VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Facts

The facts giving rise to the present appeal are that a Memorandum of Understanding dt. 19-01-09 was entered into between Mr. Hashim Moosa on the one hand and the Appellant as well as Mr. Surendra Reddy on the other, for procuring lands at a certain price from the land procurers, i.e. the Appellant and Mr. Surendra Reddy. As per Clause 10 of this MOU, INR 10 lakhs was paid to the procurers for arranging facilitation of transfer of land from the landowners to Mr. Hashim Moosa/his nominees. No other payment, except a reimbursement under Clause 11, was contemplated under this MOU. A search and seizure operation was carried out at the Appellant's premises on 25-11-10 u/s 132. As recorded in paragraph 4 of the assessment order, the Appellant disclosed an income of INR 2.27 crores as a consequence of the search and seizure.

The Appellant returned a total income of INR 4.77 crores whereas the total income assessed was INR 4.78 crores. An order imposing penalty u/s 271AAA was passed for AY 2011-12 on the ground that the Appellant did not make payment of tax and penalty in terms of Section 271AAA(2) after receipt of SCN and considering the entire received income as the undisclosed income. On the same day, another order imposing penalty at

the rate of 10% u/s 271AAA was passed in respect of AY 2010-11 on the entire returned income i.e. INR 4.78 crores. The CIT(A), Bangalore allowed ITA No.119 preferred against the Penalty Order in respect of AY 2010-11 while accepting the submission of the Appellant that 2009-10 cannot be the 'specified previous year' for the purpose of Section 271AAA. The ld. ITAT vide order dt. 17-10-16 rejected the Appellant's appeal against the order again on the ground of non-compliance with Section 271AAA(2) against which the Appellant preferred an appeal u/s 260A on the substantial questions of law. Vide the impugned judgment dated 02-08-22, the High Court dismissed the appeal of the Appellant holding that the appellant had voluntarily filed return of income more than what he had admitted before the DDIT. According to him, machinery Section has thus failed and therefore, penalty cannot be imposed.

Ruling

SC is of the view that the present case revolves around the interpretation of Section 271AAA. Since the said section is a complete code in itself, SC held that the imposition of penalty is not mandatory. Consequently, penalty under this Section may be levied if there is undisclosed income in the specified PY. SC is of the view that though u/s 271AAA(1), the Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. Further, SC also stated that the AO has the discretion to levy penalty, yet this discretionary power is not unfettered, unbridled and uncanalised. In the present case, the appellant admitted INR 2.27 crores as income for AY 2011-12 during the search before DDIT(Inv.) as well as substantiated the manner in which the said undisclosed income was derived and paid tax together with interest thereon, albeit belatedly. Consequently, all the conditions precedent mentioned in Section 271AAA(2) stand satisfied and, therefore, penalty under Section 271AAA(1) is not attracted

Source: Supreme Court in the case of K. Krishnamurthy vs DCIT vide [2025] 171 taxmann.com 413 (SC) on February 13, 2025

When issue relating to section 36(1)(vii) had already been discussed in assessment order, reassessment proceedings were quashed and set aside in a case where reopening was after expiry of 4 years from end of AY on ground of misrepresented deductions claimed u/s 36(1)(vii)/(viia).

