VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Supreme Court Rulings

Education cess cannot be allowed as deduction in computing income chargeable under the head “PGBP”

Facts

The assessee contends that the expression does not include ‘cess’ and therefore, the amounts paid towards cess are liable to be deducted in computing the income chargeable under the head ‘PGBP’. However, the Respondent - Revenue contends that cess is also included in the scope and import of the expression ‘any rate or tax levied’ and consequently, the amounts paid towards the cess are not liable for deduction in computing the income chargeable under the head ‘PGBP’.

The ITAT, in its judgment, has reasoned that since cess is collected as a part of the income tax and fringe benefit tax, therefore, such cess is to be construed as tax and accordingly, there is no scope for such implications, when construing a taxing statute. Even, though, cess may be collected as a part of income tax, that does not render such cess, either rate or tax, which cannot be deducted in terms of the provisions in Section 40(a)(ii). ITAT also stated that the mode of collection is really not determinative in such matters relying upon Unicorn Industries v. Union of India [2019] 112 taxmann.com 127 (SC).

The case was appealed before the HC who held that in the present case, though the claim for deduction was not raised in the original return or by filing revised return, the Appellant - Assessee had indeed addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the basis that there was no obligation on the AO to consider the claim for deduction in such letter, the CIT(A) or the ITAT, before whom such deduction was specifically claimed was duty bound to consider such claim. Accordingly, we are unable to agree with the assessee’s contention based upon the decision in Goetze India Ltd. The Department thereafter filed an SLP.

Ruling

The Apex Court held that in view of the subsequent amendments in the Income Tax Act, 1961, ‘Education Cess’ cannot be allowed as an expenditure. The impugned judgment is therefore set aside and Department’s appeal is allowed. SC also stated that the AO while implementing and giving effect to this order, will examine the amount of ‘Education Cess’, if any, claimed by the respondent as an expenditure in the returns or in the proceedings.

SC in JCIT vs Sesa Goa Ltd. vide [2024] 161 taxmann.com 806 (SC) on April 15, 2024

SLP disposed of as infructuous against order of HC where assessee did not furnished information related to the transaction as required by AO in reopening notice, assessee could not contend that she was denied opportunity of hearing and, thus, impugned reassessment order was valid.

Facts

In the facts of the present case, the petitioner in her reply had highlighted that the assertions of the AO were vague and had specifically sought better material and information from AO to enable a rebuttal. In these circumstances the issuance of second notice for furnishing specific details of the transaction, which as per AO is subject matter of the first notice cannot be faulted.

A perusal of the third notice and the impugned order shows that as per the AO, the details of the transaction which form the basis of all the three notices were same. It is the case of the respondent that the said material was available on record and forms the basis of the inquiry when the initial notice was issued.

Pertinently, the petitioner has not offered any explanation for the transaction(s) entered with M/s Subhshree Financial Management Pvt. Ltd. Limited in the relevant FY in her latest reply. In the absence of any explanation offered in her reply, HC did not find any error in the impugned order issued by the AO rather further added that we do not agree with the contention of the petitioner that she was denied an opportunity to respond to the allegations made in the notices.

The petitioner filed a detailed reply but elected not to explain or substantiate the transaction between the petitioner and M/s Subhshree Financial Management Pvt. Ltd. The petitioner having elected to not furnish the said information cannot contend that she was denied an opportunity of hearing.

The petitioner does not dispute that there were transactions between petitioner and M/s Subhshree Financial Management Pvt. Ltd. in the relevant FY. With respect to the petitioner's contention in the writ petition that this transaction was a loan transaction and it stood repaid, the same is a bare averment, unsubstantiated and it is neither evident from the record nor can this fact be determined in these proceedings, when the allegation of the Department is that it was an accommodation entry. The said submission of the petitioner will be examined by the AO in the assessment proceedings after perusing the material furnished by the petitioner. The third reply offered no such explanation, much less the above explanation for the transaction. The matter was further taken before the Apex Court.

