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CHARTERED ACCOUNTANTS

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Supreme Court Rulings

Contractual obligations of distributors/franchisees without a fiduciary character of relationship, or business being done on principal's account would not be under a legal obligation to deduct TDS on profit component in payments received by such distributors/franchisees from third parties, or while selling pre-paid coupons or starter-kits to distributors

Facts

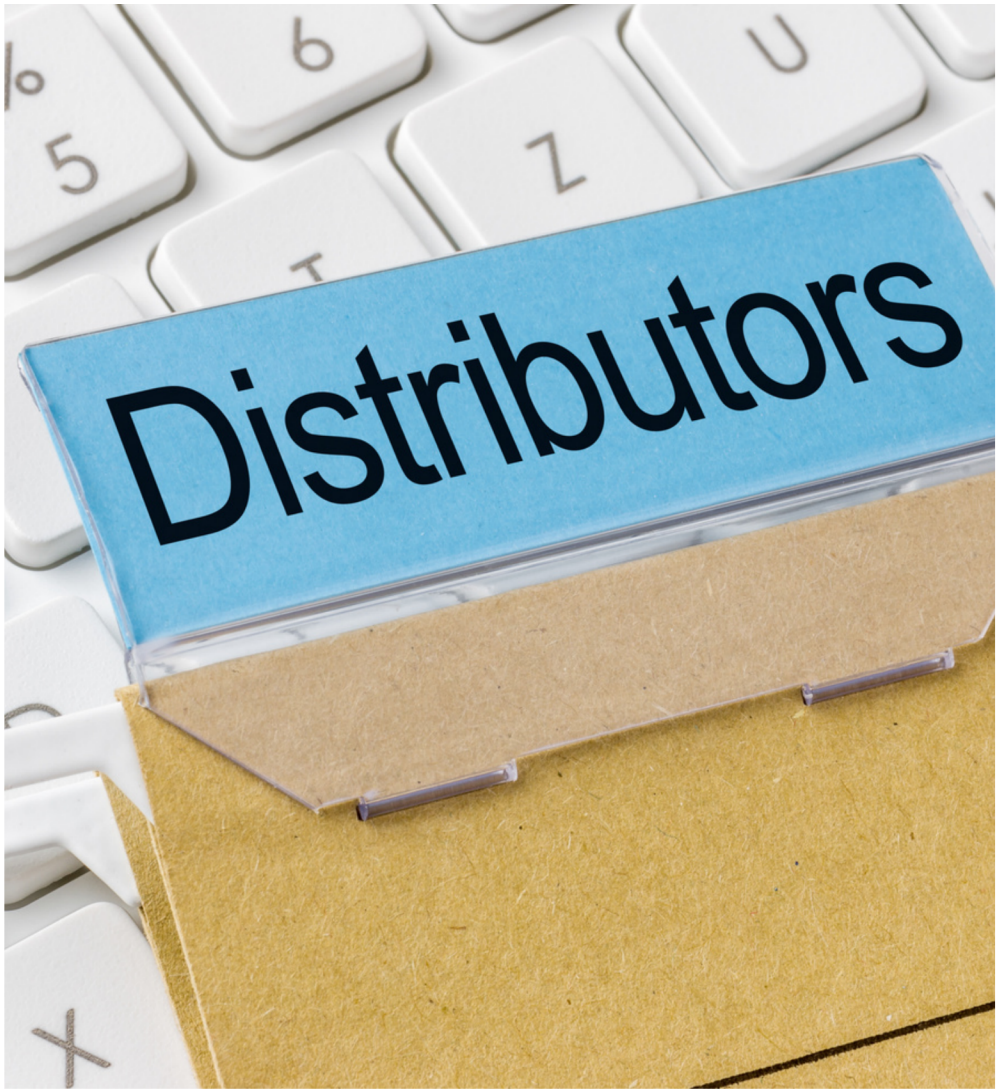
The issue relates to the liability to deduct TDS u/s 194-H on the amount which, as per the Revenue, is a commission payable to an agent by the petitioner's under the franchise/distributorship agreement between the petitioner's and the franchisees/distributors As per the petitioner's, neither are they paying a commission or brokerage to the franchisees/distributors, nor are the franchisees/distributors their agents. The High Courts of Delhi and Calcutta have held that the petitioner's were liable to deduct tax at source u/s 194-H, whereas the High Courts of Rajasthan, Karnataka and Bombay have held that Section 194-H is not attracted to the circumstances under consideration.

