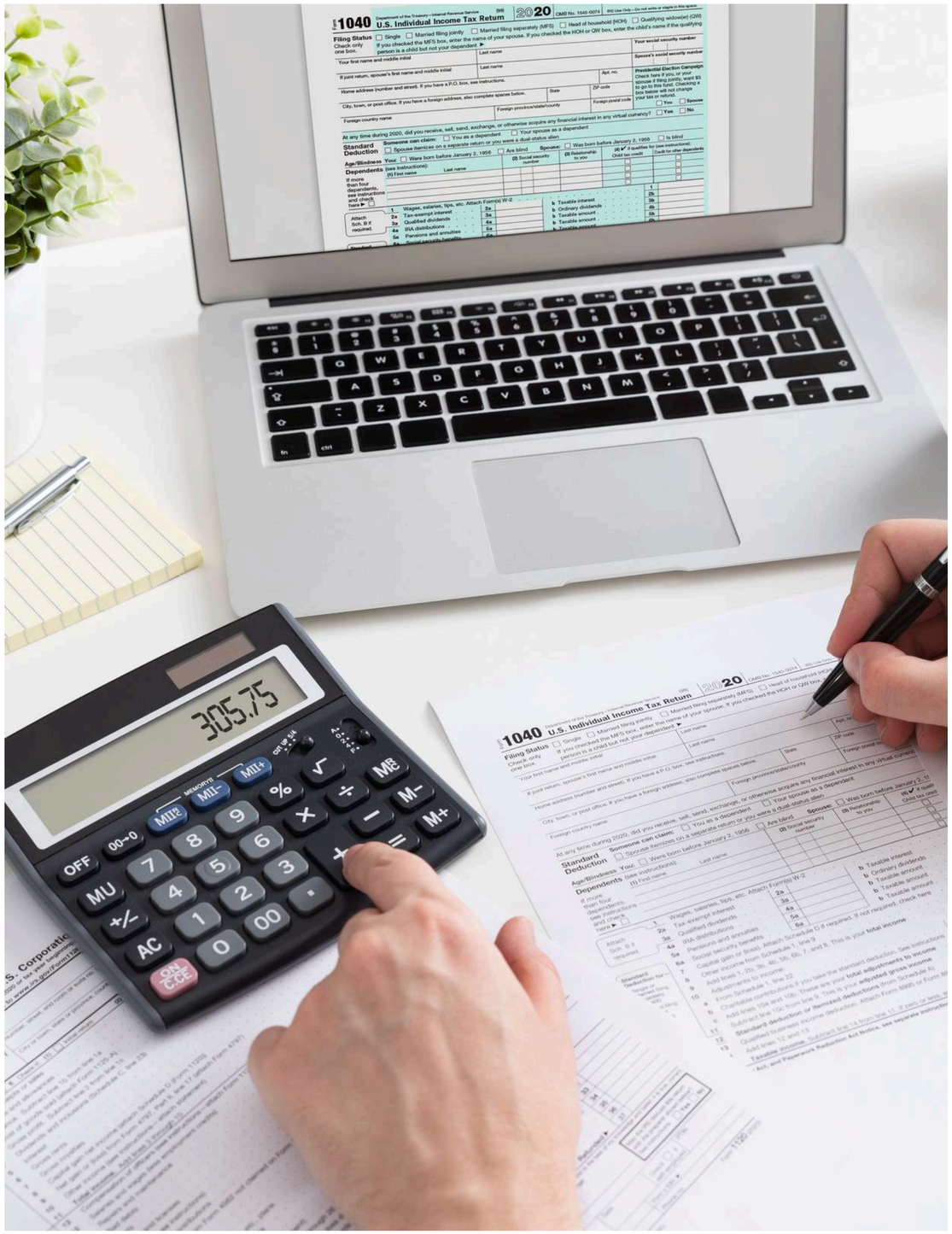
Second reassessment proceedings on same set of reasons would not be sustainable where reassessment proceedings had already been concluded

ITAT Rulings

ITAT quashes penalty as Revenue failed to point specific action u/s 270A(9) for imposition of penalty

High Court Rulings

Revision of Form 3 under Direct Tax VSV Act, 2020 due to omission of set off/carry forward of losses and unabsorbed depreciation in Schedule D, would not negate relief granted by AO.



Facts

Pursuant to order u/s 143(3), an addition of INR 3,00,00,000 came to be made which was affirmed by the CIT(A). In the meanwhile, the VSV Act came to be enforced. Seeking to derive benefit therefrom, the assessee submitted a declaration in terms contemplated under Section 3 of the VSV Act. It is the case of the assessee that Schedule D was inadvertently left blank notwithstanding the relief which had been accorded by the AO itself. Later when, Form 3 came to be issued, the tax arrears as payable of INR 97,35,000 were computed on if paid on or before 30 April 2021.