Ruling

SC held that the prayer in the petition is not pressed at this stage since relief has already been obtained by the petitioner. The question of law, if any, is however left open for consideration. The SLP and applications, if any, are accordingly disposed of as infructuous.

SC in Saroj Chandna vs ITO vide [2024] 162 taxmann.com 101 (SC) on April 22, 2024

High Court Rulings

Contribution made by assessee-company to Compensatory Afforestation Fund (CAF) would be revenue expenditure and not capital in nature

Facts

The petitioner is engaged in the business of manufacturing of iron and steel products and had filed the return for AY 2006-07 declaring total income of INR 4422.83 crores. The case was selected for scrutiny and the assessment u/s 143(3) was completed determining the income at INR 4489.32 crores. The CIT exercised its powers u/s 263 and issued a notice followed by an order setting aside the original assessment order u/s 143(3) r.w.s. 263 disallowing the contribution made by petitioner to CAF. Aggrieved by the order, an appeal was preferred by petitioner to the CIT(A) who dismissed the appeal. Further, the ITAT allowed the appeal holding that the CIT was not justified in invoking the provisions of Section 263.

Ruling

HC in this case held that the only issue considering the facts and circumstances of case and also the proposed substantial questions of law, which arise in this appeal is “whether petitioner was entitled to treat the contribution of INR 212.52 crores to CAF as capital in nature or as revenue expenditure as claimed by petitioner. HC placed reliance on Commissioner of Income Tax v. Dr. Prafulla R. Hede and Another Tax Appeal No. 15 of 2012 dated 6th February 2012 and held that this issue is no more res-integra and accepted that contribution to CAF will be revenue expenditure and not capital in nature. Even the Special Leave Petition that was filed by the Revenue against Dr. Prafulla R. Hede was dismissed. HC dismissed the present appeal holding that no substantial question of law arises.

HC, Bombay in PCIT vs Tata Steel Ltd. vide [2024] 161 taxmann.com 607 (Bombay) on April 17, 2024

