VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

December 2025

Inside this edition

High Court Rulings

Where reassessment was initiated on basis of fresh and tangible material received from Investigation Wing and Insight Portal, reopening could not be treated as change of opinion.

ITAT Rulings

Revised computation and payment of due taxes during assessment, it was not a case of concealment or furnishing inaccurate particulars Penalty u/s 271(1)(c) deleted where assessee had correctly disclosed LTCG in return but wrongly claimed deduction u/s 54F and 54B.

Assessee cannot be declared an assessee in default for non-deduction of TDS u/s 194-IA on alleged consideration where Revenue failed to establish by cogent evidence that assessee had made cheque and cash payments towards purchase of a flat.

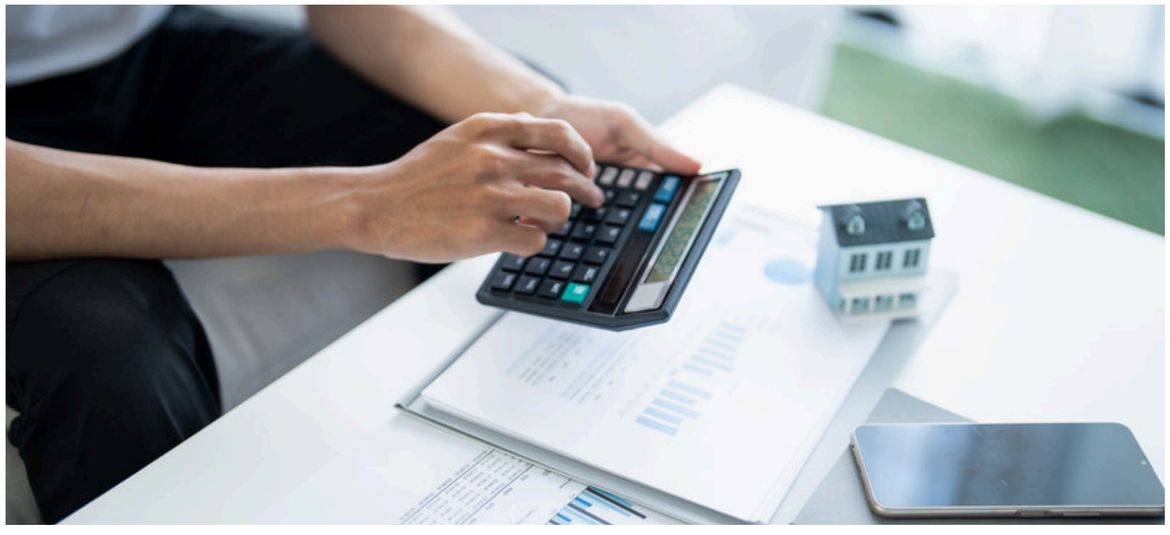
& more...

Where reassessment was initiated on basis of fresh and tangible material received from Investigation Wing and Insight Portal, reopening could not be treated as change of opinion.

Facts

The petitioner is a limited liability company who by this writ petition seeks to challenge not only an order passed u/s 148A(3) but also the notice issued u/s 148 in respect of the AY 2021-22 on the specific ground that the same are based on change of opinion. The ld. AR has drawn the attention of this Court to the notice issued u/s 148A(1) which was based on information which had been uploaded in the Insight Portal, wherefrom it has been deduced that the income chargeable to tax has escaped assessment in respect of the financial transactions made by the assessee to the tune of INR 383.57 crores concerning a cash purchase of coal from Majee Group amounting to INR 2.45 crores and the information uploaded in the TAS report amounting to INR 381.12 crores. Along with the above SCN, the entire documents received from the investigation were also enclosed.