The assessee asserted that it was on account of a sheer inadvertent mistake and oversight that it had overlooked filling in the requisite details in Schedule D. In view of the above, it is stated to have moved an application for what was claimed to be a mistake apparent on the face of the record and thus rectifiable which has come to be rejected in terms of the order impugned, against which the present appeal has been preferred.

Ruling

HC held that it would be wholly unjust to construe the provisions of the VSV Act as contemplating the settlement amount exceeding the tax liability as

This since the order of assessment to that extent would not even have formed subject matter of disputation. The definition of “disputed tax liability” & “tax arrears" clearly lends credence to the submission that the settlement would have to necessarily be confined to that part of the assessment which was adverse to the assessee and which may have formed subject matter of ongoing proceedings.

HC also stated that once the AO itself had accorded the facility of carry forward and set off of unabsorbed depreciation and business losses, the same could not have been denied to the declarant. The failure of the writ assessee to make the requisite disclosures in Schedule D would neither detract from the relief which had been accorded by the AO nor change the factum of carry forward and set off as forming part of the assessment order. The grant of that facility appears to have been noticed by the Designated Authority and it was perhaps this aspect which convinced it to record that it would be open to the assessee to seek relief in that respect accordance with law.

However, the Designated Authority clearly appears to have lost sight of the fact that unless Form 3 were duly amended and rectified, the specter of finality which stands statutorily conferred on that determination would have deprived the assessee of asserting any claim in respect of carry forward and setoff.

Once it was conceded that those reliefs stood granted in the original order of assessment itself, the Designated Authority would have been justified in rectifying the mistake which was apparent from the record.

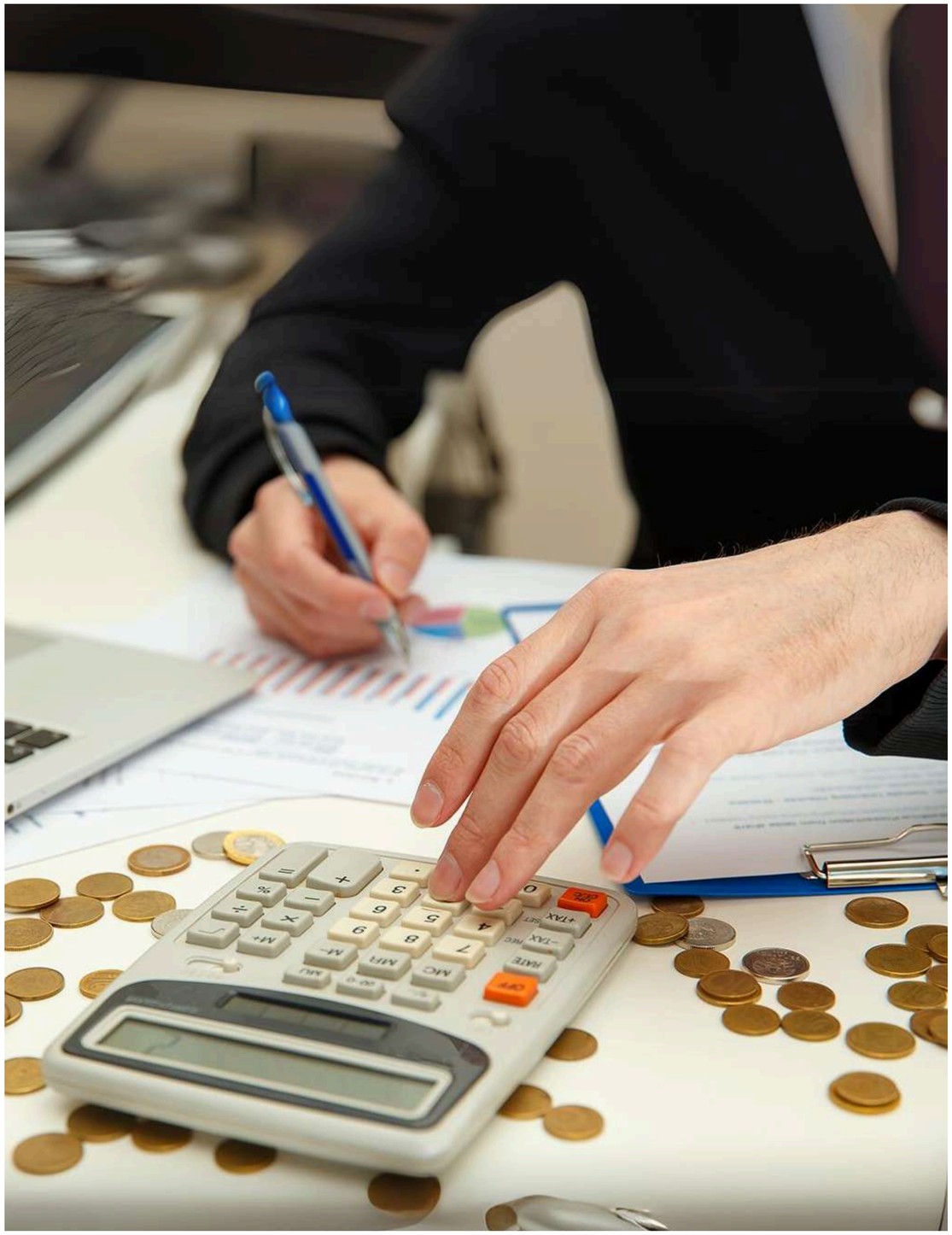
High Court accordingly, allowed the writ petition and quashed the and directed the Designated Authority to issue a Form 3 afresh bearing in mind the observations rendered here in above.