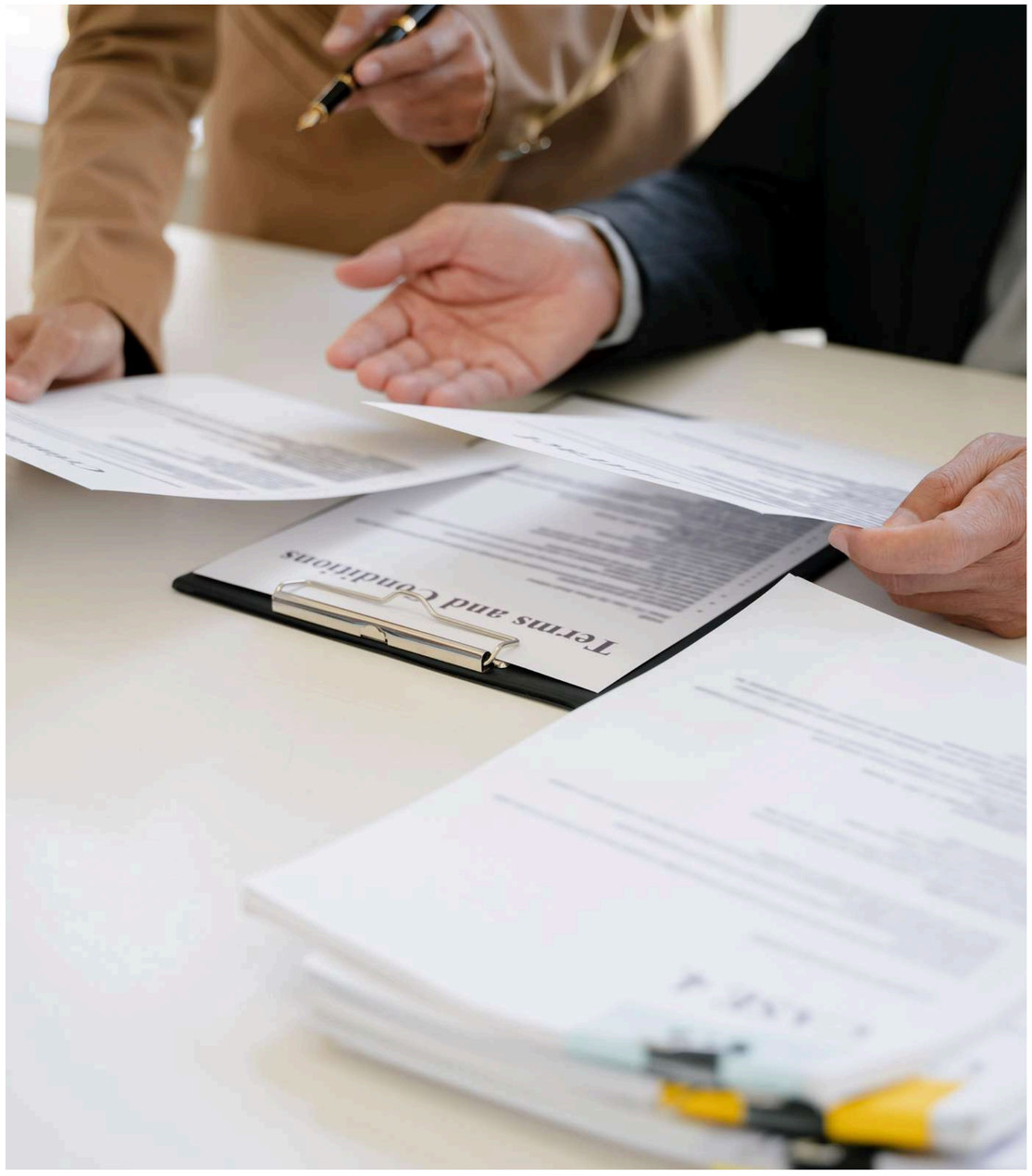
Matter remanded back for fresh consideration where SCN was issued with time limit of only three days plus extension by another two days; proceedings apparently seemed to be in a hasty manner without a reasonable opportunity being given.

Facts

The counsel for the petitioner contended that the SCN issued on 17-03-22, clearly reflects that it was in fact seeking for an explanation on the draft assessment order forwarded u/s 144C. The petitioner further held that if the SCN was a draft assessment order u/s 144C, the other mandatory requirement u/s 144C having not been adhered to, the entire proceedings drawn thereon stands vitiated only on the ground of non-adherence to the requisite procedure prescribed under the Act.

It was also contented that reply to SCN was filed and, again the respondent authorities made a correspondence vide notice u/s 142(1) calling the petitioner to furnish the accounts and the documents specified. The petitioner again gave his reply on the same day and another response within a week.

However, before the same could be appreciated by the respondent authorities, the impugned order was passed leading to filing of the present writ petition. Since the dispute was in respect of the AY 2014-15, the SCN was issued after so long a period on 17-03-22. The respondent authorities ought to have given a reasonable period of time rather than hastily proceeding and concluding the entire proceedings in less than fifteen days' time which goes to show the arbitrariness and predetermined approach of the respondent authorities in passing of the impugned order.



Ruling

HC held that the SCN unambiguously reflects it to be a draft assessment order and on plain reading, it appears to be a draft assessment order. The presumption drawn by the petitioner for it to be a notice u/s 146C cannot be doubted. Another aspect which needs to be considered is that the SCN was issued on 17-03-22 and the time limit for response was up till 20-03-22. This duration was too short a period, particularly, when the explanation and details have been sought of an assessment year about seven to eight years old. Thereafter, vide notice dated 21-03-22 the authority concerned extended the period by another two days. For all the aforesaid reasons, HC do not find any hesitation in reaching to the conclusion that the proceedings drawn by the respondent authorities apparently seems to be in a hasty manner without a reasonable opportunity being given to the petitioner. Thus, the impugned order therefore to the aforesaid extent is set aside. Since the impugned order is being quashed on the technical ground of fair opportunity not being provided, the matter as remitted back to the authority concerned directing them to hear the petitioner and then proceed and decide strictly in accordance with law without any further delay.

