VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Inside this edition

High Court Rulings

Impugned reopening of assessment on basis of information received from Investigation Wing that appellant had claimed an exemption u/s 10(38) on LTCG arising on sale of shares of a company was unjustified where it is clear from records that there had been no LTCG.

Service of the order upon CA does not absolve Tribunal of serving copies of order upon appellant. Appeal before the HC against the order of the Tribunal after a delay of 40 days was condoned where the appellant gained knowledge about impugned order only upon receipt of the recovery notice.

ITAT Rulings

Payment was allowable in AY 2017-18 on payment basis in terms of section 43B(f) where LE liability paid to employees in AY 2017-18 pertained to LE for earlier AYs 2002-03, 2003-04 and 2004-05 but had been disallowed and taxes thereon had been paid by filing application under DT VSV Scheme, 2024.

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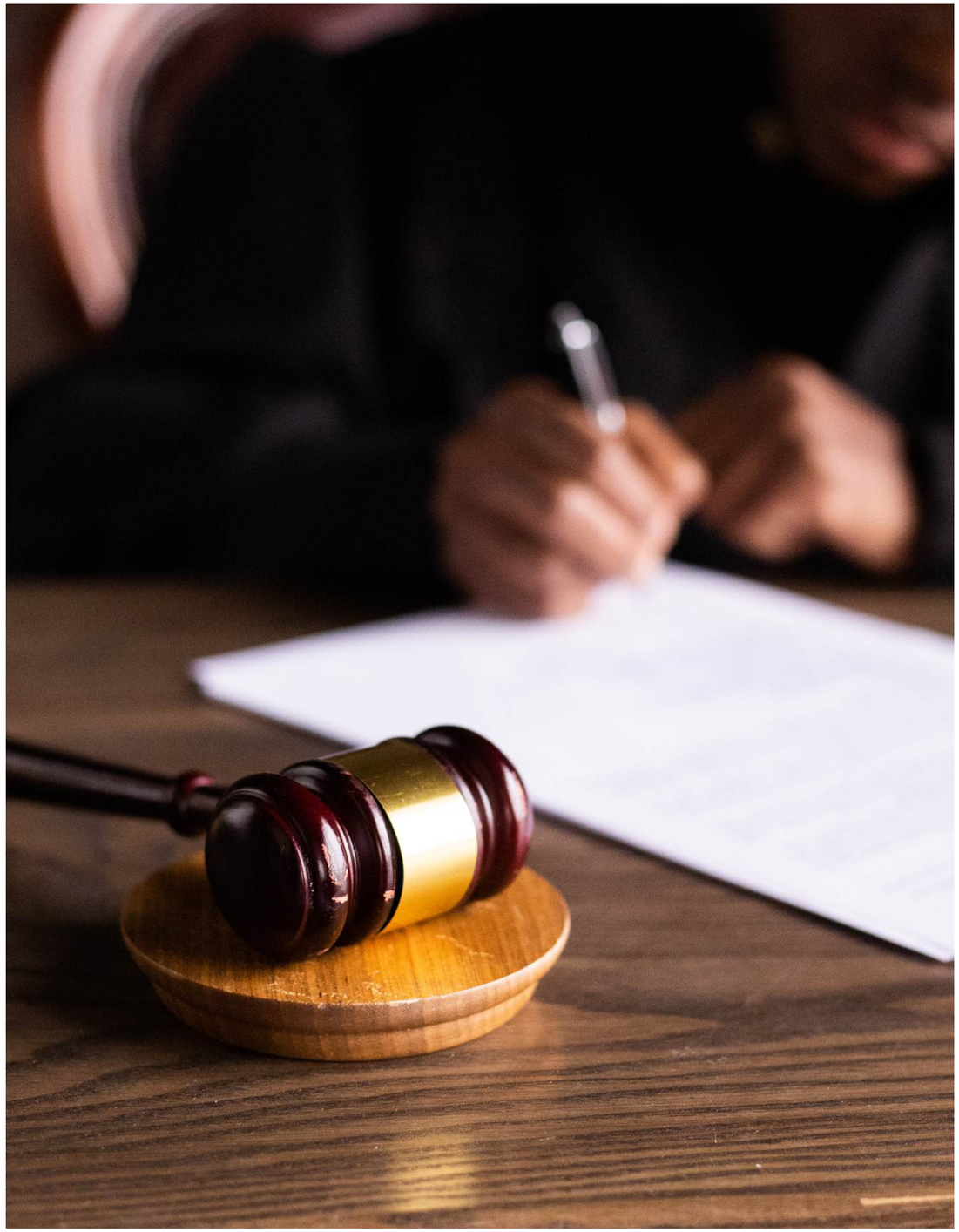