Mr. Mazumdar submitted that 9 transactions for the relevant AY have been identified, and it has been alleged that the petitioner has made huge cash payments to Majee Group and that since, the petitioner is engaged in manufacturing of steel products and has a factory at Purulia, where, coal is an essential raw material, such coal had been purchased by the petitioner from Anup Majee Group. By comparing the above information with that of the notice issued u/s 142(1), it was submitted that when the said notice u/s 142(1) was issued, the above information was obviously within the notice of the AO. Notwithstanding the above and despite noting the aforesaid transactions as would corroborate from the observations made in the said notice, under the head "verification of transactions", the petitioner was called upon to explain the noted nine transactions and the cash payments made to the said Majee Group. The ld. Counsel of the petitioner had claimed that it had never entered into any alleged cash transactions and therefore, the allegation was unfounded. He further added that during the assessment proceedings, no addition was made to the above issue. It was also reiterated that in respect of the AY 2018-19 similar allegations had been levelled though, the same could not be substantiated. On the issue of TAS report, it was stated that all the transactions as are reported in TAS report are part of regular books of accounts and as such the same cannot be said to be an income escaping assessment and as such the proceeding should be dropped.



Ruling

HC stated that for a case of change of opinion to be established an AO must arrive at an opinion that there has been no escapement of income on the ground noted therein. Admittedly, in this case, he found that the transactions of the petitioner with Majee Group had been considered by the jurisdictional AO. However, HC finds that the jurisdictional AO was unable to form an opinion in the said case in absence of data and as such was not in a position to verify whether the parties have any business relationship. It is on such ground; the issue was dropped. The above, in my view, would not constitute formation of an opinion by the jurisdictional assessing officer. It is well settled that reassessment of income u/s 148 cannot be made on the basis of a change of opinion. If the AO had earlier made an assessment for a relevant AY expressing an opinion on the matter either expressly or by necessary implication, a reassessment proceeding for alleged escapement of income from assessment of tax cannot be initiated, as it would be a case of change of opinion. If such order is non-speaking, cryptic, it may be difficult to attribute to the AO any opinion on the question that was raised in the proposed reassessment proceedings. However, if, on a conscious application of mind, an opinion is made based on the relevant facts and the materials available or existing at the relevant point of time while making the assessment, and if, again, a different or a divergent view is reached, it would be tantamount to change of opinion. Having regard to the aforesaid for formation of some opinion, there has to be materials available before the AO, however, in the instant case, simply because, the transaction were available at that stage without the available data in relation to Majee Group, the same cannot, in my view, tantamount to an opinion. Especially when the petitioner claims to have any business relationship with the said Majee Group, the verification was not possible. HC found that in the order impugned, a relationship between the petitioner and the Majee Group has been identified on the basis of additional materials, which were non-existent at the time when the scrutiny proceedings were initiated u/s 142(1). It is apparent from the above that the subsequent notice issued u/s 148 is based on an order, which takes note of new and tangible material and is not a mere reference to a financial statement of the petitioner.

Source : High Court, Calcutta in Mark Steels Ltd. vs ACIT vide [2026] 182 taxmann.com 23 (Calcutta) on December 24, 2025

Revised computation and payment of due taxes during assessment, it was not a case of concealment or furnishing inaccurate particulars Penalty u/s 271(1)(c) deleted where assessee had correctly disclosed LTCG in return but wrongly claimed deduction u/s 54F and 54B.

Facts

The assessee is an individual and e-filed the return for AY 2015-16 declaring income of INR 30,190 after claiming deduction u/s 54F at INR 64,01,600 and u/s 54B at INR 28,80,560 and has shown LTCG at Rs. NIL. Case was selected for limited scrutiny under CASS and valid notices u/s. 143(2) & 142(1) were served upon the assessee. The Ld. AO observed that assessee has shown LTCG at INR 90,95,120, and against this income, has claimed deduction u/s. 54F & 54B and declared NIL income under capital gain. The Ld. AO, further on examination of records, observed that on account of transaction of conversion of capital asset into stock-in-trade during the FY 2010-11, the assessee's share of capital gain is INR 1,64,17,638 and the same is required to be offered total in the year when consideration is received. The Ld. AO further observed that out of LTCG of INR 1,64,17,638, assessee has declared LTCG of INR 61,98,677 and INR 75,04,083 in the returns for AYs 2013-14 & 2014-15 respectively and the remaining amount of LTCG i.e. INR 27,14,877 is eligible for deduction u/s 54F & 54B. The Ld. AO observed that in the return of income, assessee has shown LTCG of INR 90,95,120 and has also claimed deduction against this amount u/s 54F at INR 64,01,600 and u/s 54B at INR 28,80,560. The Ld.AO, thus, observed that assessee has claimed excess deduction of INR 63,80,243. Further, during the assessment proceedings itself, assessee has filed a revised computation of income admitting the mistake and had paid due taxes. The Ld. AO assessed the income at INR 64,91,229 and initiated the penalty proceedings u/s 271(1)(c) for furnishing inaccurate particulars of income at INR 63,80,243. Subsequently, penalty order dated 18-05-18 levying the penalty was issued. Aggrieved with the order of penalty, assessee filed appeal before the Ld. CIT(A) but failed to succeed. Now, the assessee is in appeal before this Tribunal.