HC, Telangana in A. Jaipal Reddy Amireddy vs Union of India vide [2024] 162 taxmann.com 103 (Telangana) on April 19, 2024

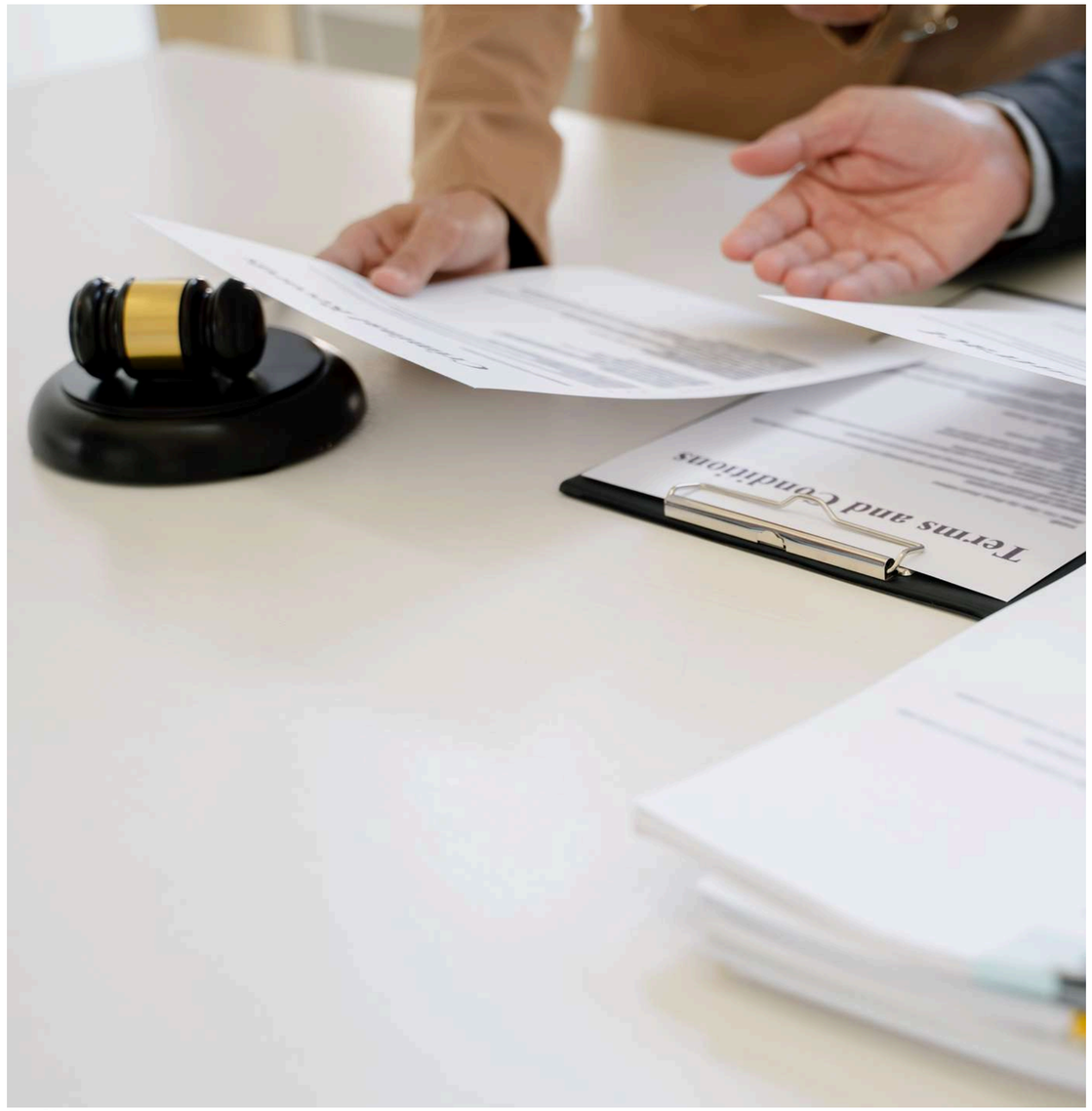
Since petitioner rendered part of his service tenure as SG employee and balance part of it was as an employee of PSU, it was a bonafide in claiming exemption of INR 20 lakhs u/s 10(10)(ii) in revised return on account of gratuity received from his employer; impugned penalty u/s 270A was not warranted