Impugned reopening of assessment on basis of information received from Investigation Wing that appellant had claimed an exemption u/s 10(38) on LTCG arising on sale of shares of a company was unjustified where it is clear from records that there had been no LTCG.

Facts

The matter relates to reopening of the assessment u/s 147 on the basis that specific information has been received from the office of the Principal Directorate of Income Tax (Investigation), Mumbai that the appellant has claimed an amount of INR 90.95 lacs as exemption u/s 10(38) having arisen on a scrip called 'VMS Industries Ltd.'. The ld. Tribunal has elaborately considered the facts and has pointed out that the information based on which the reopening was done was factually incorrect. The undisputed facts are that the return of income submitted by the appellate was processed u/s 143(1). The appellant had a long term capital gain as per accounts amounting to INR 41.99 lacs after adjustment of LTCL of INR 4.63 lacs which was claimed as exemption u/s 10(38). However, the AO reopened the assessment u/s 147 on specific information from the Investigation Wing that the appellant had claimed an amount of INR 90.95 lacs as exemption u/s 10(38) which arose in the share scrip called 'VMS Industries Ltd.'

Ruling

HC held that there is nothing on record to indicate as to where from the AO received such information that the appellant had a gain of INR 90.95 lacs which, according to the appellant, is a STCG of INR 57.47 lacs which was offered to tax in the original assessment itself. Furthermore, it is clear from the records that there has been no LTCG by the appellant in the shares of VMS Industries Ltd. as alleged by the AO and, therefore, the ld. Tribunal was fully justified in holding that the reopening of assessment was not bad in law. HC stated that when the appellant has not claimed any exemption u/s 10(38), the question of reopening would not arise. Therefore, the ld. Tribunal after examining the facts has rightly allowed the appeal filed by the appellant and set aside the order passed by the AO as well as the first appellate authority. Thus, HC find no question of law much less substantial question of law arising for consideration in this appeal and accordingly, the appeal was dismissed.

Source: High Court, Calcutta in PCIT vs Nikunj Dhanuka vide [2025] 176 taxmann.com 60 (Calcutta) on June 18, 2025

Service of the order upon CA does not absolve Tribunal of serving copies of order upon appellant. Appeal before the HC against the order of the Tribunal after a delay of 40 days was condoned where the appellant gained knowledge about impugned order only upon receipt of the recovery notice.

Facts

The appellant along with her husband, were assessed to tax for the Assessment Year 2009-2010 and they having filed the Appeals No. 88 and 89 before the Commissioner of Income Tax (Appeals), their appeals came to be allowed. This gave a cause for the Revenue to approach the Appellate Tribunal. As a result, the order passed by the Income Tax (Appeals) was set aside and the order of the AO was restored. The appellant has urged before the HC that as per Section 260(A), an appeal to the HC shall lie from the order passed in appeal by the Appellate Tribunal on a substantial question of law and such appeal shall be filed within 120 days from the date on which the order appealed against is received by the appellant from the PCC or the CC. According to the AR, the impugned order was passed on 14-09-2016 but the appellant was not aware of the said order until April 2024 when she was served with a recovery notice for the AY 2009-10 and thereafter she applied for certified copy of the order, which was received by her on 17-04-2024 and therefore the delay of 40 days has occasioned in filing the appeal, if counted from the date of receipt of the certified copy of the order.