Ruling

SC held that an independent contractor is free from control on the part of his employer, and is only subject to the terms of his contract. But an agent is not completely free from control, and the relationship to the extent of tasks entrusted by the principal to the agent are fiduciary. As contract with an independent agent depends upon the terms of the contract, sometimes an independent contractor looks like an agent from the point of view of the control exercisable over him, but on an overview of the entire relationship the tests may not be satisfied. The distinction is that independent contractors work for themselves, even when they are employed for the purpose of creating contractual relations with the third persons. An independent contractor is not required to render accounts of the business, as it belongs to him and not his employer. In other words, the term 'agent' should be restricted to one who has the power of affecting the legal position of his principal by the making of contracts, or the disposition of the principal's property; viz. an independent contractor who may, incidentally, also affect the legal position of his principal in other ways.

In view of the aforesaid discussion, SC held that the petitioner's would not be under a legal obligation to deduct TDS on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors. Section 194H is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the petitioner – cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside. The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed.

Source: Supreme Court in Bharti Cellular Ltd. ACIT vide [2024] 160 taxmann.com 12 (SC) on February 28, 2024

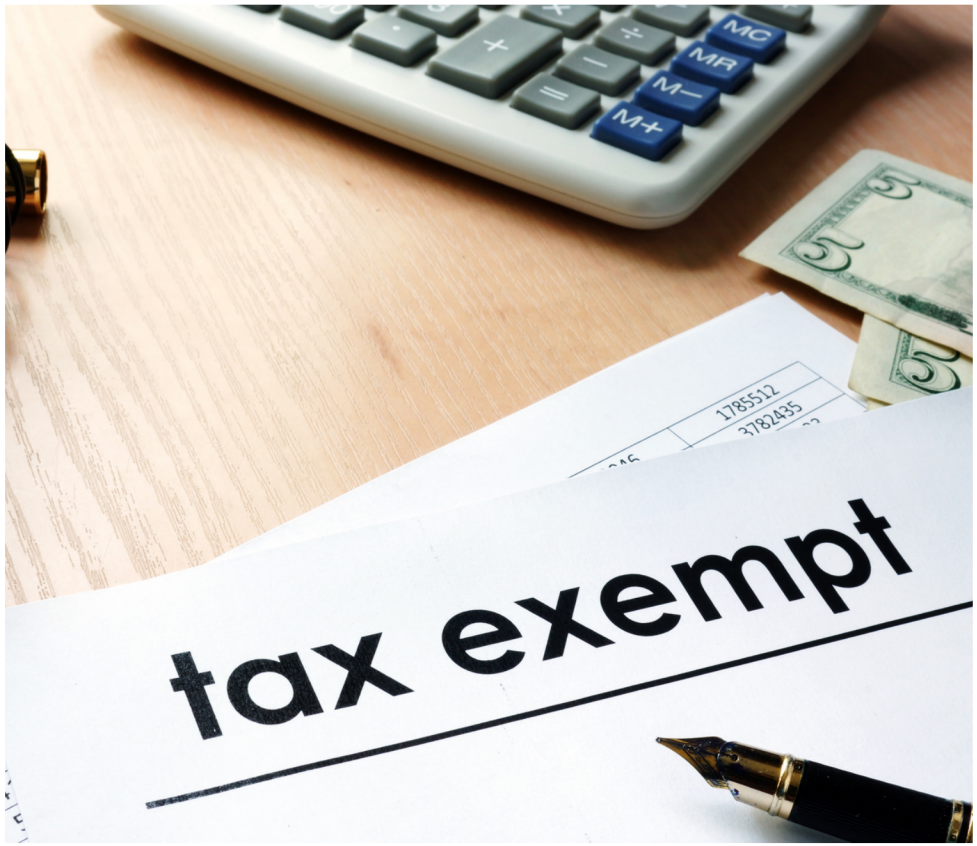


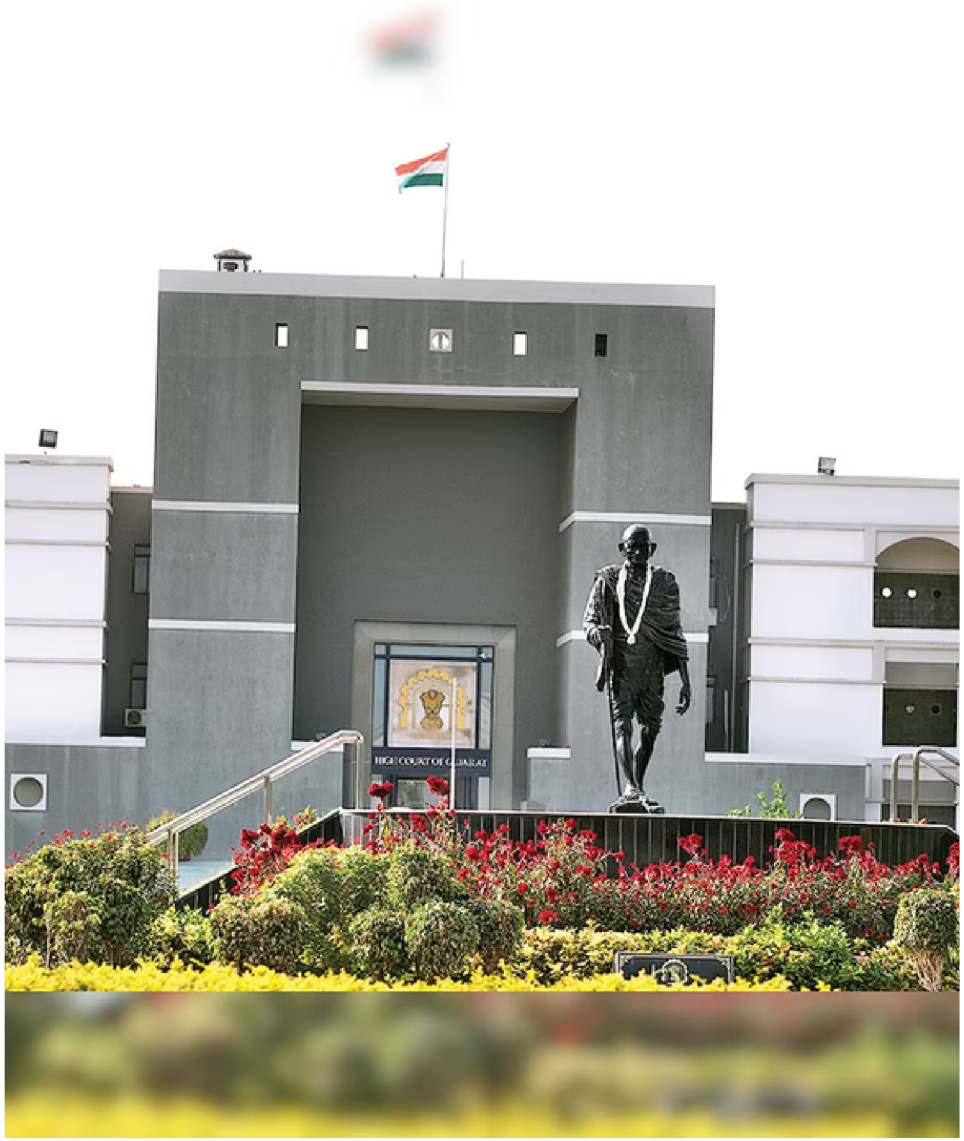
Where exemption u/s 54F was allowed by AO, thereafter in subsequent AYs, AO cannot reappreciate same facts to reopen assessment and disallow exemption for upcoming AY on ground that three years from date of deposit in capital gain deposit scheme have lapsed

Facts

The case for AY 2013-14 was selected for scrutiny requiring the petitioner to submit the details with regard to the exemption claimed u/s 54F. The AO after considering such details passed an Assessment Order dated 18.03.2016 u/s 143(3) by making addition of INR 45.29 lacs to the return income being disallowance of cost in relation to the sale of shares. The petitioner had purchased the residential plots during the previous year relating to the AY 2015-16 by withdrawing the amount from Capital Gain Deposit Scheme. The AO was of the opinion that the petitioner had purchased open plots instead of residential houses as prescribed u/s 54F. The petitioner justified his claim u/s 54F by furnishing a copy of Municipal Tax Bills, Electricity Bills and property card of the seller which showed that the plots with house purchased by the petitioner were duly reflected as residential property in the municipal records. The AO, accepting such explanation passed the Assessment Order u/s 143(3) after made addition of INR 30.56 lacs to the return income by invoking provision of Section 56(2)(vii)(b).

