VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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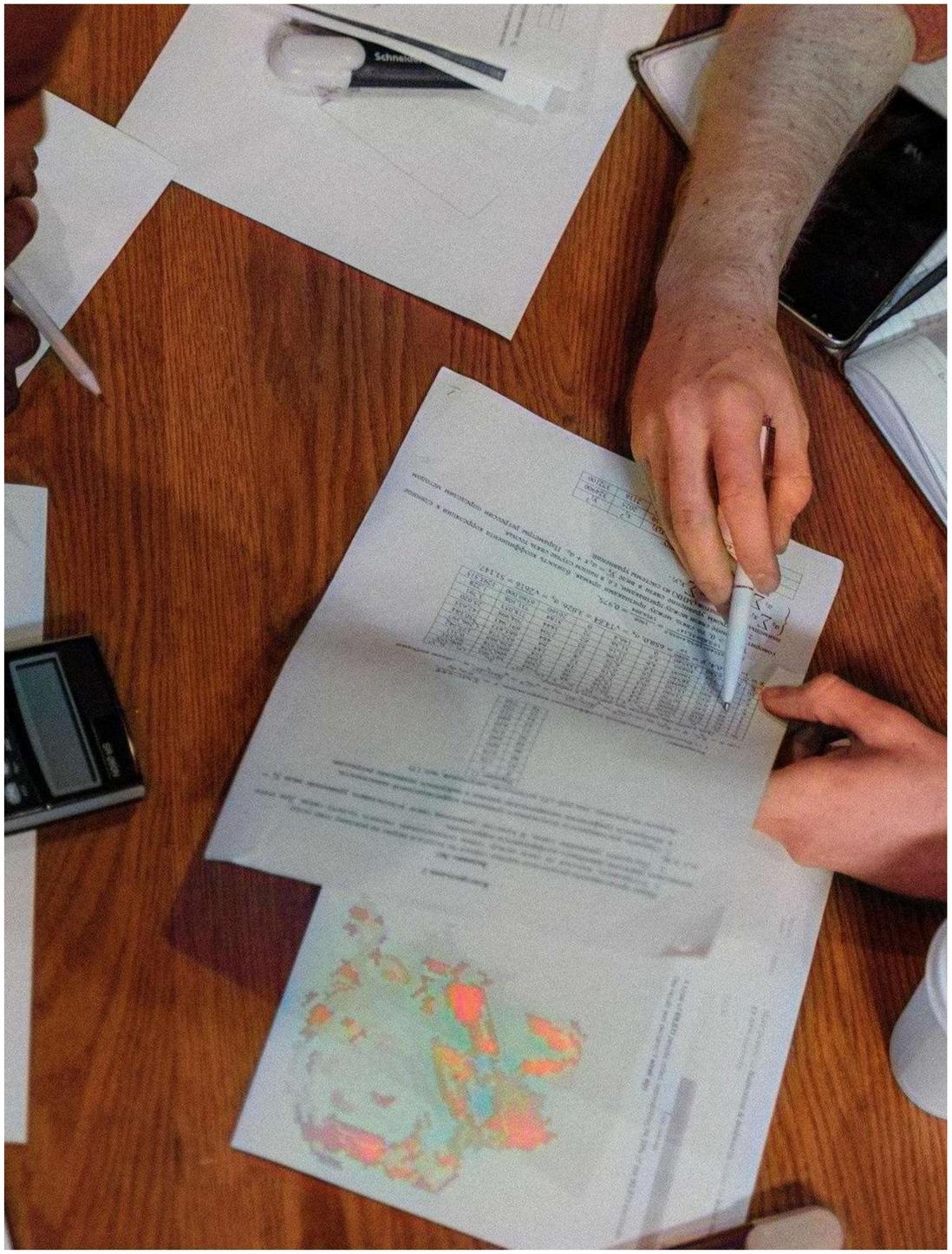
Facts

The appeal arises in the backdrop of a search and seizure action which was initiated on 07-04-16 in the case of Harvansh Chawla. Pursuant to the search, a Satisfaction Note as contemplated u/s 153A came to be recorded by the AO with respect to the searched individual. The respondent-assessee in this appeal is the non-searched entity. A Satisfaction Note in its respect and referable to Section 153C came to be drawn on 15-05-19. Pursuant to an assessment being undertaken in terms of Section 153C, the AO on 31-12-19 made additions of INR 32.91 lacs in respect of receipts of foreign inward remittances, INR 2.50 lacs on account of non-deduction of TDS and INR 2.58 crores in respect of debts written off. Aggrieved by the aforesaid, the respondent-assessee preferred an appeal before the CIT(A) which in terms of its order of 09-06-21 deleted the addition of INR 32.91 lacs and confirmed addition of INR 2.50 lacs. In respect of addition of INR 2.58 crores, the CIT(A) allowed partial relief to the extent of INR 2 crores and pegged the addition to the extent of INR 7 lacs. The income of the assessee consequently stood enhanced by INR 2.23 crores. The Tribunal appears to have essentially borne in consideration the fact that since the date of search was 07-04-16, the amendments which came to be introduced in



Section 153C by virtue of Finance Act, 2017 would not be applicable.