Ruling

HC held that since the facts involved clearly reveal that the copy of the order against which the appeal is preferred, is received by the CA, who has filed his affidavit categorically stating that he is unable to recollect if the copies were given by him to the appellant or the legal heirs of the appellant's spouse in the year 2016. HC stated that since we are of the view that service upon the CA do not absolve the Tribunal of serving the copies of the order upon the appellant, who has adopted a specific stand before us that it is only upon receipt of the recovery notice the applicant gained knowledge about the impugned order and thereafter preferred an application for certified copy of the order which was received on 17-05-2024 and the appeal was preferred with a delay of 40 days. HC is convinced with the justification of the appellant that she was unaware of the impugned order being passed on 14-09-2016 until April 2024 when she was served with the recovery notice for the AY 2009-10, thereafter steps were taken by her so as to institute the appeals against the said order which is filed beyond the period of limitation prescribed user Section 260(A). As the appellant had no knowledge of passing of the impugned order, only on receipt of the certified copy of the same, she has preferred the appeals. Therefore, HC is of the view that the appeal deserves to be decided on merits by condoning the delay that has occurred in instituting the appeals.

High Court, Bombay in Mrs. Neelam Ajit Phatarpekar vs DCIT vide [2025] 176 taxmann.com 129 (Bombay) on June 23, 2025

A second notice on 13-3-25, seeking response by 17:00 hours of 15-03-25 i.e. within 2 days, with a very short time for filing response particularly as 14th March 2025 was a declared holiday on occasion of Holi festival, since no reasonable opportunity had been given, impugned assessment order passed was to be set aside.

Facts

The ld. AR of the appellant submits that sufficient opportunity of hearing was not provided to the appellant before passing the assessment order and the same has been passed in violation of principle of natural justice and without following the Standard Operating Procedure provided u/s 143(3). He further submitted that the appellant has duly filed his return for the AY 2023-24 electronically on 12-09-23. Subsequently, the Department had issued notice u/s 142 (1) on 01-08-24 to which the appellant replied on 05-08-24. Thereafter, the second notice was issued by the Department on 13-03-25 wherein response was sought by 17:00 hours of 15-03-25 in a very short span. He submits that between 13-03-25 and 16-03-25, the office was closed due to Holi Festival and Sunday. Thereafter, the appellant has submitted his response on 17-05-25, however, the same was not taken into consideration by the Department. The ld. AR submitted that by fixing a short time limit the Department has deprived the appellant from fair opportunity of hearing which is directly in violation of principle of natural justice and stated that the Department ought to have granted reasonable time to file the response. In support of his contention, the AR placed reliance on the cases of Gemini Film Circuit v. Addl./Jt./Dy./ Asstt. CIT/ITO/Income Tax Department/NFAC, Delhi vide [2023] 157 taxmann.com 445/461 ITR 13 (Madras)/MANU/TN/7675/2023 decided by the High Court of Madras; Monika Jaiswal v. Union of India [2024] 165 taxmann.com 41/300 Taxman206/466 ITR 488 (Calcutta)/MANU/WB/1717/2024 and others decided by the High Court of Calcutta; Cheftalk Food and Hospitality Services (P.) Ltd. v. ITO [2024] 165 taxmann.com 415 (Bombay)/MANU/MH/4989/2024:2024:BHC-S:12330-DB decided by the High Court of Bombay; and in the case of Rashmi Lakhotia v. Union of India [2023] 148 taxmann.com 157/456 ITR 320/MANU/CG/1393/2022(Chhattisgarh) passed by this Court. Lastly, ld. AR for the appellant submitted that the assessment order is not sustainable and same deserves to be quashed and appellant is entitled for reasonable opportunity of hearing in view of principle of natural justice.