Facts

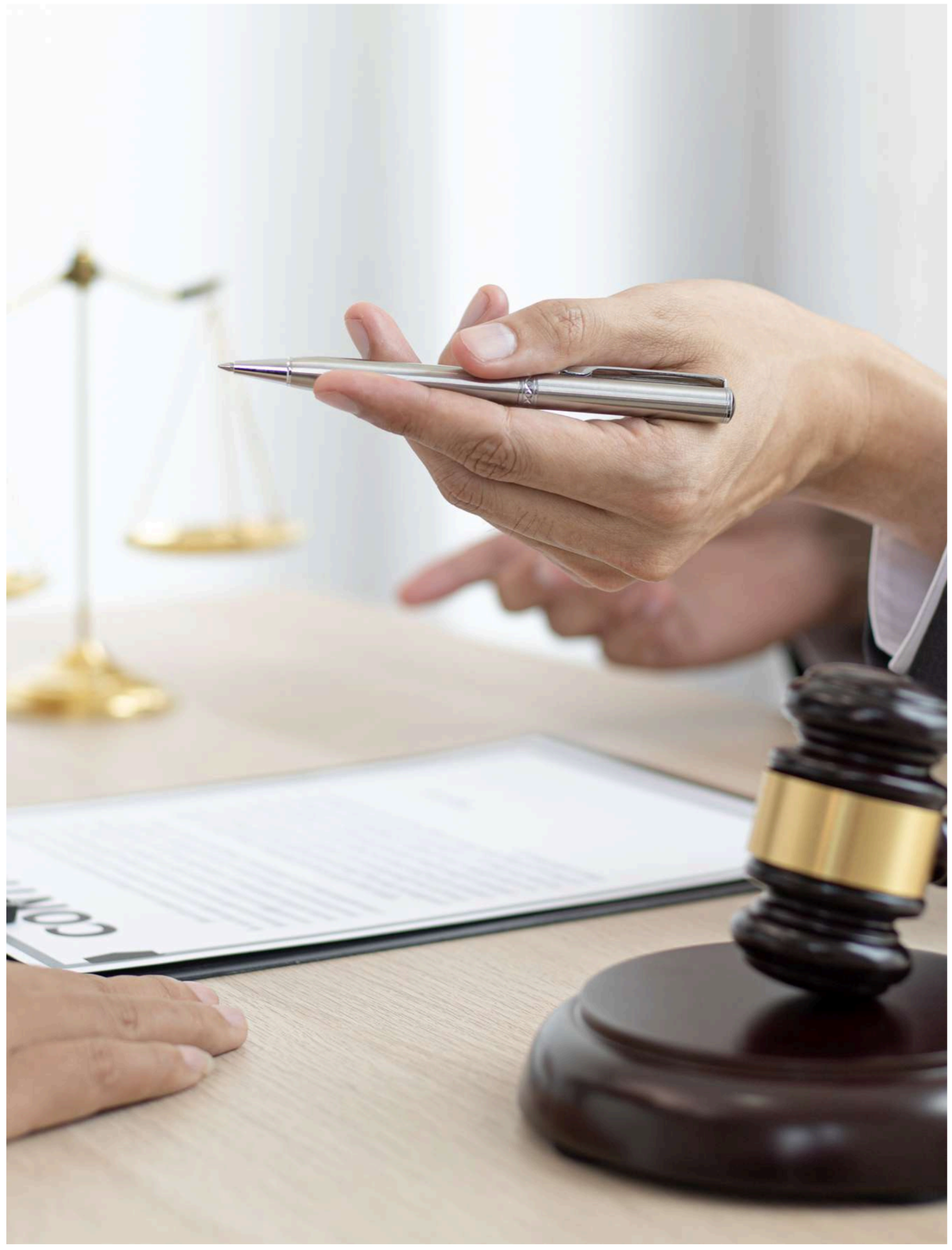
The appellant challenges notice u/s 148 for AY 2014-15 wherein the ld. Counsel on behalf of the appellant submits that the impugned notice is issued after a period of 4 years from the end of the AY and in the absence of any allegation of any failure to disclose fully and truly all material facts necessary for the assessment, impugned notice is barred by the first proviso to Section 147. The ld. Counsel further submitted that the issue for which the reopening was sought was raised in the course of the assessment proceedings and a reply was duly furnished and considered in the assessment order, therefore, the impugned proceedings would amount to change of opinion. The ld. counsel relied upon the decision in the case of Hindustan Unilever Limited v. R.B. Wadkar 137 Taxman 479/268 ITR 332 (Bombay). On the other hand, the ld. Counsel for the respondent submitted that there isa failure on the part of the petitioner to disclose fully and truly all material facts and are valid.

Ruling

On a perusal of the reasons recorded in the present case, there were no allegations of any failure to disclosure fully and truly of material facts

necessary in the assessment as per the findings of the Tribunal. It shows that the information on the basis of which re-opening is sought was based on the documents filed by the appellant alongwith the return of income and in the assessment proceeding. Therefore, the impugned proceedings were quashed and set aside. Further, on perusal of the reasons recorded in the present case, High Court did not find any allegation of any failure to disclosure fully and truly of material facts necessary in the assessment. But on the contrary on a perusal of the reasons recorded, it shows that the information on the basis of which re-opening is sought was based on the documents filed by the appellant proceeding. Therefore, the impugned proceedings were quashed and set aside.