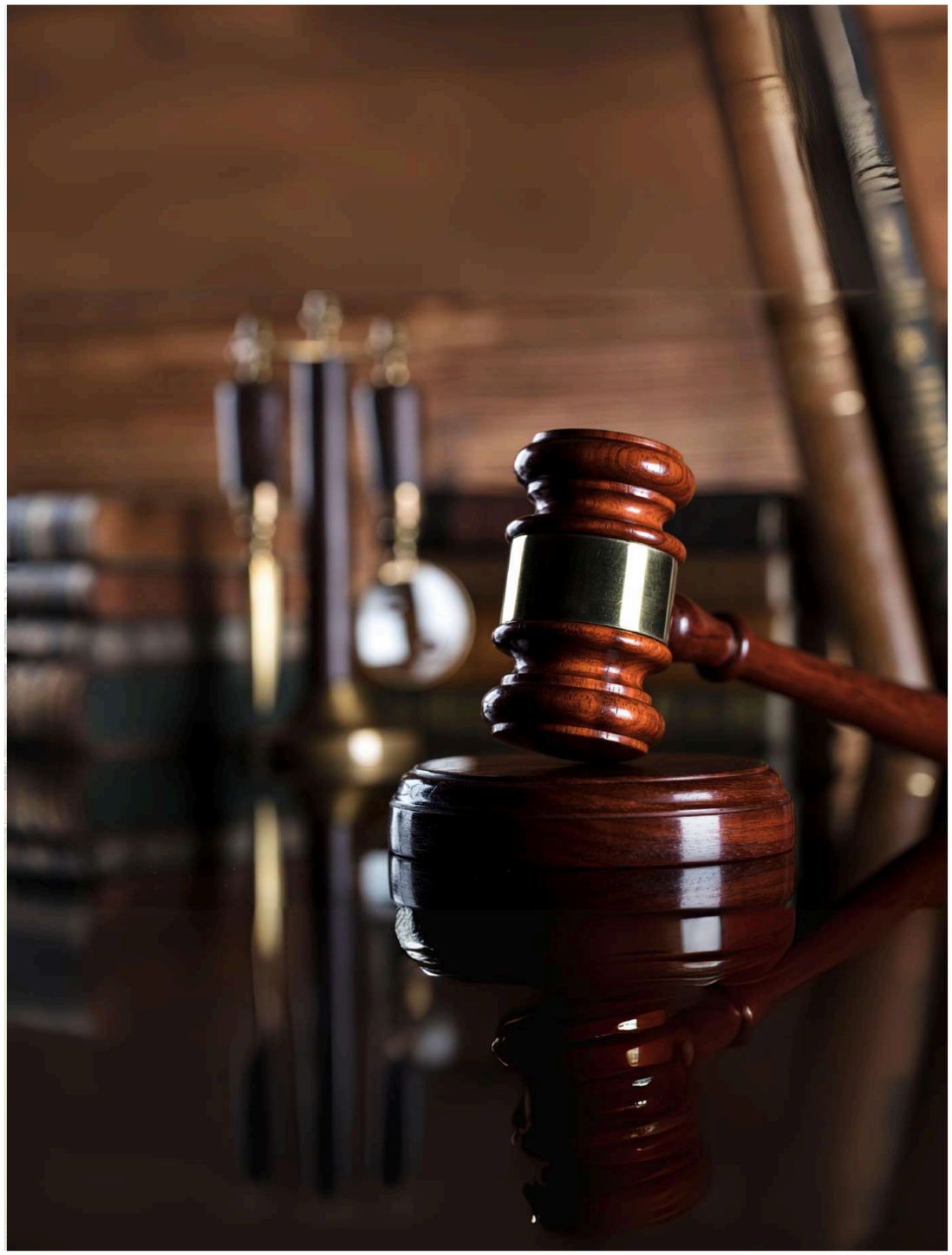
Ruling

HC find that while it is true that AO of the searched person as well as that of the respondent assessee was the same, undisputedly while in the case of the former, satisfaction was recorded on 29-03-19, the AO in the case of the respondent assessee drew up a Satisfaction Note on 15-05-19. In order to appreciate the essential legislative objective underlying the handover of material and formation of opinion by the AO of the non-searched entity, we would have to bear the following aspects in mind. We firstly take note of the fact that Section 153C would get triggered firstly upon the Assessing Authority of the searched entity identifying documents or material which are found to relate to a person other than the entity which was subjected to search. In such a contingency, that Assessing Authority is obligated to transmit the relevant material to the AO of the “other person”. The AO of the non-searched entity is thereafter required to scrutinize the material so received and evaluate whether the same is likely to have an impact on the determination of the total income of such other person. This becomes evident from the plain text of Section 153C requiring the AO of the non-searched party being "satisfied that the books of account or documents or assets seized have a bearing on the determination of total income of such other person.The material and documents unearthed in the course of the search have to be independently evaluated before a reassessment exercise can be initiated against a non-searched person.

Unless the AO of that "other person" is satisfied that the material so gathered is likely to have an impact "on the determination of the total income of such other person", the mere receipt of documents would not suffice.

It thus becomes apparent that it is the satisfaction arrived at u/s 153C which constitutes the cornerstone of that provision and the primary ingredient for Section 153C being set into motion. In our considered opinion, HC held that the actual or physical act of transmission of documents is merely a step-in aid of formation of opinion whether an assessment u/s 153C is liable to be initiated. It