Ruling

HC stated that in view of the aforesaid discussion and in light of the law laid down by the various High Courts and considering the manner in which proceeding has been conducted by the Department before passing the assessment order, HC is of the view that no reasonable opportunity has been given to the appellant particularly by providing the dates between Holi festival. Hence, this Court is of the view that the assessment order has been passed in violation of principle of natural justice.

Consequently, the impugned assessment order was set aside, and the respondent was directed to restore the matter and to take suitable steps for rehearing of the case by providing reasonable opportunity of hearing to the appellant.

HC stated that if any fresh notice is issued to the appellant, then sufficient time may be provided for filing response and only then, the Authority shall pass fresh assessment order. The Writ Petition was accodinlgy allowed.

Source: High Court, Chhattisgarh in Ramesh Kumar Jain vs CIT vide [2025] 176 taxmann.com 72 (Chhattisgarh) on June 26, 2025

Where AO adopted net profit @ 10% of total gross receipts, but no infirmity was found in books of accounts maintained, invocation of section 145(3) and best judgment assessment u/s 144 were unjustified.

Facts

During search, several incriminating documents were found and seized from the residential and business premises. Post issuance of notice u/s 153A, the appellant along with three other persons of the group filed Settlement Applications before the Income Tax Settlement Commission, Additional Bench, Kolkata and the ITSC passed order u/s 245D(4) on 28-09-15 and has determined the total income and total tax liabilities in the case of the appellant for the block period AY 2006-07 to 2012-13 and the rate of net profit was further enhanced by the appellant to the extent of 10% by submitting a letter dated 18-9-15 which was ultimately accepted by the ITSC.

The appellant had filed his return of income for the AY 2014-15 declaring total income at INR 6.65 crores and on 31-08-15, the case was selected for scrutiny through CASS and notice u/s 143(2) was issued and served upon the appellant. Ultimately, on 29-11-16, a SCN was issued to the appellant to show cause as to why the net profit @ 10% of the gross contract receipts during the FY relevant to the AY under consideration should not be adopted, which the appellant replied competently and finally, on 29-12-16, assessment order u/s 143(3) was passed determining total income at INR 13.25 crores holding 10% of the net profit of total gross contract receipts. The assessment order was challenged by the appellant before the CIT (Appeals) who partly allowed the appeal and deleted the resultant addition of INR 6.60 crores holding net profit at 5.37% of the gross contract receipts. Feeling aggrieved and dissatisfied against the order of the CIT(Appeals), the Revenue preferred an appeal before the ITAT which was dismissed leading to filing of the instant tax appeal in which the substantial question of law.