The case for AY 2016-17 was reopened as the AO on scrutinizing the record for AY 2015-16, formed a belief that the claim of exemption u/s 54F made by the petitioner by investing sale consideration received on sale of shares of Paras Inn Pvt. Ltd. for the purchase of small house along with large area of open land is improper and proportionate claim u/s 54F is required to be withdrawn in the AY 2016-17. The petitioner filed objection contending inter alia that during the course of the Regular Assessment for AY 2013-14 and 2015-16, all the details and documents with regard to the claim of deduction u/s 54F was furnished to the AO and who after considering the details allowed the exemption u/s 54F and therefore there is mere change of opinion for reopening of the AY 2016-17 on the part of the AO. Being aggrieved, the petitioner has preferred this petition.





Ruling

On perusal of the above provisions, it is clear that the petitioner had claimed the exemption u/s 54F for AY 2013-14 as well as purchased the residential plots furnishing the details for the same during the course of regular assessment for AY 2015-16 is in accordance with the provisions. The AO therefore cannot now again re-appreciate the same facts which was considered during the course of AY 2015-16 to disallow the exemption u/s 54F to assume the jurisdiction to reopen AY 2016-17 on the ground that three years from the date of deposit in the capital gain deposit scheme would be over on 30.01.2016 which would fall in previous year relevant to the AY 2016-17. In view of above facts emerging from the record as well as the aforesaid settled legal position, HC held that there would be lack of jurisdiction to reopen the assessment on mere change of opinion. Therefore, the petition was allowed by quashing and setting aside the impugned notice u/s 148 and the order rejecting the objection of the petitioner.

Source: High Court, Gujarat in Bimalkumar Karshanbhai Tank vs ITO vide [2024] 159 taxmann.com 711 (Gujarat) on February 23, 2024

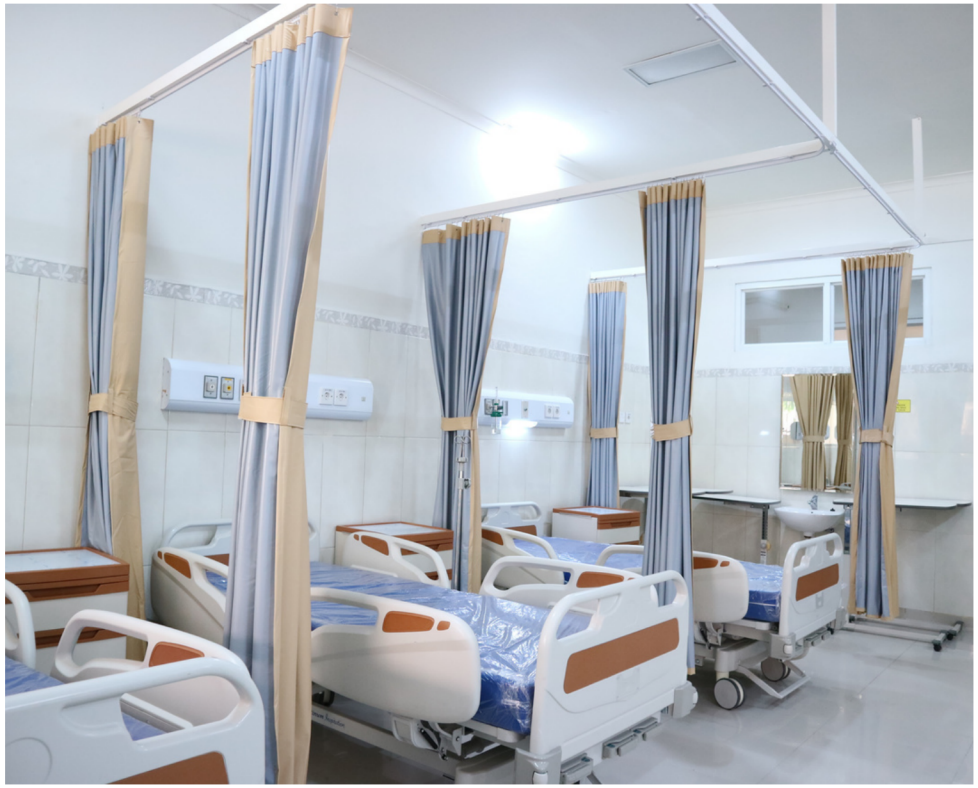
Merely because petitioner preferred a claim which was not acceptable to revenue, petitioner could not be visited with proceedings u/s 271(1)(c), unless and until twin requirements u/s 271(1)(c) were satisfied