Source: High Court, Bombay in the case of ICICI Bank Ltd. vs DCIT vide [2025] 171 taxmann.com 617 (Bombay) on February 11, 2025



Where assessee company was amalgamated with two other companies and thereby lost its existence, assessment orders passed subsequently in name of said non-existing entities were void in law and same were to be quashed and set aside

Facts

The six appeals for the AYs1993-94 to 1995-96 are filed by the appellant-assessee M/s Reliance Industries Ltd. (RIL) and the revenue has filed two appeals for the AYs 1994-95 being cross-appeals. All the appellant's appeals were admitted in the year 2008 and the revenue's appeals were admitted in the year 2013 on the questions of law set out in the respective

orders of admission. The appellant raised a preliminary jurisdictional ground on whether the assessment orders for these years could at all have been passed in the name of M/s. Reliance Polyethylene Limited (RPEL) and M/s. Reliance Polypropylene Limited (RPPL) non-existing companies on account of amalgamation order by which these companies were merged with Reliance Industries Limited (RIL).

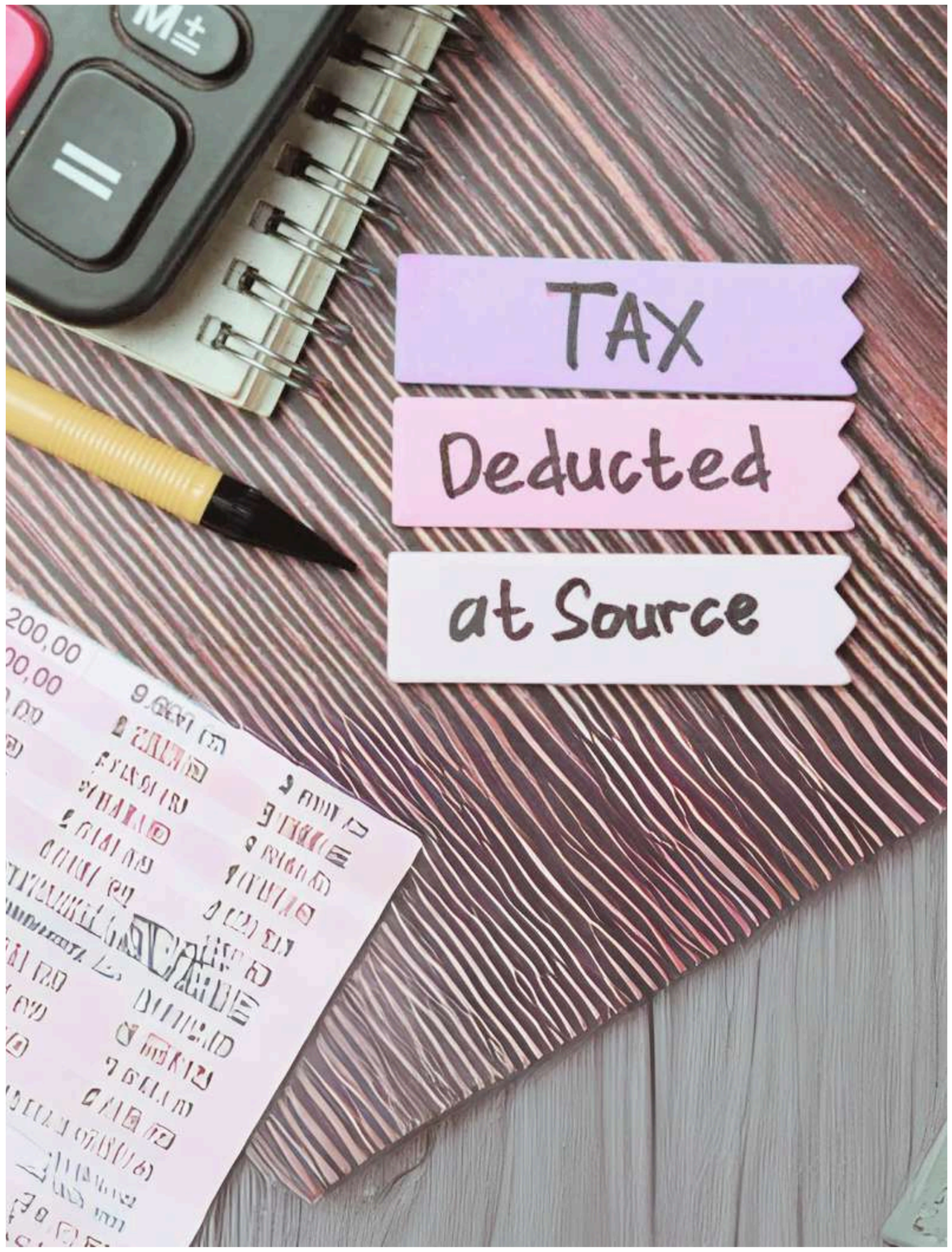
For the AY 1993-94 (Income Tax Appeal Nos. 1381 of 2007 and 1313 of 2007), there is material to show that the AO was informed about or in any event, aware of the order dt. 11-01-95, by which the Reliance Polypropylene Limited and Reliance Polyethylene Limited were merged with Reliance Industries Limited (RIL). The ld. Counsel of the appellant submits that although the AO was aware that RPEL and RPPL are merged with RIL, still the assessment order was passed in the name of the non-existing entities RPEL and RPPL. RPEL and RPPL ceased to exist on account of the merger order and, therefore, any assessment order passed in the name of such a non-existing entity is void.