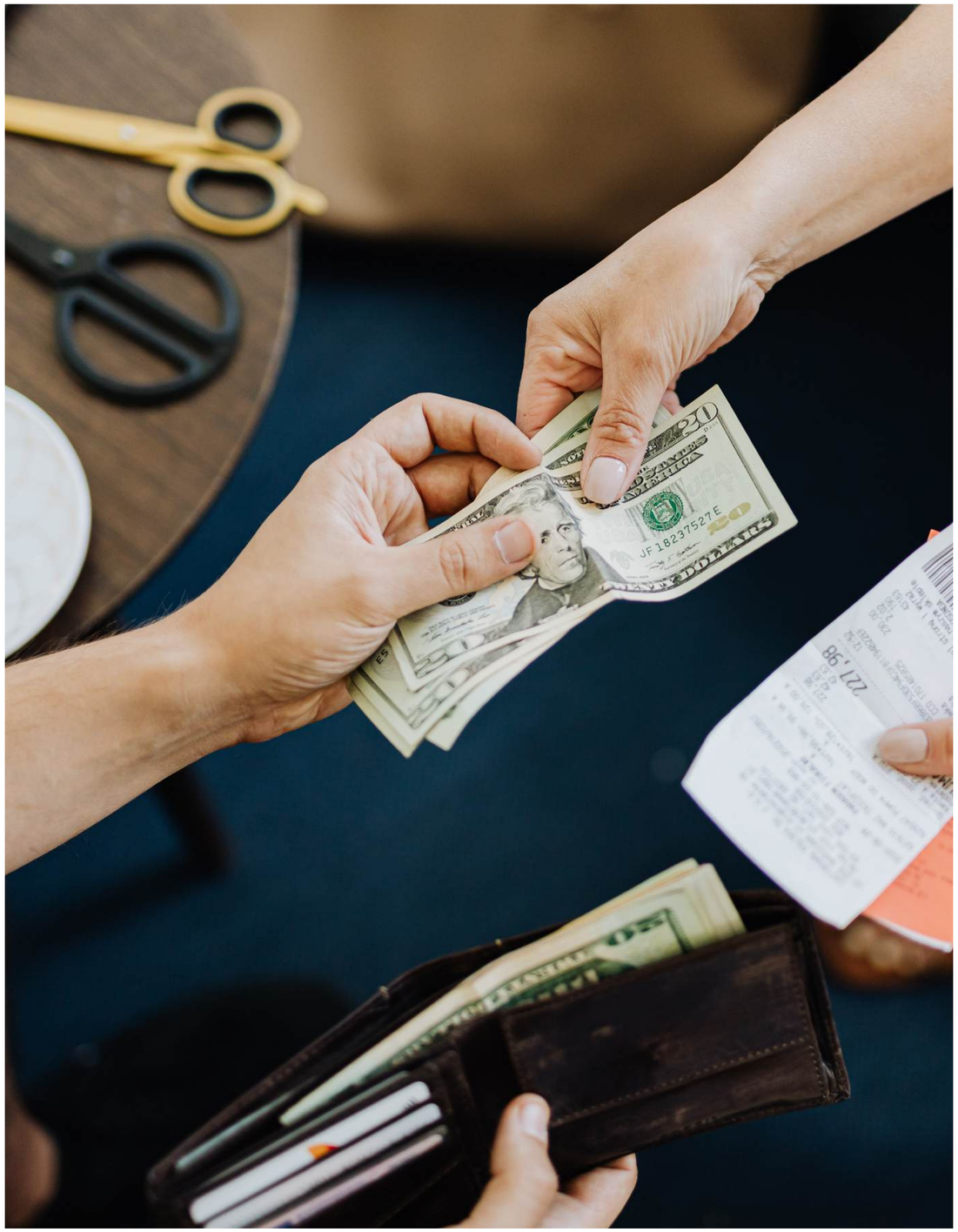
The ld. counsel appearing for the Revenue submitted that the ld. ITAT has failed to appreciate that the appellant had voluntarily rejected his books of accounts for all the PYs i.e. AYs 2006-07 to 2012-13, therefore, the correctness of the opening and closing balances of different ledger accounts pertaining to the books of accounts of the appellant for the year under consideration could not be relied upon and therefore 10% net profit of the total gross contract receipts could not be reduced to 5.37% by the CIT (Appeals), as the ITSC, Kolkata by order passed under Section245D(4) held that the appellant had suo motu rejected his books of accounts for the AYs 2006-07 to 2012-13 and the appellant itself has admitted before the ITSC to reject the results of audited books of account and net profit to be adopted @ 10% of gross contract receipts, which would be binding upon the appellant. Therefore, the CIT (Appeals) and the ITAT both had concurrently erred in holding the net profit to be 5.37% of the gross contract receipts on the basis of books of accounts and thereby committed legal error which deserves to be set aside by interfering in the instant tax appeal by allowing it.

High Court Rulings

Ruling

HC in the present case, held that adoption of net profit @ 10% of the total gross receipts by the AO has been made on pure guess work only and record of the appellant has not been found deficient and no infirmity or defect was noticed by the AO, therefore, Section 145(3) could not be invoked and assessment could not have been done holding 10% net profit of the total gross receipts making best judgment assessment u/s 144. In that view of the matter, the concurrent finding of the two Courts viz. CIT (Appeals) and the ITAT partly interfering with the order of the AO is in accordance with law and the substantial question of law was answered in favour of the appellant. Resultantly, the appeal of the Revenue was dismissed.