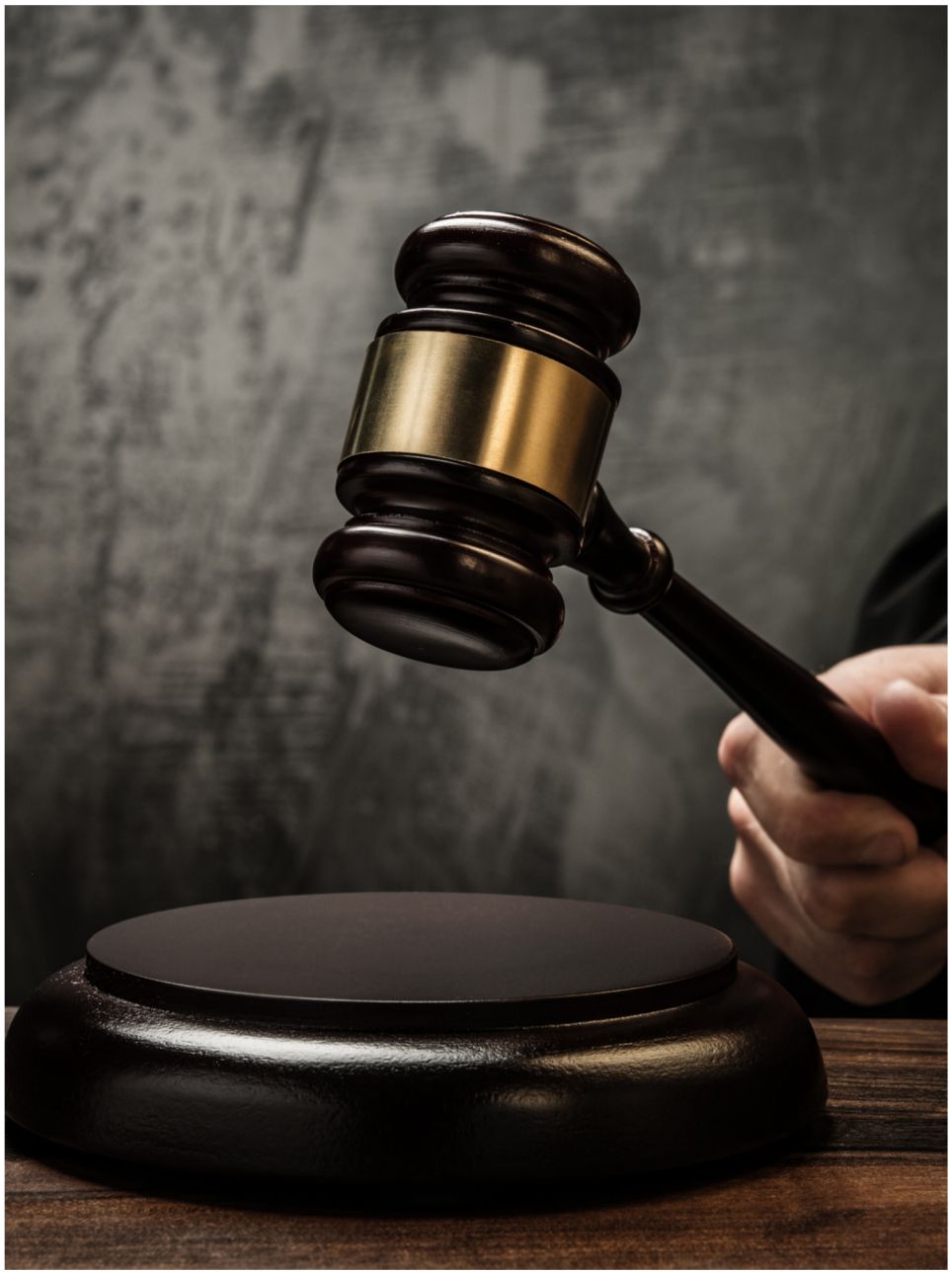
Facts

The petitioner was running a hospital till 31-10-2015, and subsequently for their own reasons, they leased it out to Thumbey Hospital India Pvt. Ltd. with effect from 03-11-2015. It filed return on 17-10-2016 for the AY 2016-17 declaring an income of INR 86.91 lacs. Subsequently, it revised the same on 08-11-2017, declaring the income of INR 33.64 lacs. In the original return, the petitioner considered the entire lease rent amounting to INR 1.88 crores as business income claiming full depreciation on the assets, including building and equipment for the entire year; whereas in the revised return, the petitioner claimed lease and receipt as income from house property to claim 30% standard deduction u/s 24 and also the depreciation on fixed assets on building and equipment for the entire year.

Since the petitioner claimed depreciation on business assets, ld. AO treated the income of the petitioner as income from business and initiated penalty proceedings u/s 271(1)(c) on the ground of furnishing inaccurate particulars. The ld. AO passed an order 01-04-2022, levying a penalty of INR 16.46 lacs and this order is the subject matter of this appeal. Petitioner preferred appeal before the ld. CIT(A) and reiterated its stand that was taken during the assessment proceedings and according to the CIT(A), no fresh evidence was adduced. According to the CIT(A), it was by mistake, the AO passed two penalty orders, but since the appeal was filed in respect of the penalty levied by order dated 01-04-2022 while cancelling the penalty that was levied by earlier order, CIT(A) confirmed the penalty that was levied by order dated 01-04-2022.