is in that sense merely a machinery provision put in place to enable the AO of the non-searched person to examine whether an assessment is liable to be commenced u/s 153C. Thus, even in a case where the AO of the searched and the non-searched party be one and the same, it would be the formation of an opinion that the material is likely to "have a bearing on the determination of the total income" which would constitute the core and the heart of Section 153C. A harmonious interpretation of the main part of Section 153C and its Proviso lead us to hold that in cases where the jurisdictional AO is common, the commencement point would have to be construed as the date when the satisfaction is formed by the said AO with respect to such other person. HC also stated that even though there may not have been an actual exchange of material unearthed in the course of the search between two separate authorities, it would be the date when the AO records its satisfaction with respect to the non-searched entity which would be of seminal importance and constitute the bedrock for commencement of action u/s 153C. Consequently, there is no merit in the appeal.

High Court, Delhi in the case of PCIT vs Karina Airlines International Ltd. vide [2024] 165 taxmann.com 421 (Delhi) on August 02, 2024



Assessment order passed without giving 7 days' time to assessee to file objections in response to SCN issued prior to said order was in breach of principles of natural justice and deserved to be quashed and set aside and matter was to be remanded for a fresh order

Facts

The primary grievance as raised by the Petitioner is that prior to the Assessment Order being passed, the Petitioner was issued a SCN dt. 22-03-24 calling upon him to show cause on the variations which were sought to be made, in the return of income. The Petitioner contended that such notice was generated and uploaded on the portal on 22-03-24. Further, the next day was a Saturday. The Petitioner objected to the said SCN stating that less than 24 hours were granted to respond to the Notice, which was in breach of the principles of natural justice, which would amount to a flaw in the decision-making process.