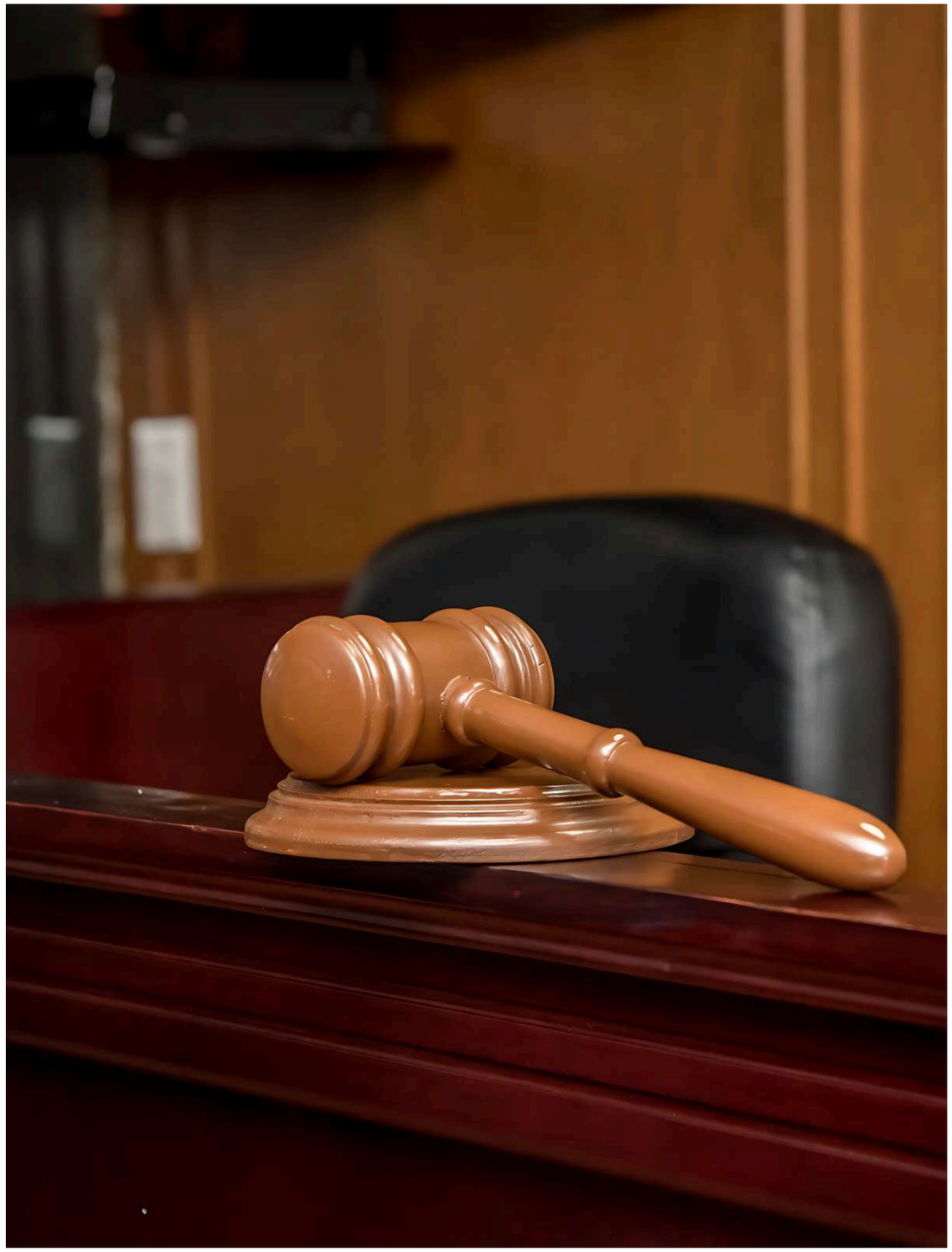
High Court, Delhi in the case of Fresh Pet (P.) Ltd. vs PCIT vide [2024] 167 taxmann.com 223 (Delhi) on September 09, 2024