Facts

The petitioner being an individual was an employee of Maharashtra State Electricity Generation Company Ltd, a SG of Maharashtra owned company, wherefrom he retired on 31-05-16. Declaring total income of INR 44.68 lacs with NIL tax liability, he filed his original return which subsequently was revised claiming tax refund of INR 3.09 lacs owning to upward revision of claim of exemption of Gratuity to INR 20 Lakhs as against original claim of INR 10 Lakhs.

The said ITR was initially processed u/s 143(1) and later subjected to complete scrutiny by a notice served u/s 143(2). While framing assessment u/s 143(3), the Ld. AO made addition of INR 10 Lakhs arising on account of restricting the claim of exemption of gratuity to INR 10 Lakhs u/s 10(10)(ii) as against the claim of INR 20 Lakhs made in revised ITR.

The petitioner did not challenge the disallowances and the consequential additions in appeal. Pursuant to aforestated disallowance, the Ld. AO initiated penal proceedings for misreporting of income u/s 270A and after considering the submission, imposed a penalty of INR 6.03 lacs @ an accelerated rate of 200% of tax sought to evaded u/s 270A(8).



Ruling

ITAT held that levy of penalty in this case was not warranted for the reasons that;

- admittedly for part of the service the petitioner was SG employee whose employment by enforcement of electricity Act, 2003 and MSEGCL employee Service Regulation 2005 was converted into non-governmental service/employment.

Therefore, the belief under which full/extended exemption of retirement benefit claimed in the ITR filed was in first not incorrect in its entirety and certainly it was bonafied and not synthetic one;

- Secondly, the explanation offered by the petitioner in support of his mistaken but bonafied belief and disclosed all material facts of his service & the circumstance which swayed to claim full exemption in his ITR in our considered view squarely falls within Section 270A(6)(a), therefore pardonable; and
- Finally, the imposition of penalty is at the discretion of Ld. AO, since Section 270A(1), refers to the word ‘may’ and not as ‘shall’. However, the tax authorities below in our considered view were failed to appreciate the facts and circumstance of the present case holistically and further in right spirit of law but dealt therewith without application of mind and perfunctory imposed/confirmed the penalty @ accelerated rate of 200% u/s 270A in unwarranted case like this.

Before parting, it is apt to note here that, the possibility of presence of doubt in the mind of Ld. AO while deciding the ceiling of exemption as to whether status of employment as at the time of joining or at the time of retirement is to be considered, cannot be completely ruled out. However, the Ld. AO disallowed the excess claim of exemption which stands fortified by the Hon'ble Apex Court in CCE v. Calcutta Springs, [2008] 229 ELT 161 (SC) which has been followed subsequently in landmark judgement CoC v. Dilip Kumar & C' reported in [2018] 9 SCC 1 (SC) wherein their Hon'ble lordship have held that, in case of benefit of doubt or ambiguity in taxing the income, the benefit of doubt goes to State. However, in respect of penalty in fiscal laws the principle followed is more like the principle in criminal cases. The appeal filed by the petitioner was therefore allowed.