The petitioner is, therefore, before ITAT in this appeal mainly contending that the order was passed beyond the time prescribed u/s 275 and, therefore, it is bad under law. It is also contended that there is no concealment of income and, therefore, mere disallowance of the claim will not result in levy of penalty. The ld. AR contended that law does not permit passing two penalty orders by the AO, because with passing of the first penalty order the AO becomes functus officio and, therefore, the second penalty order is non-est in the eye of law.





Ruling

For the first issue, ITAT was in agreement with the ld. AR that whether or not subsequently cancelled by the CIT(A), with the passing of the first penalty order by 13-08-2021 within six months from the end of the month in which the Tribunal passed the orders, the ld. AO became functus officio and he has no jurisdiction to pass the second penalty order beyond the period prescribed u/s 275(1).

For the second issue, ITAT placed reliance on the case of CIT v. Reliance Petroproducts Pvt Ltd vide [2010] 322 ITR 158 (SC), wherein the Hon'ble Apex Court held that when the petitioner preferred a claim, it was up to the authorities to accept its claim in the return or not, but merely because the petitioner had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty u/s 271(1)(c). It was further held that if the contention of the Revenue is accepted, then in case of every return where the claim made is not accepted by the AO for any reason, the petitioner will invite penalty u/s 271(1)(c) and that is clearly not the intendment of the Legislature.

Further, the Tribunal held that merely because the petitioner preferred a claim which was not acceptable to the Revenue, the petitioner cannot visit the proceedings u/s 271(1)(c), unless and until the twin requirements u/s 271(1)(c) are satisfied. Therefore, the impugned penalty order is and the AO was directed to delete the penalty.