Source: High Court, Chhattisgarh in ACIT vs Sunil Kumar Agrawal vide [2025] 176 taxmann.com 166 (Chhattisgarh) on June 27, 2025



Payment was allowable in AY 2017-18 on payment basis in terms of section 43B(f) where LE liability paid to employees in AY 2017-18 pertained to LE for earlier AYs 2002-03, 2003-04 and 2004-05 but had been disallowed and taxes thereon had been paid by filing application under DT VSV Scheme, 2024.

Facts

The appellant is a domestic company, and the return was filed with 'NIL' income, which was selected for scrutiny and after considering the submission of the appellant, the assessment was made at the total income of INR 1.26 lacs vide order u/s 143(3). Aggrieved with the assessment order, the appellant filed an appeal before the Ld. CIT(A) who partly allowed the appeal, aggrieved with which the appellant has filed the appeal before this Tribunal. The claim was allowable on accrual basis before the appellate forums in view of the decision of Hon'ble jurisdictional Calcutta High Court in the case of Exide Industries v. Union of India ([2007] 164 Taxman 9 /292 ITR 470 (Calcutta)) dated 27.06.2007, wherein it was held that the provisions of Section 43B(f) was ultra vires and that the leave encashment was allowable on accrual basis.

Ruling

ITAT after considering the submissions of the appellant held that since the LE liability of INR 44.51 lacs was paid to the employees during the AY 2017-18 which though pertained to the earlier AYs 2002-03, 2003-04 & 200405 but had been disallowed and taxes thereon have been paid by the appellant by filing the application under the DT VSV Scheme, 2024, therefore, the impugned payment of INR 44.51 lacs is allowable in the relevant AY 2017-18 on the payment basis in terms of Section 43B(f) and the Ld. AO is directed to allow the same after the appellant files the evidence for payment. ITAT stated that the limitation as regards filing of the revised return to entertain the claim is for the Assessing Authority and not for the Appellate Authority as has been held in the case of **Goetze (India) Ltd**. which has also been reiterated by the **Hon'ble Delhi High Court** in the case of **Jai Parabolic Springs Ltd**. Hence, the appeal was allowed.

Source : ITAT, Kolkata in Universal Cables Ltd. vs ACIT vide [2025] 175 taxmann.com 566 (Kolkata - Trib.) on June 12, 2025

Exemption u/s 11 is allowed where form No. 10B was not uploaded within due date of filing return u/s 139(1) but was available before AO at time of processing.

Facts

The appellant trust is engaged in providing financial and other assistance to the lower strata of the society and needy as well as to individuals after due evaluation of their needs. The trust had been granted approval u/s 12A(1)(ac)(i) vide order dated 28-05-21 bearing provisional registration no. AADTA8073AE20131. The return of income for the AY under consideration was filed on 13-10-22 vide acknowledgement no. 717686701131022, i.e., within the extended due date of 07-11-22. The requisite form 10B was duly filed on 28-09-22 within 1 month prior to due date for furnishing ROI u/s 139(1) by the CA vide acknowledgement 955227960140223 but inadvertently, the appellant missed to accept it. The return was processed u/s 143(1) on 03-03-23, wherein adjustment of INR 9.43 lacs was made and the exemption claimed u/s 11 was denied. Aggrieved with the intimation, the appellant filed an appeal before the ld. CIT(A), who considered the submissions, examined the provisions of section 12A and noted that since the appellant had filed its e-return on 31-10-22 within the extended due date of 07-11-22 and the audit reporting Form had been submitted on 28-09-22 but was accepted by the appellant on 14-02-23, which was beyond the specified date i.e. 07-10-22 and as the audit report in form No. 10B had not been filed by the appellant within the due date, therefore, the action of the CPC was found to be correct and the appeal was dismissed.