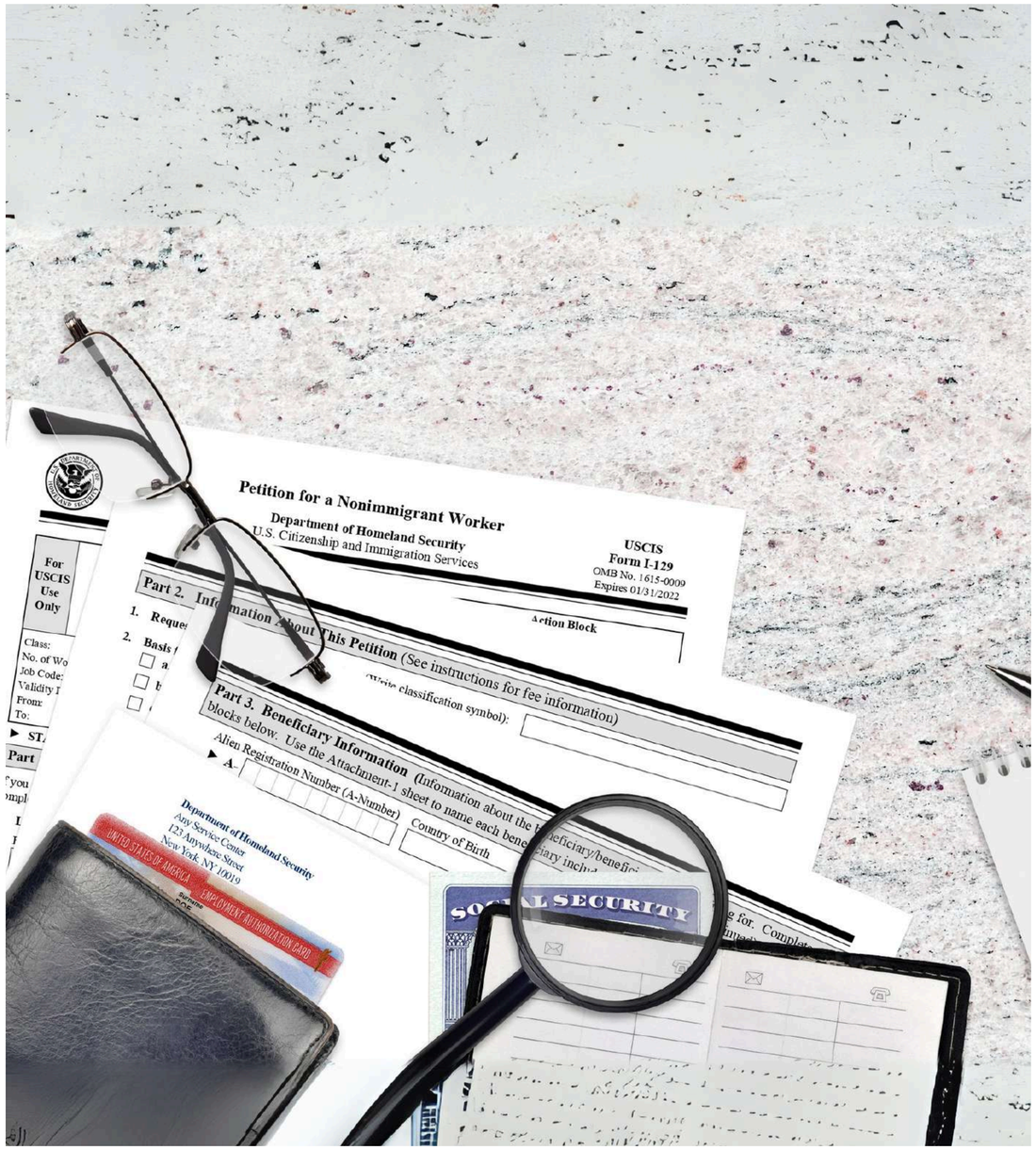
In support of the reliefs prayed in the present proceedings, the primary contention as urged on behalf of the Petitioner is to the effect that under the provisions of Section 144B(6)(xi), the PCC or the PD General, as the case may be, incharge of the NFAC, is conferred power to be exercised with prior approval of the Board, to lay down the standards, procedures and processes for effective functioning of the NFAC and the units set up, in an automated and mechanized environment. It is submitted that in pursuance of such powers, the Commissioner, NFAC, Delhi has notified the "Standard Operating Procedure for Assessment Unit under the Faceless Assessment

provisions of Section144B " and the attention is drawn to the relevant paragraph of the SOP, being paragraph 'N' of the said order under the heading "Process of Assessment" .Clause N.1.3 thereunder provides that a period of seven days be given to the assessee for obtaining response from issuance of SCN.

Ruling

HC find much substance in the contention as raised on behalf of the Petitioner. It may be observed that the SOP, as issued under the provisions of Section 144B(6)(xi), clearly provides a response time of seven days from the issuance of the SCN to the assessee to submit his reply. In the present case, the SCN was issued on 22-03-24 and there was sufficient time available with the AO to pass an assessment order even if he was to grant seven days' time to the Petitioner to file reply. However, the AO granted only two days' time at the first instance and thereafter extended the same by another two days, which apart from being not sufficient, was certainly, not in accordance with the time to respond the SCN, as prescribed under the SOP. The AO, therefore, appears to have arbitrarily exercised jurisdiction by granting an extension of only two days. In our opinion, such approach on the part of the Respondents was clearly in breach of the SOP, which has also resulted in breach of the principles of natural justice, which guaranteed to the Petitioner a fair and reasonable opportunity to respond to the SCN under the procedure prescribed, in undertaking the assessment proceedings. This has surely caused a prejudice to the Petitioner. The petition was therefore allowed.