Second reassessment proceedings on same set of reasons would not be sustainable where reassessment proceedings had already been concluded

Facts

The Assessee is the proprietor of M/s. JMK Enterprises, which is engaged in dealing in electronic goods and components who had filed its return of income for the AY 2014-15, declaring a total income of INR 23.06 lacs. The Respondent issued a notice u/s 148 proposing to assess/reassess the income of the assessee in response to which, the Assessee filed his return along with P&L Account and balance sheet of the Propitiatory Firm M/s. JMK Enterprises. After considering the submissions and the document placed on record by the assessee, an assessment Order u/s 147 came to be passed on 26-03-22, accepting the submissions made by the assessee. On





31-05-22, yet another notice u/s 148-A(b) purportedly in accordance with the judgment of the Supreme Court in Union of India v. Ashish Agarwal (2023) 1 SCC 617/[2022] 138 taxmann.com 64/286Taxman 183/444 ITR 1 (SC), came to be issued. Despite the fact that an order u/s 147 was already passed, respondent No. 1 passed an order under Section 148-A(d) on the same information which was the subject matter of the order passed u/s 147 which is the subject matter in the present writ petition.

Ld. counsel for the assessee, however, has argued that the impugned order and impugned notice have been issued ignoring the fact that assessment order u/s 147 was already passed and that the judgment of the Supreme Court cannot be applied in the present case where proceedings have already culminated in an order passed u/s 147 on merits.

Ruling

HC held that in this case, assessment proceedings had already concluded on 26-03-22 and the reassessment action was reinitiated on the same set of reasons vide SCN u/s 148A(b), leading to the passing of an order u/s 148-A(d) and issuance of notice u/s 148. Placing reliance on the ruling of Anindita Sengupta, HC restricted itself from sustaining the impugned action of reassessment.

The writ petition was accordingly allowed and the impugned order dt. 20-07-22 u/s 148-A(d) as well as consequential notice u/s 148 of the even date

shall stand quashed.

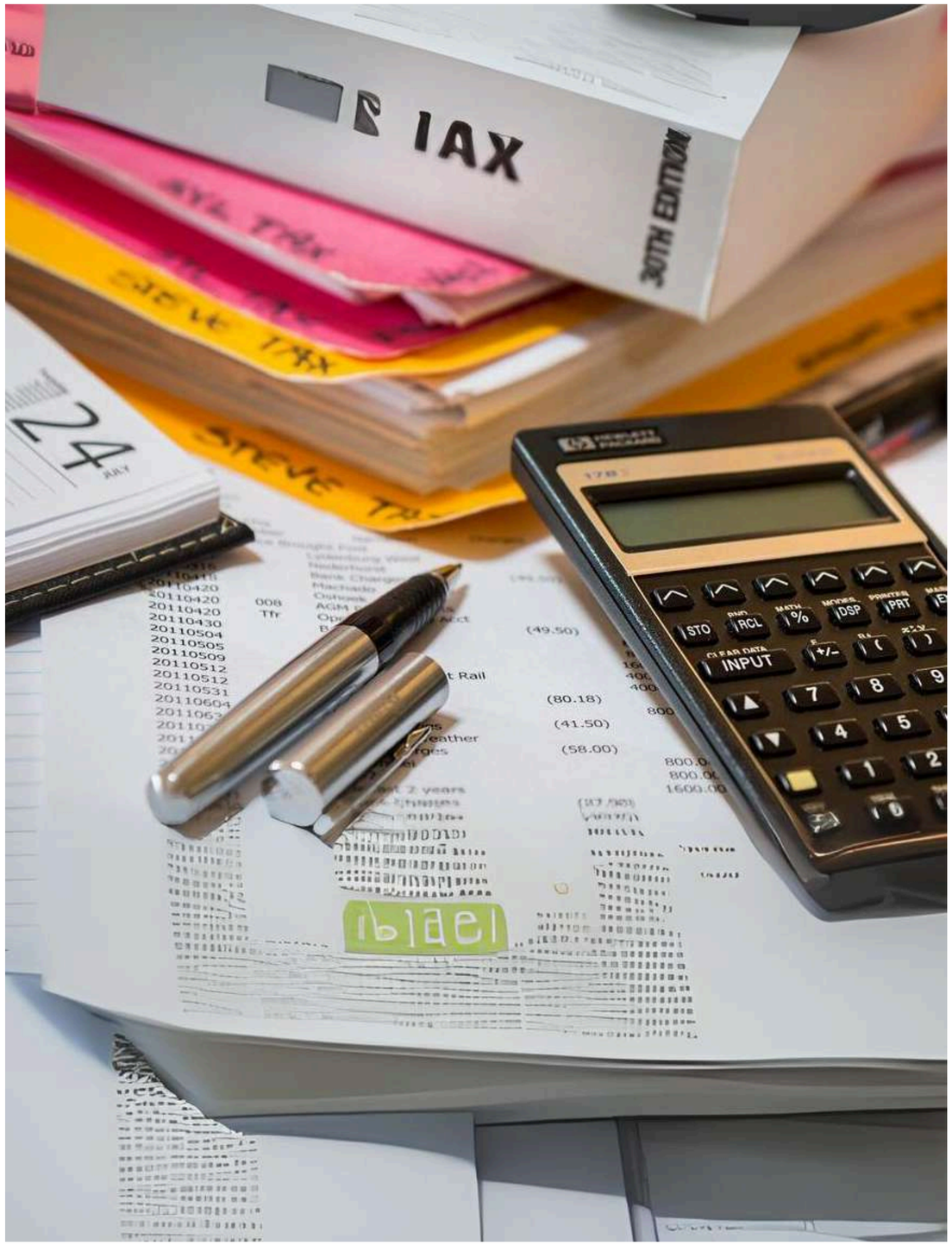
High Court, Delhi in the case of Jaswant Singh Juneja vs ITO vide [2024] 166 taxmann.com 661 (Delhi) on September 12, 2024