Rulings

In the light of the above judgment and on examining the facts of the instant case, ITAT find that assessee has furnished all the income properly in the income tax return and has shown the correct LTCG of INR 90,95,120 as against the old amount calculated at INR 27,14,877. It is also not the case with the Revenue that claim of deduction u/s 54F/54B made by the assessee is not as per the provisions of the Act and that any of the conditions provided u/s 54F/54B, has not been fulfilled. The only mistake pointed out by the Ld.AO is that incorrect claim of higher deduction u/s 54F/54B has been made by INR 63,80,243. It is further an admitted fact that assessee has revised the computation of income during the assessment proceedings in spite of the fact that assessee could have easily revised the income tax return. All these facts clearly demonstrate that inadvertent mistake has been committed by the assessee making a wrong claim of deduction u/s 54F/54B, however, it is not a case of concealment of particulars of income or furnishing inaccurate particulars and therefore the ratio laid down by the Hon'ble Supreme Court in the case of Reliance Petroproducts (P.) Ltd. squarely applies on the facts of the instant case. Therefore, ITAT is of the considered view that Ld. CIT(A) erred in confirming the action of the Ld. AO in levying penalty u/s 271(1)(c). Finding of the Ld. CIT(A) is set aside and impugned penalty is deleted.

Source : ITAT, Pune Bench in Amol Vasant Deshmukh vs ITO vide [2025] 181 taxmann.com 763 (Pune – Trib.) on December 17, 2025.

Assessee cannot be declared an assessee in default for non-deduction of TDS u/s 194-IA on alleged consideration where Revenue failed to establish by cogent evidence that assessee had made cheque and cash payments towards purchase of a flat.

Facts

The facts of the case are that as per information received from the DDIT (Inv.)-2, Ludhiana vide letter dated 16-03-21, proceedings u/s 132 were conducted in the case of Homeland Group of cases on 26-02-20 wherein assessee had purchased flat No. T-4/41 jointly, having 50% share, at Homeland Heights, Sector 70, Mohali for a total consideration of INR 1,29,55,083 on which no TDS was deducted u/s 194-IA. Notice u/s 133(6) was issued and assessee furnished reply. It was noticed that the assessee made cheque payment amounting to INR 92,35,500 and also paid cash amounting to INR 19,75,000 towards payment for purchase of the property. It was found that the assessee deducted TDS but did not pay the same within the due date, therefore assessee was liable for interest u/s 201(1A). The ld. CIT (Appeals) dismissed the appeal of the assessee.

Rulings

The assessee for purchase of property, then it is incumbent upon the assessee to deduct the TDS and deposit the amount so deducted with the Treasury of the Government. In the present case, the Revenue has not brought on record any evidence to show that any cash payment was made by the assessee for purchase of the property. Furthermore, it is confirmed by the ld. Sr. DR that no additions u/s 148/153-C were made by the AO based on the alleged statement given by Mr. Monu and Shri Sanjiv Garg in the hands of the assessee. In our considered opinion, it is necessary for the Revenue to demonstrate that the assessee has made the payment in cash for buying the property. Since the pre-requisite for deducting the TDS i.e. making the payment in cash or banking channel has not been proved by the clinching evidence, therefore, the question of deducting the TDS on the alleged hypothetical payment of cash/cheque for buying the property by the assessee does not arise. In view of the above, once the Revenue failed to prove the payment of cash/cheque, by cogent evidence, therefore, ITAT is of the considered opinion the assessee was not required to deduct the TDS and hence, the AO's order is not sustainable. In view of the above, the assessment order and the appellate order are quashed, and the appeal of the assessee is allowed.