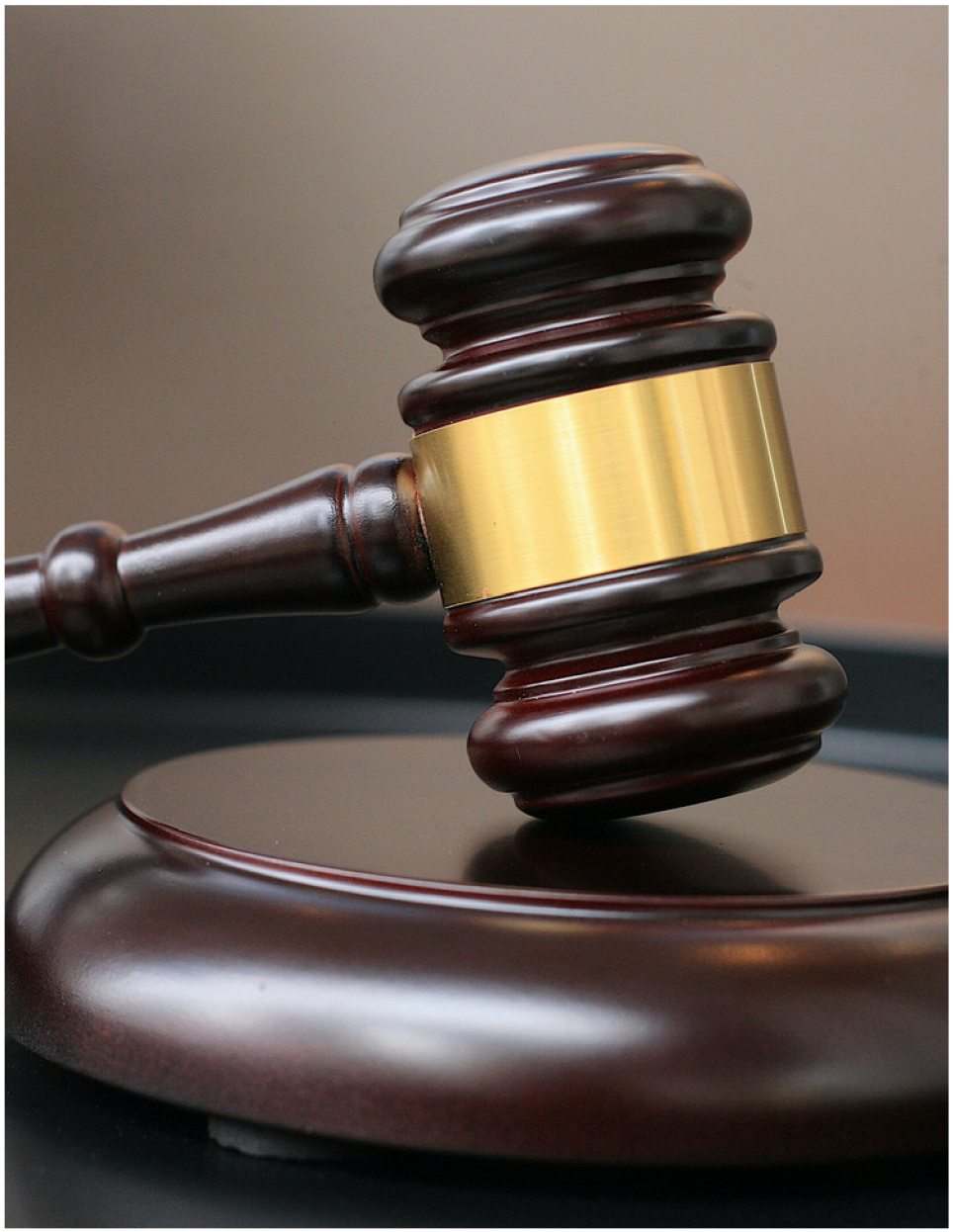
Source: ITAT, Hyderabad in Kamal Enterprises and New Life Hospital vs DCIT vide [2024] 160 taxmann.com 39 (Hyderabad - Trib.) on February 26, 2024

Appeal concluded ex-parte was remitted back to CIT(A) where petitioner pleaded for another opportunity, in view principles of natural justice, on account of husband's death

Facts

The petitioner's husband had worked as pastor with Andhra Evangelical Luthern Church, Guntur and was in receipt of 300 sq. yds of land, valued at INR 75 lacs as gift on 28-05-2013 without any consideration on his retirement, as a token of gratuity for the services rendered by him. The same was registered and supported by a valid registered document and stamp duty of INR 4.12 lacs was paid by him. The AO held that, since the stamp duty paid was more than INR 50,000, the petitioner's husband is liable to offer the entire amount as income from other sources u/s 56(2)(vii)(b). Since the petitioner's husband did not file any return of income offering the said amount as income from other sources, notice u/s 148 was issued. In response, the petitioner's husband filed return of income on 18-09-2018, declaring an income of INR 2.50 lacs. Accordingly, notices were issued from time to time to which the petitioner's husband had offered his explanation, stating that the property was given to him during 2009. He had accepted the property with the strong belief that the society has registration u/s 12A. The petitioner's husband further submitted before the AO that section 56 is not applicable for the transactions relating to 2009 and the property received from the institution having registration 12/A does not attract provisions of section 56. Not being satisfied with the explanation offered by the petitioner's husband, the AO completed the assessment and passed order u/s 143(3) r.w.s. 147, by disallowing the amount of INR 75 lacs as income from other sources u/s 56(2)(vii).