High Court, Bombay in the case of Cheftalk Food and Hospitality Services (P.) Ltd. vs ITO vide [2024] 165 taxmann.com 415 (Bombay) on August 13, 2024



Where assessee NRI based in Dubai and also assessed to income-tax with jurisdictional income tax officials at Mumbai, had transactions with persons whose cases were already centralized with Delhi Authority, there was a substantial and imminent reason and cause available with revenue to exercise powers u/s 127 to deal with such cases, so as to centralize assessment of assessee from Mumbai to Delhi

Facts

The petitioner is an NRI, who is stated to be living in Dubai since 1992. The petitioner is also an Indian assessee having a PAN and is assessed to income-tax with the jurisdictional income tax officials at Mumbai. The Income-tax department had carried out search proceedings involving the petitioner on 30-06-19 at New Delhi. It appears that the petitioner had transactions with Indian citizens who were subjected to search and seizure, whose assessments were also centralized with the Central Circle at New Delhi. On such backdrop, a proposal was mooted on 30-07-20 by the PCIT (Central) to centralize the petitioner's case at New Delhi.

The petitioner was called upon to show cause as to why the petitioner's case should not be centralized with the PCIT New Delhi, for post search coordinated investigation and assessment proceedings. The petitioner has made a grievance on the search and seizure operations to be illegal. He also complained that the petitioner was illegally brought to India on 30-01-19. The petitioner stated that he had deep roots in Mumbai, and was filing his income tax returns as NRI from Mumbai, hence transferring his case

was an attempt to cause unnecessary trouble and mental pressure, so as to implicate the petitioner in false investigation. He made a grievance that the show cause notice was contrary to law and without any basis. As the petitioner did not comply with the requirements of the provisions of Section 142(1), as also did not reply to the penalty SCN issued u/s 272A(1)(d), the Delhi Authority imposed a penalty of INR 10,000 on the petitioner u/s 272A(1)(d).

The case of the petitioner is, however, that the Delhi Authority had passed such order without granting an opportunity of hearing to the petitioner and that the petitioner received the knowledge of the said order from the notice dated 3-03-22 issued by Central Circle 20, Delhi, directing the petitioner to get the accounts audited under Section 142(2A).

Ruling

ITAT held that Section 127 is a procedural provision for ascertaining liability of an assessee to determine in a fair, impartial and effective manner, so that no one is unduly benefited and wherever competent authority, having power of transfer u/s 127 or any assessee has apprehension, or for other administrative reason, it is found necessary that case should be transferred from jurisdiction of one authority to another, the same may be done. Statute also incorporates requirement of principles of natural justice as also recording of reason but simultaneously has used phrase "whenever it is possible to do so". This has been noticed by a Constitution Bench in Kanshi Ram Agarwal v. Union of India, AIR 1965 SC 1028. Reading Section 127,

Court has said that Section 127(1) imposes an obligation on the authority exercising power under the said Section to record 'reasons' for directing transfer of a case from one Income Tax Officer to another. It further requires that whenever power conferred by Section 127 is intended to be exercised, an opportunity should be given to assessee, "whenever it is possible to do so" and reasons have to be recorded for making order of transfer. Court thus held that opportunity to assessee shall be offered" whenever it is possible to do so" but order must contain reasons for transfer. Court held that "requirement that opportunity should be given, cannot be said to be obligatory, because it has been left to discretion of authority to consider whether it is possible to give such opportunity to assessee. This is of course, true, in coming to the conclusion, that Authority must act reasonably and bona-fide; but if Authority comes to conclusion that it is not possible to give a reasonable opportunity to assessee, same can be dispensed with. . However, it is not so with regard to requirement that reasons must be recorded for making transfer. So far as Section 127(1) is concerned, there is no dispute about this position. The twin requirement u/s 127(2) has some complication. It is true that under Act, 1961 i.e. Section 120 read with Section 124, AO is vested with jurisdiction over an area where any person carrying on the business or profession resides. Therefore, in normal course, an assessee is entitled to be assessed by AO having jurisdiction as stated in the aforesaid provisions but there is no such vested right in an assessee to be assessed by a particular AO. In given case, Competent Authority may transfer a matter from one AO to another, may be having effect of change of place also but that will not affect any substantial right of assessee.

In the light of the above discussion, High Court is of the clear opinion that in the facts of the present case, no case for interference in exercise of our jurisdiction under Article 226 of the Constitution of India is made out by the petitioner, in assailing the impugned order dated 14-06-21 passed u/s 127. The writ petition is accordingly rejected.