Ruling

Before we adjudicate on the issue of jurisdiction, HC propose to deal with the interim applications filed by the appellant-assessee-RIL for taking on record documents to show that the AO was aware about the amalgamation of RPEL and RPPL with RIL before passing the assessment order. Section 260A(7) provides that save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (CPC) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section. In the Income-tax Act, there is no provision dealing with admission of additional evidence by the High Court u/s 260A. Therefore, examination of the provisions of CPC is required.

High Court have allowed the appellant-assessee's appeal only on the ground that assessment orders have been passed in the name of the amalgamating companies. High Court clarified that nothing in this order would preclude the respondents from initiating fresh proceedings against the amalgamated company-RIL in accordance with law for assessing income in the hands of the amalgamated company. It was further clarified by this judgment that since the assessment orders have been quashed, the questions of law admitted in various appeals on merits is not adjudicated upon. To conclude, the appeals and interim applications filed by the appellant-assessee are allowed, consequently the appeals filed by the appellant-revenue and writ petition filed by the petitioner are rendered infructuous.

Source : High Court, Bombay in the case of Reliance Industries Ltd. vs P. L. Roongta vide [2025] 171 taxmann.com 467 (Bombay) on February 14, 2025



TDS as per section 194C(5) is applicable only where payment exceeds fifty thousand rupees

Facts

The appellant is a proprietary concern and running his business of marble and granite under the name and style of M/s. Shivam Marble. During the AY, the appellant filed his return of income u/s 139(1) declaring total income of INR 8.61 lakhs and the accounts were duly audited. The case was selected for scrutiny u/s 143(2). After considering the arguments filed by the appellant, the ld. AO passed the assessment order u/s 143(3) assessing the total income of INR 43.97 lakhs as against the returned income. The ld. AO made two additions:

- under section 40(a)(ia) for non-deduction of TDS on transport charges u/s 194C.
- undisclosed income of capital gains for INR 6.25 lakhs on sale of agricultural land as well as undisclosed interest.

On being aggrieved, the appellant preferred an appeal before the ld. CIT(Appeals), who deleted the addition on account of capital gains whereas upheld the addition on account of TDS. Thereafter, the appellant approached the ld. Tribunal.

Ruling

The ld. Tribunal held that where the payments made by the appellant are less than 50,000, therefore, provisions of section 194C(5) are not applicable. Further, where the remaining amount of INR 28.18 lakhs is concerned, the main contention of the appellant is that there is no direct contract between the appellant and the transport companies and the seller has made the arrangements. On this aspect, it is an admitted fact that the entire amount of transport charges was paid by the appellant, but the assessee has not produced any evidence to establish that the lorries were engaged by the seller. Moreover, there is no mention u/s 194C that there should be a direct contract between the assessee and the transporters to deduct TDS u/s 194C. It is an admitted fact that the entire transportation amount was paid by the appellant to the transporters. Therefore, there is a contract between the appellant and the transporters. Hence, whatever the amount paid by the appellant is liable to deduct TDS. Therefore, Tribunal had no hesitation to come to a conclusion that the TDS provision u/s 194C is applicable to the present case on hand. Further, for amendment of the 1st proviso to section 40(a)(ia), the matter was remitted back to the file of ld. AO to examine this issue afresh and pass a speaking order regarding the amendment vide Finance Act, 2014 to the first proviso to section 40(a)(ia).