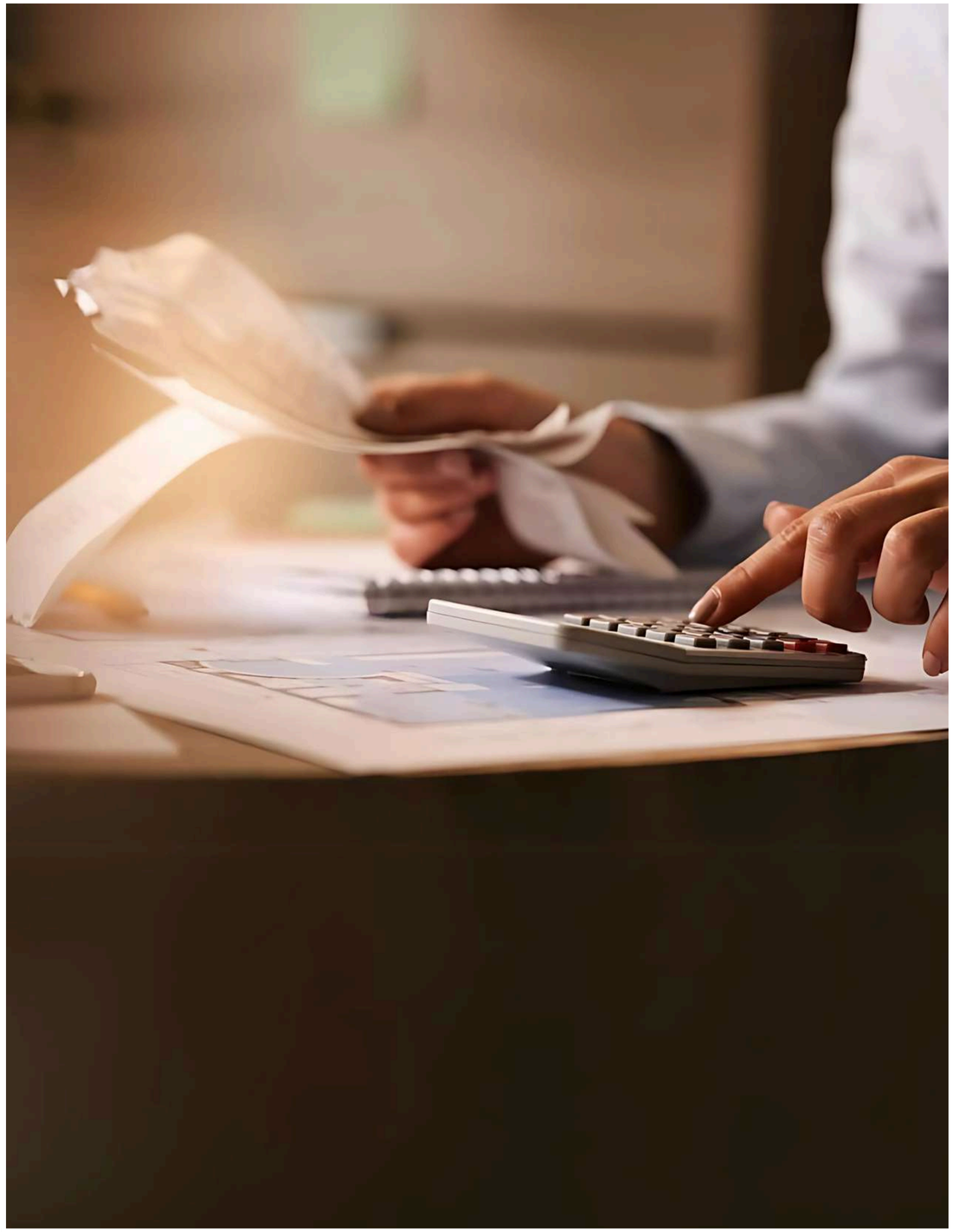
Explanation inserted to section 14A vide Finance Act, 2022 is prospective in nature