High Court, Bombay in the case of Rajiv Saxena vs CIT vide [2024] 165 taxmann.com 764 (Bombay) on August 26, 2024

Once assessee objects to value of property proposed to be adopted by AO, then AO is duly bound to refer matter to DVO in terms of Section 50C(2).

Facts

The brief facts of the case are that a plot of land was purchased jointly by the assessee (60% share) at a purchase price of INR 8.15 lacs registered on 19-12-06. The said plot was sold by the assessee for a consideration of INR 2.15 crores along-with two other persons and stamp duty of INR 24.45 lacs was paid on such transaction. The conveyance deed was executed on 03-03-12. The assessee filed return of income for AY 2012-13 on 28-09-12 declaring total income at INR 11.35 crores wherein LTCG on sale of this land was not offered to tax. The case of the assessee was selected for scrutiny assessment u/s 143(3). The Ld. AO ascertained from the Stamp Valuation Authorities that as per prevailing jantri/circle rates, the value of the property was INR 4.99 crores against declared consideration amount of INR 2.15 crores in the conveyance deed. Therefore, provisions of Section 50C were applicable in the case of the assessee.

The ld. AO, taking into consideration the assessee's contentions held that the said plot of land was defective and the land was also a disputed land, and also agreed with the submission of the assessee to the effect that the valuation done by the Stamp Valuation Authority (SVA) / (Jantri Value) was more than the fair market value and therefore, the matter was referred to the DVO for valuation.

The DVO valued the land at INR 3.18 crores against the Jantri/Circle rate of INR 4.99 crores, which was taken into consideration by the then AO and accordingly addition of INR 1.82 crores was made on account of LTCG on the basis of valuation done by DVO. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). The Ld. CIT(A) vide Order dt. 10-08-16 upheld the order of AO and dismissed the appeal of the assessee. Aggrieved, the assessee filed appeal before the ITAT. The Ld. AO observed that in the case of one of the co-owners, i.e. Girishbhai Prahladbhai Patel (whose share in the property was 20%), he did not seek valuation from DVO during his assessment proceedings. The AO of the co-owner of the property, in assessment proceedings of the company-owner, opted for taking sale value of property at INR 4.99 crores as determined by the Stamp Duty Authorities i.e. Assessing Officer took the Jantri Value of property as sale consideration. Therefore, the ld. AO of the assessee, Kantaben Patel initiated re-assessment proceedings on the basis of findings by the AO in the case of co-owner that a sum of INR 1.09 crores has escaped the assessment in the hands of the assessee by adopting the Jantri value of such property. The AO vide assessment order passed u/s 143(3) r.w.s. 147 made addition considering the value of property at INR 4.99 crores i.e. by taking the jantri value of such property as determined by the Stamp Valuation Authority. This, addition was challenged by the assessee before the CIT(A) who allowed the appeal of the assessee. The Department is in appeal before the Tribunal.

Ruling

The Tribunal in view of the facts of the present case and the judicial precedents on the subject which have laid down that once the assessee objects to the value of property proposed to be adopted by the AO, then the AO is duly bound to refer the matter to the DVO in terms of Section 50C(2).

In the instant case, the assessee had submitted that there were serious infirmities in the title to the property and hence the Jantri value adopted by the Stamp Valuation Authorities did not represent the correct value of the property sold by the assessee during the impugned year under consideration.

Therefore, when the assessee had raised a specific objection as to the value of the property adopted by the Stamp Valuation Authorities, on the ground that the title itself to the impugned property under consideration was defective, then, in our considered view, Ld. CIT(A) has correctly held that the matter was required to be referred to the file of DVO. Accordingly, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference. In the result, the appeal of the Department is dismissed.

ITAT, Ahmedabad in the case of ITO vs Ketaben Janakbhai Patel vide [2024] 165 taxmann.com 835 (Ahmedabad - Trib.) on August 07, 2024

Since assessee had violated provisions of Indian Medical Council Act, 1956, professional conduct, Etiquette and Ethics Regulations, 2002, impugned advertisement expenditure claimed by assessee-hospital could not be allowed as business expenditure