Aggrieved by the order of the AO, the petitioner's husband preferred an appeal before the CIT(A) and notices were issued and served on him, but he neither filed written submission filed in support of grounds of appeal nor sought adjournment. During the appeal proceedings, the petitioner's husband expired on 11-10-2019 and consequently notices were issued and served on her through email, being wife and legal heir, but no response was received from the petitioner. Hence, the CIT(A) dismissed the appeal of the petitioner ex-parte. Aggrieved by the order, the petitioner preferred an appeal before the Tribunal.



Ruling

ITAT held that it is evident that the appeal of the petitioner was dismissed ex-parte as there was no compliance from the petitioner to the notices. The AR contended that the petitioner was not given sufficient opportunities to substantiate her case and therefore, pleaded for another opportunity of being heard. However, in view of the foregoing facts and circumstances of the case and keeping in view the principles of natural justice, ITAT remitted the matter back to the file of the CIT(A) and directed the CIT(A) to afford the petitioner, another opportunity of being heard and to pass order on merits. The petitioner was also directed to adhere to the notices issued and furnish relevant material evidences to substantiate her case. Accordingly, the grounds filed by the petitioner are allowed for statistical purpose.

Source: ITAT, Visakhapatnam Bench in Smt. Vardhanapu Manikumari vs ITO vide [2024] 160 taxmann.com 41 (Visakhapatnam - Trib.) on February 20, 2024

Where AO allowed exemption u/s 10(37), in respect of interest received by petitioner u/s 28 of Land Acquisition Act on enhanced compensation after making necessary inquiry about taxability of said interest, said order could not be treated as erroneous by CIT.

Facts

The petitioner is an individual who runs M/s. Gulshan Variety Store, Fatehabad. For the AY 2018-19 he filed his return declaring income of INR 27,900 which was processed u/s 143(1)(a). The case was, subsequently selected for complete scrutiny under the e-assessment scheme, 2019 on the issue, namely reduction of income in Revised Return and claim of refund and income from other sources. The Ld. AO completed the assessment u/s 143(3) on total income of INR 27,900 as returned by the petitioner after taking into account all relevant material on record. In exercise of power vested under him u/s 263, ld. PCIT perused the records of the petitioner and found that in the ITR the petitioner has claimed refund of TDS amount of INR 2,85,259 deducted by HUDA u/s 194A on the interest of INR 28,52,590 received as enhanced compensation on the compulsory acquisition of his agricultural land which was claimed as exempt. He formed the opinion that the ld. AO had completed the assessment without carrying out necessary and proper enquiry which he ought to have carried out in respect of the treatment of interest received on compensation or enhanced compensation. The explanation was not acceptable to the ld. PCIT who set aside the assessment order with a direction to AO to pass an order afresh in accordance with law. Aggrieved, the petitioner is in appeal before the Tribunal.

Ruling

ITAT held that since the order of the ld. AO is based on the decision of the Hon'ble Supreme Court in Ghanshyam HUF on the issue of taxability of interest received by the petitioner u/s 28 of Land Acquisition Act, it can at best be said to be a debatable issue on which two views are possible and the ld. AO accepts one of the views. In this view of the matter too, the ld. PCIT cannot assume revisional jurisdiction as held by the Hon'ble Delhi High Court in CIT vs. Hindustan Coca Cola Beverages P Ltd. (2011) 331 ITR 192 (Del.) Accordingly, on the facts and in the circumstances of the case, ITAT held that the order of the ld. PCIT is not sustainable and accordingly petitioner's appeal was allowed.

Source: ITAT, Delhi Bench in Gulshan Kumar vs PCIT vide [2024] 159 taxmann.com 715 (Delhi - Trib.) on February 13, 2024

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