Facts

The assessee, Williamson Financial Services Limited, is a Company engaged in the business of Lease Financing, Financial Advisory and Capital Market Operations, and had filed its return for the AY 2013-14 showing a loss of INR 6.03 crores. The case of the assessee was selected for scrutiny through CASS. The assessee has made disallowances u/s 14A of INR 2.25 crores not by following any systematic or specific method of calculation but on the basis of disallowance made in assessment orders of earlier AYs.

Being aggrieved with the assessment order, the assessee Company preferred an appeal before the CIT(A) which was partly allowed affirming the action of invocation of provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962. However, the CIT(A) held that the disallowance u/s 14A read with Rule 8D cannot exceed the income claimed exempt. Being aggrieved with the said finding of the CIT(A), the Revenue has preferred appeals for AYs 2012-13 to 2014-15 and 2009-10 before the Tribunal who set aside the orders passed by the CIT(A) relating to different





AYs and affirmed the orders passed by the AO. Being aggrieved with the said findings of the Tribunal, the assessee Company has preferred the instant appeals.

Ruling

In view of the Memorandum Explaining the Provisions in the Finance Bill, 2022 and various decision rendered by the different High Courts, this court also hold that the Explanation inserted to Section 14A vide Finance Act, 2022 is applicable prospectively.

In view of above discussions, the substantial questions of law framed in these appeals were answered as under :

(i) the order passed by the Tribunal, holding that insertion of Explanation to Section14A is clarificatory and thereby retrospective in nature, is erroneous in law.

(ii) the findings of the Tribunal to the effect that the insertion of Explanation to Section 14A is clarificatory, is contrary to the legislative intention as expressed in Memorandum to the Finance Bill, 2022.

Consequently, the present appeals were allowed and the impugned order passed by the Tribunal were set aside and the orders passed by the CIT(A)

were affirmed.

HC also took note of the fact that the Bench of the Tribunal, in earlier decision rendered relying on decision of Delhi High Court in "Era Infrastructure (India) Ltd.," has held that the Explanation inserted to Section 14A is applicable prospectively. However, the same Bench, while deciding the Miscellaneous Applications, preferred on behalf of the assessees subsequently has concluded that the decision of the Delhi High Court is not binding the Tribunal. Having taken note of the above fact, while restraining from making harsh comments, HC held that such a conduct of the members of an authority, which is discharging judicial functions, cannot be appreciated.

High Court, Gauhati in the case of Williamson Financial Services Ltd. vs CIT vide [2024] 166 taxmann.com 607 (Gauhati) on September 24, 2024

No jurisdiction can be invoked on the ground that excess stock found during survey proceedings should have been declared as unexplained investment by assessee u/s 69 particularly when AO had passed order of assessment after conducting inquiry

Facts

The assessee Company is engaged in the business of trading of Gold Ornaments, Gold Bullion, Diamond Ornaments & precious metals and derives income from them. The assessee's case was selected for compulsory scrutiny consequent upon the survey action carried out at the

business premises of the assessee u/s 133A. During the course of survey proceedings, excess stock of INR 2.26 crores was found which the assessee surrendered as his income for the AY 2017-18 and thereafter, the assessee filed ITR in response to the notice u/s 142(1) declaring total income of INR 2.37 crores as PGBP which includes the impugned excess stock of INR 2.26 crores.The AO issued SCN to the assessee u/s 263 that the assessee Company has shown very small net profit ratio in comparison to the net profit shown in the previous two years, which the assessee replied, however, the AO did not find the explanation satisfactory and added only INR 1,42,715 and the entire income was taxed at the rate of 30% along with surcharge and cess. The revisional authority i.e. PCIT finding that the AO has failed to verify the claim of the assessee of excess purchase and further finding that there is no application of mind on the part of the AO to verify the claim of the assessee in the return of income and also finding that the assessment order passed u/s 144 is erroneous as well as prejudicial to the interest of the Revenue, proceeded to issue notice u/s 263 on the ground that the assessee had disclosed additional income of INR 2.26 crores after finding the excess stock of jewellery of same value during the survey proceedings and the same should have been declared as unexplained investment by the assessee u/s 69 which should have been taxed u/s 115BBE and should have been taxed at 60% plus surcharge and cess.The assessee replied the notice under Section 263 of the IT Act stating that the assessee is a Company engaged in trading of Gold Ornaments, Gold Bullion, Diamond Ornaments and precious metals and that