It was further noted that the delay in filing of Form No. 10B had not been condoned by the appropriate authority in accordance with the CBDT Circular No.16/2022 dated 19.7.2022. The Ld. CIT (A) also relied upon the decision in the case of **Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223** which was in the context of deduction u/s 10B and according to him which is equally applicable to the present case. Since in the instant case, the appellant had filed the return of income on 31-10-22 i.e. within the extended period up to 07-11-22 for the filing of return of income u/s 139(1) and had filed the audit report in Form No.10B on 28-09-22, but which was accepted by the appellant on 14-02-23, and which was beyond the specified date i.e. 07-10-22, therefore, it was clear that the audit report in Form No. 10B had not been filed within the specified date and therefore, the action of the Ld. AO was found to be correct and accordingly the appeal was dismissed. Aggrieved with the order of the ld. CIT(A), the appellant has filed the appeal before the Tribunal. It was also submitted before the Tribunal by the Ld. AR that the due date for filing the return of income had been extended and the audit report was required to be filed a month earlier. The same was filed belatedly but was available at the time of processing of the return of income and therefore, the claim of exemption should not have been denied.

Ruling

After examining the facts of the case, ITAT deem it appropriate to set aside the order of the Ld. CIT(A) as well as the intimation of the Ld. AO and remit the matter back to the Ld. AO for considering the claim of the appellant afresh as the audit report was available at the time of processing the return of income and therefore, the claim of exemption under section 11 had to be allowed .Needless to say, the appellant shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, all the grounds taken by the appellant in his appeal are allowed for statistical purposes. In the result, the appeal filed by the appellant is allowed for statistical purposes..

Source : ITAT, Bengaluru in AMPI Foundation vs DDIT vide [2025] 175 taxmann.com 989 (Kolkata - Trib.) on June 16, 2025.

Reassessment proceedings initiated beyond prescribed limitation period were rendered void ab initio and unsustainable in law where limitation period available to AO for issuance of notice u/s 148, as per section 149, had expired on 31-03-22, however, notice was issued on 29-07-22

Facts

The appellant had filed his return of income for AY 2015-16 declaring total income of INR 11.87 crores. Subsequently, the case was taken up for reassessment based on the information received under Risk Management Strategy as formulated by the CBDT. Notice u/s 148 dated 23-06-21 was issued after obtaining the prior approval of the PCIT, Delhi-4. The AO vide order u/s 147 r.w.s. 144B dated 29-05-23 completed the assessment at income of INR 36.25 crores by disallowing the short term capital loss. In appeal, ld. CIT(A) partly allowed the appeal of the appellant. Aggrieved, appellant and revenue both are in cross appeals before the Tribunal.

At the time of hearing, ld. Counsel for the appellant submitted that the ld. CIT(A) had not quashed the notice u/s 148 being barred by limitation in view of the first proviso to section 149(1) and as such the notice issued u/s 148 is bad in law and deserves to be quashed.

Ruling

In view of the aforesaid, ITAT stated that the impugned order dated 29-07-22 issued u/s 148(A)(d) as well as the notice dated 29-07-22 issued u/s 148 in respect of AY 2015-16 deserve to be quashed. The aforesaid view has also been accepted by the Hon'ble Delhi HC in Pratishtha Garg v. ACIT Central (2025] [2025] 171 taxmann.com 264, and ITAT Mumbai Bench decision in the case of ITO v. Sumitra Rajesh bhai Jain 2025 SCC Online ITAT 1859. ITAT further noted that even otherwise, the limitation period must be strictly construed in accordance with the statutory provisions of the Act as amended by the Finance Act, 2021, read with TOLA and judicial pronouncements of the Hon'ble Supreme Court.

In the considered view of this bench, the impugned reassessment proceedings-initiated u/s 148 vide notice dated 29-07-22 is barred by limitation and deserve to be quashed and consequently, the reassessment order passed u/s 147 r.w.s Section 144B also deserve to be quashed. Resultantly, the only legal ground is decided in favour of the appellant by allowing the same.

Source : ITAT, Delhi in Harish Kumar vs NFAC, Delhi vide [2025] 176 taxmann.com 309 (Delhi - Trib.) on June 18, 2025.

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