Source : ITAT, Kolkata, in the case of Bikash Kumar Mondal vs ITO vide [2025] 171 taxmann.com 495 (Kolkata - Trib.) on February 05, 2025

Where appellant by mistake deducted TDS u/s 194J instead of 194C, liability to pay interest u/s 201(1A) arise; AO was to be directed to look into appellant's contention with regard to incorrect levy of interest u/s 201(1A) on account of admitted short deduction and pass order afresh in accordance with law

Facts

This appeal is filed by the appellant along with the affidavit for condonation of delay against the order of the Ld. CIT(A), Noida. The appellant by mistake deducted TDS u/s 194J instead of 194C. The ld. Counsel submitted that if at all the TDS is liable to be deducted u/s 194J the computation of interest demand u/s 201(1A) is incorrect for the reason that the rate of TDS u/s 194J till 31-05-07 was 5.61% which was increased to 11.33% w.e.f. 01-06-07. Therefore, the excess amount deposited for the period from April 2007 and May 2007 may be allowed to be adjusted against correct liability of interest recalculated as per rates in force during relevant period.

Ruling

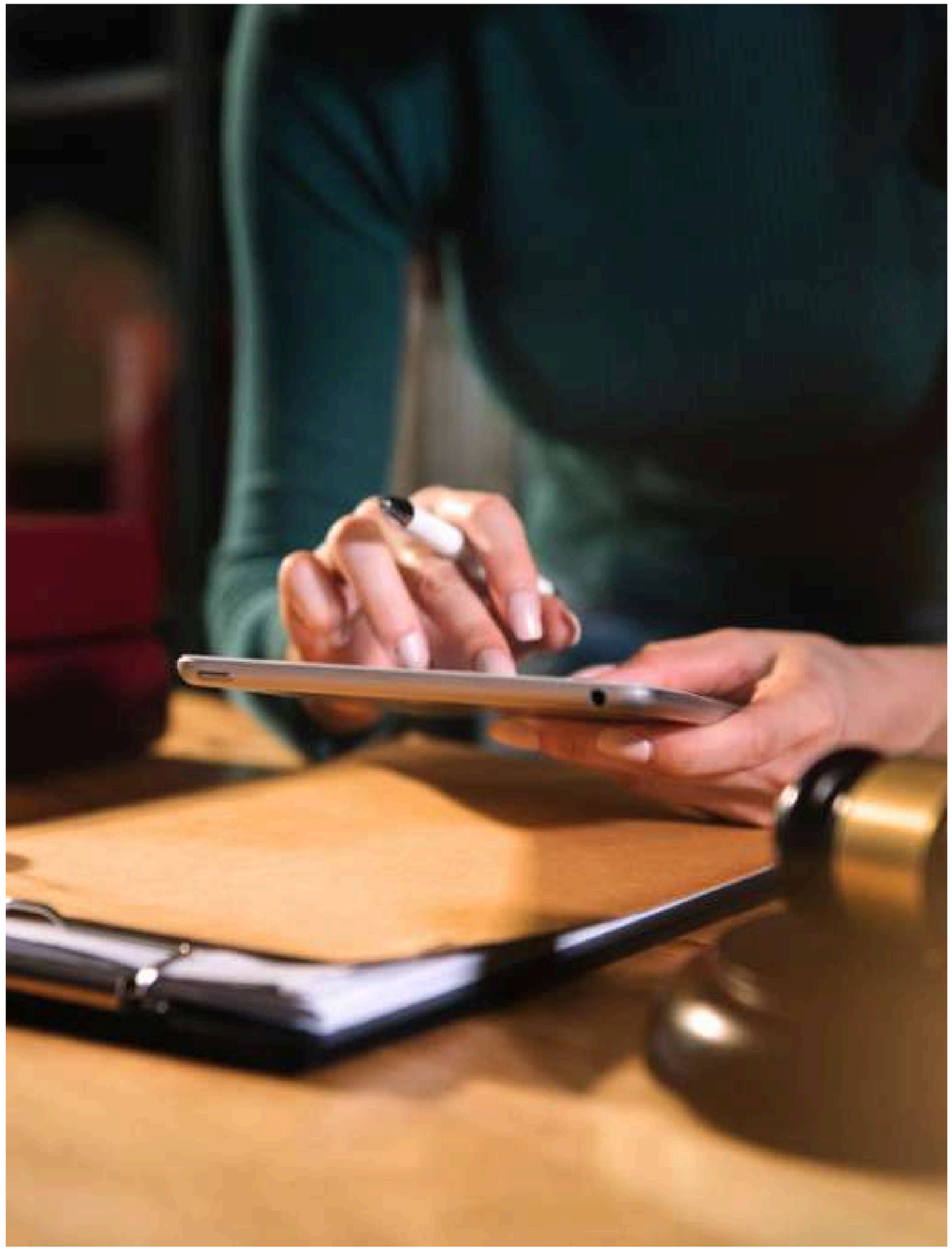
Tribunal observed that ld. CIT(A) had directed the AO to look into and ensure that the calculation of interest as charged by the AO u/s 201(1A) is as per law. It is also observed by the Tribunal that the ld. CIT(A) held that the dispute in appeal is only with regard to charging of interest u/s 201(1A) which was rightly made by the AO for the delayed deposit of TDS. We do not see any infirmity in the order of the Ld. CIT(A). However, the appellant contended that interest u/s 201(1A) was incorrectly charged. Therefore, ld. Tribunal had directed the AO to look into the appellant's contention with regard to incorrect levy of interest u/s 201(1A) and pass order afresh after providing adequate opportunity of being heard. Since the dispute is only with regard to levy of interest in this appeal all other grounds raised by the appellant on the deductibility of TDS u/s 194J/194C are not emanating from the order passed by the AO u/s 201(1A) and therefore these grounds will not survive.