the assessee Company follows mercantile system of accounting over the years consistently and there is no deviation. The PCIT came to the conclusion that the assessing authority did not make proper inquiry and having satisfied that the assessment order is erroneous and it is prejudicial to the Revenue in view of Explanation 2 to Section 263, set aside the assessment order and remanded back the matter to the AO for fresh adjudication of the issue.Feeling dissatisfied and aggrieved by the order of the PCIT, invoking the revisional jurisdiction u/s 263(1), the assessee preferred appeal u/s 253 before the ITAT branding the same as unsustainable and stating that Section 263 is not attracted and thus, the ld. PCIT could not have invoked Section 263. The ITAT by its order allowed the appeal and set aside the order of the PCIT holding that there is no reason and justification for exercising the revisional power u/s 263 and restored the order passed by the AO. Being aggrieved, the Revenue has preferred this appeal in which substantial question of law has been formulated and set-out in the opening paragraph of this order.

Ruling

HC is of the considered opinion that both the twin conditions, namely, the order of the AO sought to be revised is erroneous and it is prejudicial to the interests of the Revenue, are not satisfied at all to invoke the jurisdiction u/s 263, as the AO has passed the order of assessment after conducting inquiry. As such, the learned PCIT is absolutely unjustified in invoking the jurisdiction u/s 263 which has rightly been set-aside by the ITAT. The

The substantial question of law has therefore been answered in favour of the assessee and against the Revenue.

High Court, Chhattisgarh in the case of PCIT vs Mahavir Ashok Enterprises (P.) Ltd. vide [2024] 167 taxmann.com 396 (Chhattisgarh) on September 27, 2024

ITAT quashes penalty as Revenue failed to point specific action u/s 270A(9) for imposition of penalty

Facts

The assessee company is in the business of Micro finance which is approved by Reserve Bank of India as NBFC filed its return of income for the AY 2020-21 declaring total income of INR 126.85 crores. Thereafter, the AO completed the assessment u/s 143(3) r.w.s. 144B assessing the total income at INR 128.25 crores by making the following disallowances:

-Employees contribution of Provident Fund amounting to INR 16.61 lacs u/s 36(1)(va), and;

-Education cess amounting to INR 1.23 crores claimed as deduction u/s 37.