Facts

The assessee a hospital filed its return of income admitting a total income of INR 4.80 crores for the AY 2018-19. The return was summarily processed on 06-11-19 u/s 143(1), after enhancing the total income at INR 4.94 crores with respect to disallowances on delayed payment of Employees Contribution to PF and ESI payments. Subsequently, the case was selected for complete scrutiny. The AO on perusal of the P&L Account noticed that assessee has claimed advertisement expenditure to the extent of INR 36.52 lacs and requested assessee to explain the nature of expense and also to justify the claim with respect to restriction imposed and categorization of such expenses under "unethical Acts" under the professional conduct, Etiquette and Ethics Regulations, 2002 of Indian Medical Council. Assessee failed to respond to the notices, in absence of any explanation from the assessee the AO disallowed a sum of INR 36.52 lacs u/s 37(1). Aggrieved by the order of the ld. AO, assessee filed an appeal before the ld. CIT(A). Before, first Appellate Authority assessee filed documentary evidences with respect to the nature of expenses incurred and supporting bills and vouchers and the ld. CIT(A) forwarded the additional documentary evidences submitted by the assessee to the ld. Assessing Officer calling for Remand Report.

The AO furnished the Remand Report on 08-03-23. The Remand Report of the AO was forwarded to the assessee for rejoinder which was submitted by the assessee. Considering the Remand Report and the Rejoinder and other explanations and information's provided by the assessee, the ld. CIT(A) partly allowed the appeal of the assessee by restricting the disallowances to 50% of the expenses claimed by the assessee. Aggrieved by the above order, assessee is in appeal before the Tribunal.

Ruling

In these circumstances, Tribunal find that ld. CIT(A) has also not adjudicated the case with respect to allowability of expenditure as per Indian Medical Council Guidelines, 2002. Chapter - 6 of the Indian Medical Council Act, 1956 professional conduct, Etiquette and Ethics Regulations, 2002 prohibits even the institutions and organizations to solicit patients either directly or indirectly. ITAT is of the considered view that the assessee has violated the provisions of Indian Medical Council Act 1956, professional conduct, Etiquette and Ethics Regulations, 2002. There is no merit in the arguments of the Ld. AR that the assessee has made public only the services offered by the assessee which in our opinion construes advertisement. Further, we also find that Ld. CIT(A) has erred in estimating the disallowances and restricting to 50% of the expenditure claimed by the assessee without providing any valid reasoning and hence we are inclined to set aside the order of the Ld. CIT(A), thereby restoring the order of the Ld.

AO on this issue. Accordingly, the appeal of the assessee is dismissed. With regard to the Cross Objection filed by the revenue, since the appeal of the assessee has been dismissed thereby restoring the order of the Ld.AO on this issue, the grounds in the Cross objection raised by the revenue is allowed.

ITAT, Visakhapatnam in the case of Chalasani Hospitals (P.) Ltd. vs ACIT vide [2024] 165 taxmann.com 753 (Visakhapatnam - Trib.) on August 12, 2024

AO was not correct in invoking provisions of section 69A and charging tax u/s 115BBE where assessee, Karta of HUF had deposited cash of Rs. 10.75 lakhs in bank account during demonetization period and offered same for tax as well have maintained the source of such deposits

Facts

The brief facts of the case is that the assessee is a Karta of HUF who derived income from House Property and Income from Other Sources. The assessee had filed his Return of Income for the AY 2017-18 declaring total income of INR 5.73 lacs. The return was taken up for scrutiny assessment, the AO found that the assessee in his Account with Bank of Baroda deposited a sum of INR 10.75 lacs during demonetization period and issued SCN to explain the above source of cash deposit. The assessee replied the source of cash deposit in Bank of Baroda is withdrawal from four other banks. Further the assessee was not having any business income but rental income and other sources income only, therefore he has not filed the Profit and Loss and Balance Sheet along with Return of income. However, filed the same before the AO along with cash book, wherein cash on hand as on 01-04-2016 as opening balance was INR 10.75 lacs, which was deposited in Bank of Baroda during demonetization period, therefore requested not to make any addition. However, AO rejected the Books of Accounts by stating on the verification of the Return of Income filed for the A.Y. 2016-17, assessee has shown Closing Cash on hand as Zero and in the Cash Book of A. 2017-18, assessee has shown Opening Balance to the tune of INR 10.09 lacs which is not justifiable and therefore made addition as unexplained money u/s 69A of the Act and tax the same u/s. 115BBE. Aggrieved against the addition, the assessee filed an appeal before ld. CIT(A) who confirmed the additions. Aggrieved, the assessee is in appeal before the Tribunal.

Ruling

ITAT held that it is an undisputed fact during the demonetization period, the assessee made cash deposit of INR 10.75 lacs. During the assessment proceedings, the AO has rejected the explanation offered by the assessee. Since in the Return of Income, the assessee shown closing cash on hand as Nil but in the cash book shown the opening balance for A.Y. 2017-18 to the tune of INR 10.09 lacs The assessee before Commissioner filed copies of previous three years Form 26AS, ITR, Statement of Income, P&L account and Balance Sheet and further explained that rental income with appropriate TDS u/s 194I which is clearly reflecting in Form 26AS records. The monthly rents were also deposited in bank accounts. Since the assessee is a Senior Citizen withdrawn and kept substantial balance in his bank accounts because of emergency medical needs.