Source : ITAT, Delhi in the case of Accounts Officer, BSNL vs DCIT, TDS vide [2025] 171 taxmann.com 683 (Delhi - Trib.) on February 7, 2025

Assessee had filed its responses within due date mentioned in notice, rejection of applications for renewal of registration u/s 12A(1)(ac)(iii) and approval u/s 80G(5)(iii), on incorrect factual grounds violates natural justice

Facts

The appellant, Apna Charitable Trust, is a public charitable trust engaged in providing medical treatment and concessional medicines through its hospital and pharmacy units. The trust was granted provisional registration u/s 12A(1) from 07-04-22 to AY 2024-25 and, subsequently, applied for renewal of registration u/s 12A(1)(ac)(iii) through Form 10AB. Additionally, the appellant also applied for approval u/s 80G(5)(iii) by filing another Form 10AB. In response to the renewal application, CIT(E) rejected the renewal application alleging that the assessee failed to furnish the requisite details, even though the submission was made. Likewise, the order also rejected



the application u/s 80G(5)(iii) on similar grounds, stating that the appellant had failed to satisfy the genuineness of activities, and the conditions prescribed u/s 80G(5)(i) to (v). Aggrieved by these rejections, the appellant had filed the present appeals before the ld. Tribunal contending that the CIT(E) has completely ignored the submissions.

Ruling

ITAT accepted that the appellant had filed its response, within the due date mentioned in the CIT(E)'s notice whereas the CIT(E) had ignored the submission and erroneously rejected the application citing noncompliance. Such an approach violates natural justice, as the appellant's submission should have been duly considered before passing an adverse order. In case of approval u/s 80G(5)(iii) also, the appellant had filed a detailed submission, complying with the notice which the CIT(E) again did not examine and rejected the application on incorrect factual grounds. Given the fact that the documents were submitted, the rejection was without proper verification. Considering the facts, the orders of the CIT(E) were set aside by the Tribunal and matters were restored back to the file of the CIT(E) with the direction to consider the appellants submission and decide the matter afresh after granting an opportunity of hearing.

Source : ITAT, Ahmedabad in the case of Apna Charitable Trust vs CIT (Exemptions) vide [2025] 171 taxmann.com 686 (Ahmedabad - Trib.) on February 12, 2025

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