Source: ITAT, Chandigarh Bench in Simmi Gupta vs DCIT/ACIT vide [2025] 181 taxmann.com 909 (Chandigarh – Trib.) on December 22, 2025.

Where assessee sold a redeveloped flat in respect of which rights had crystallized pursuant to allotment and agreement in 2006, mere subsequent payment of instalments or date of completion of construction did not defer date of acquisition; accordingly, period of holding was to be reckoned from date of allotment and gains were assessable as LTCG

Facts

The assessee is an individual and had filed her return of income for AY 2014-15 declaring total income of INR 1,98,31,480. In the return of income, the assessee declared LTCG of INR 1,93,94,645 arising from sale of a residential flat and claimed exemption u/s 54. The case was selected for scrutiny and assessment was completed by the AO u/s 143(3) determining the total income at INR 2,15,79,640 wherein the AO treated the capital gains arising from sale of the residential flat as STCG and made an addition of INR 2,11,44,607. The AO noted that the assessee had originally purchased a flat in New Sarvottam CHS, Andheri, Mumbai, in the year 1988 for INR 2,25,000. The said society entered into a redevelopment agreement with M/s Kumar Builders in the year 2006. Pursuant to the redevelopment arrangement, the assessee became entitled to a new residential flat admeasuring 900 sq. ft. carpet area, comprising exchange area, free-of-cost additional area and purchased additional area. The AO recorded that the assessee paid consideration of INR 9,96,600 towards purchase of additional area of 161 sq. ft., with the last installment of INR 99,660 paid on 01-04-13. The AO inferred that the assessee received possession of the new flat sometime in April 2013 and thereafter sold the flat on 31-12-13 for consideration of INR 2,35,00,000. On the above basis, the AO concluded that the holding period of the flat was less than 36months, treated the asset as a short-term capital asset, denied the exemption claimed u/s 54 and assessed the gains as STCG. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A).

After considering the assessee's rejoinder, the remand report and the material on record, the CIT(A) held that allotment or society letters do not confer possession, physical possession could not have been received prior to completion of the building in May 2012, and the holding period of the flat commenced only from May 2012. The CIT(A) relied upon various judicial precedents to hold that physical possession is determinative and concluded that the flat was held for less than 36 months prior to its sale on 31-12-13. Accordingly, the CIT(A) confirmed the action of the AO in treating the gains as STCG and upheld the addition of Rs. 2,11,44,607/-. The appeal of the assessee was dismissed. Aggrieved by the order of the CIT(A), the assessee is in appeal before ITAT.

Rulings

In the present case, ITAT holds that the record clearly shows that the assessee's rights in the redeveloped flat crystallized pursuant to the allotment letter dated 24-11-06 and the agreement dated 27-12-10. The redevelopment arrangement was not a fresh purchase in isolation but was a continuation of ownership rights flowing from the original flat held since 1988. Mere payment of installments towards additional area, including the last installment paid on 01-04-13, does not postpone the date of acquisition, as held by the Hon'ble jurisdictional High Court. The emphasis placed by the lower authorities on the date of completion of construction or alleged improbability of possession prior to May 2012 cannot override the settled legal position governing allotment-based acquisition. Further, ITAT relied upon the binding ratio laid down in Vembu Vaidyanathan, wherein the approach adopted by the AO and affirmed by the CIT(A) in reckoning the holding period from May 2012 or from the date of last instalment is legally unsustainable. Once the date of allotment/ crystallization of rights is taken as the date of acquisition, it is evident that the assessee held the capital asset for a period exceeding 36 months prior to its sale on 31-12-13. Consequently, the asset qualifies as a long-term capital asset, and the gains arising therefrom are liable to be assessed as LTCG.

In view of the above, ITAT holds that the capital gain arising on sale of the residential flat is LTCG and not STCG. Accordingly, the addition of INR 2,11,44,607 made under the head STCG was deleted.

Source :ITAT, Mumbai Bench in Mrs. Urmila Jagdish Mehta vs ACIT vide [2026] 182 taxmann.com 909 (Mumbai – Trib.) on December 29, 2025.

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