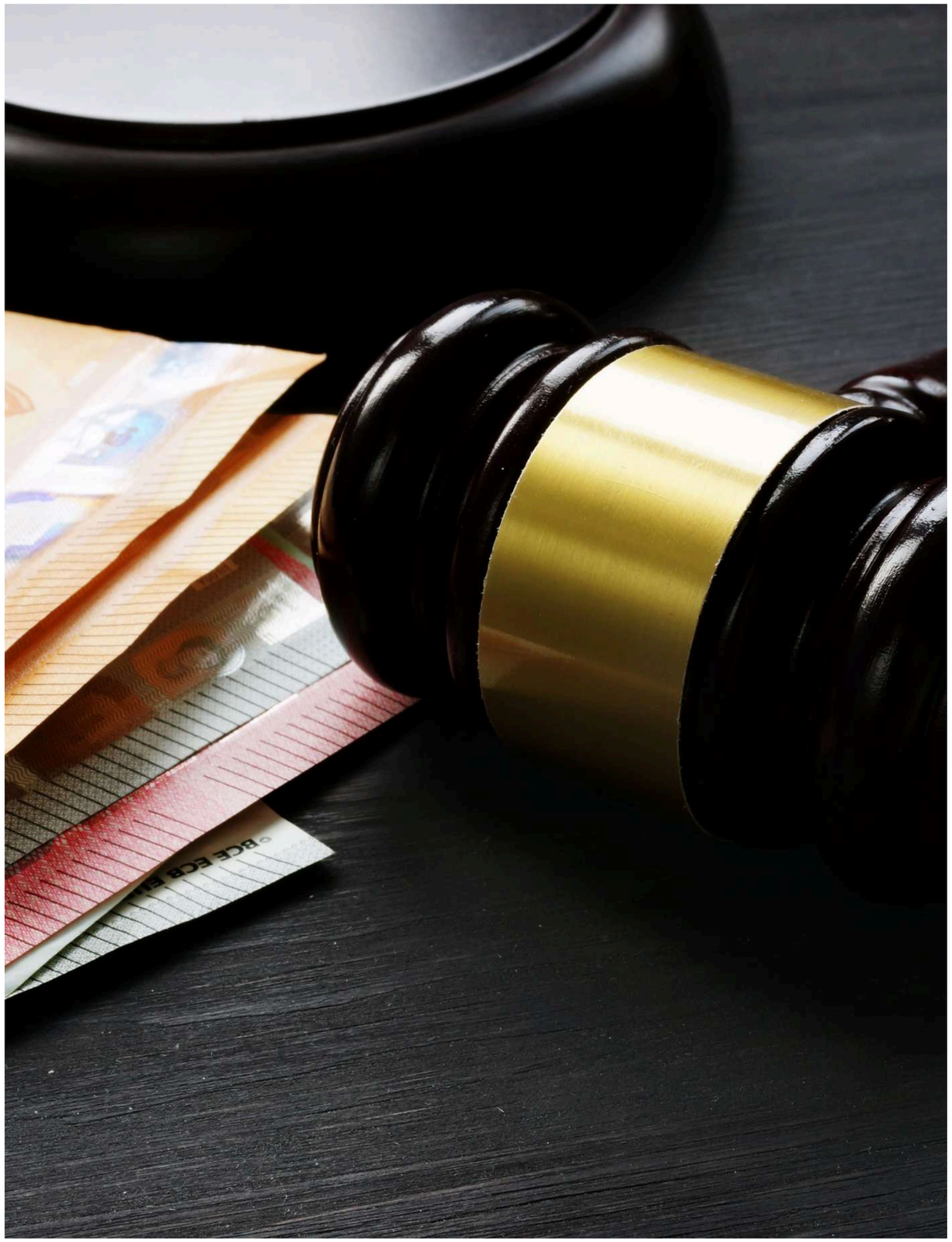
Finally, before completing the assessment proceedings, the AO initiated the penalty proceedings u/s 270A.

Thereafter, the AO issued penalty notice u/s 274 r.w.s. 270A asking the assessee to show cause as to why penalty u/s 270A should not be levied for under reporting in respect of late payment of Employees's share of PF contribution and mis-reporting of Income in respect of education cess

claimed as deduction. In the mean while the assessee had also filed an application u/s 270AA(2) in form No. 68 for granting of immunity. The opportunity of being heard was accorded to assessee to furnish reply to which the assessee duly complied through E-proceedings. The AO merely by stating that on the basis of the facts of the case, it is seen that it is not a case wherein immunity u/s 270A can be granted & accordingly rejected the application for grant of immunity.

Aggrieved by the penalty order passed u/s 270A, the assessee had preferred an appeal before the ld. CIT(A) who dismissed the appeal. Aggrieved by the order, the assessee had filed the present appeal before the Tribunal.

In the present case, Tribunal stated that the assessee company well before the completion of the assessment proceedings had filed a letter to AO for voluntary declaration of health and education cess by enclosing the revised computation. Considering the totality of the case, ITAT is of the opinion that provisions of section 270A(6)(a) is squarely applicable in this case. Since the assessee company claimed the deduction based on decision of Hon'ble jurisdictional & Non-Jurisdictional High Court as well as Tribunals, and the assessee had disclosed all the material facts to substantiate the explanation, Tribunal agreed. Further, the authorities below have also not controverted the decision relied on by the assessee to be incorrect. After the amendment in the Finance Act, assessee had also voluntarily disclosed the



health and education cess before the AO well before the completion of assessment proceedings.

ITAT is of the opinion that the penalty by hereditary nature is always discretionary. The legislature has used the word “may” in section 270A(1) . which clearly says that it is discretionary on the part of the AO to levy penalty or not. We are also of the opinion that penalty is not at par with the tax and interest and therefore, penalty should not be levied in a light hearted manner or in routine manner and not every additions/ disallowances are liable for penalty. The primary onus is on the revenue to prove that assessee falls under particular limb of default. The AO have to bring the case in the four corners of the sections in order to levy penalty which in our opinion, the authorities below failed to do so. The authority below misdirected themself by citing various irrelevant decisions of Hon’ble Supreme Court without understanding the real issues involved in the case of assessee company. Therefore, we are of the opinion that the explanation offered by the assessee is bonafide and the assessee has disclosed all material facts to substantiate the explanation. With the above observations, we delete the penalty levied u/s 270A and allow the appeal of the assessee.

ITAT, Bangalore in the case of IIFL Samasta Finance Limited vs DCIT vide ITA No.1054/Bang/2024 on September 27, 2024

Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on

For any further assistance contact our team at kmt@vkalra.com