However, after declaration of the demonetization period, the assessee deposited the so-called withdrawal amounts from his bank account which has been offered for tax by filing regular Return of Income as well as deduction u/s. 194I of the Act.The Assessing Officer also erroneously treated as unexplained cash and also invoked Section 115BBE of the Act and charged at 60% rate which is not applicable to the present case since the above cash deposits were clearly reflected in the books of accounts maintained by the assessee. The Tribunal further stated that the AO has made addition u/s 69A which will be applicable only when the assessee is found to be the owner of any money, bullion, jewellery or other valuable articles and such money etc. is not recorded in the books of accounts maintained by him from any source of income and any explanation offered by the assessee is not in the opinion of the AO is satisfactory then, the same can be added as the unexplained money in the hands of the assessee. In the present case, the assessee has recorded the above cash deposits in his books of accounts and source of cash deposits during demonetization period were also been maintained by the assessee. Therefore, in our considered view, the AO is not correct invoking provisions of Section 69A and charging tax u/s 115BBE. Thus, the addition made by the Assessing Officer is liable to be deleted. Thus, the grounds raised by the assessee is hereby allowed.

ITAT, Ahmedabad in the case of Dipak Balubhai Patel (HUF) vs ITO vide [2024] 165 taxmann.com 684 (Ahmedabad - Trib.) on August 22, 2024

Where assessee failed to provide sufficient evidence to substantiate its claim that cash deposited in its bank account was received back from various trusts in lieu of cheques issued for bogus donations, AO was justified in making addition u/s 68 on account of said cash deposits

Facts

The assessee filed return of income on 30-10-17 declaring total income at INR 1.19 crores. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 were issued and complied with. The AO on the basis of the information in possession of the Income-tax Department asked the assessee to explain source of cash deposit of INR 54.50 crores in ICICI Bank Ltd. on 12-11-16. The assessee explained that said cash was generated on account of bogus donations claimed u/s 35AC and 35AC(ii), under which cash was received back from Trusts, against the cheque issued to them for donations. The assessee submitted that it wished to participate in Income Disclosure Scheme, 2016 for declaring the said cash received against cheques issued for donation as undisclosed income, and therefore, the assessee filed such a request vide letter dated 30.09.2016 before concerned authorities for IDS disclosure for assessment years 2009-10, 2010-11, 2013-14 and 2014-15 but said request of the assessee was rejected by the concerned authorities due to procedural restrictions. The assessee contented that said letter dated 30-09-16 shows that cash

received against cheques issued for donation was available with the assessee during demonetization period and same was deposited into bank. But the AO asked the assessee by way of show cause notice dt. 01-12-19 for substantiating the claim of cash received from various trusts in lieu of bogus donations by providing documentary evidences as against verbal claim, but the assessee failed in doing so. Accordingly, the AO rejected the contention of the assessee and made addition u/s 68.

On further appeal, the ld. CIT(A) also upheld the addition relying the decision of the **Hon'ble Supreme Court in the case of Srilekha Banerjee v. CIT [1963] 49 ITR 112 (SC).** Thereafter the appeal was preferred before the Tribunal.

Ruling

The assessee contended that above parties returned the amount of donation back to assessee in cash after deducting 10% commission. The assessee further contented that he had withdrawn the said deduction u/s 35AC and the paid taxes thereon in all those AYs. Further stated that the cash, which was received back was kept with him and deposited in ICICI Bank on 12-11-16 i.e. during the demonetization period. The lower authorities have rejected the contention of the assessee on the basis of the circumstantial. According to the ld. CIT(A) in normal circumstances no one will keep the cash currency for 3 to 8 years and therefore, rejected the contention of the assessee as not reasonable or logical. Before us, no evidences have been filed in support of contention that assessee withdrawn the deduction in respect of corresponding years and cash was returned back by those trusts to the assessee. The assessee has not filed any such affidavit from those trusts supporting it contention the cash was received back. In the facts and circumstances of the case, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, appeal of the assessee was dismissed.

ITAT, Mumbai Bench in the case of Vaibhav Pankaj Shah vs ACIT vide [2024] 165 taxmann.com 620 (Mumbai - Trib.) on August 19, 2024

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