ITAT, Nagpur Bench in Ravindra Madhukar Kharche vs ACIT vide [2024] 161 taxmann.com 712 (Nagpur-Trib.) on April 16, 2024

Where assessee-company had received share application money from five investor companies through banking channels, since assessee failed to establish creditworthiness of investor companies and genuineness of transaction, impugned addition made u/s 68 was justified

Facts

The petitioner filed its return of income for the AY 2012-13 declaring income of INR 2.06 crores. The case was selected for scrutiny and the AO while completing the assessment u/s 143(3) by order noted that the petitioner had issued shares to 5 companies, (i) Gainwell Textrade Pvt. Ltd., (ii) Lucky Tradelink Pvt. Ltd., (iii) Pawapuri Mercantile Pvt. Ltd. (iv) HIL Engineering Pvt. Ltd., (v) Mubarak Cosmetics Pvt. Ltd. The AO stated that there is rampant practice of introducing undisclosed income in the guise of share application/share allotment to different companies/individuals; the companies took the shelter of corporate veil to channelize the undisclosed income; to protect this practice the Income Tax Act was amended with effect from 01-04-12.

The AO referred to a letter dated 23-01-15 which was served on the assessee requesting them to produce the new shareholders as well as the Directors within 15 days to prove the genuineness, credit worthiness of their investment. The petitioner was also directed to produce the bank statements, books of account, Profit and loss, balance sheet, computation and return AD of the shareholders of shareholders for the FY 2011-12. The petitioner was directed to be present at the time of recording their statement and for the purpose of crossexamination. It appears that the investor companies submitted a few documents but none of the directors appeared before the AO.

After considering all the materials the AO held that the petitioner company entered into a share transaction with the investor to introduce the unaccounted income in form of share application/allotment; they did not have any regular business transaction or regular acquaintance with the investors; the investors had no reason to invest such huge amount in the business of the petitioner and the entire transaction was done to circumvent the provision of the Act. Under such circumstances the entire share application/ allotment money was added back u/s 68 as undisclosed cash credit. Aggrieved by such order, the assessee preferred appeal before the CIT(A)- 11 Kolkata, who opined that since the AO has not brought out certain relevant facts, he is constrained to undertake a fact finding exercise and the petitioner was requested to furnish the bank statement of the investors, their return of income along with the financial statements along with copies of memorandum of association. The petitioner appears to have furnished the details as called for by the CIT(A) and appears to have made elaborate submissions before the CIT(A) and also placed reliance on various decisions.

The CIT(A) after taking note of the various decisions noted that the onus of establishing the identity, creditworthiness and genuineness of the share transaction was not discharged by the petitioner. It was held that the return of income filed by the petitioner's shareholders show that they did not have any real business activity and had never earned taxable income yet they were dealing in crores of money in the name of investing and receiving funds towards share capital at unreasonably high premium. Therefore, the CIT(A) came to the conclusion that the transactions were not genuine.

Ruling

ITAT held that the CIT(A) was right in adopting a logical process of reasoning considering the totality of the facts and circumstances surrounding the allegations made against the petitioner taking note of the minimum and proximate facts and circumstances surrounding the events on which charges are founded so as to reach a reasonable conclusion and rightly applied the test that a reasonable/prudent man would apply to arrive at a conclusion. On facts we are convinced to hold that the petitioner has not established the capacity of the investors to advance moneys for purchase of above shares at a high premium.

The credit worthiness of those investors companies is questionable and the explanation offered by the petitioner, at any stretch of imagination cannot be construed to be a satisfactory explanation of the nature of the source. The petitioner has miserably failed to establish genuineness of the transaction by cogent and credible evidence and that the investments made in its share capital were genuine. As noted above merely proving the identity of the investors does not discharge the onus on the assessee if the capacity or the credit worthiness has not been established. In the light of the above discussion, ITAT hold that the petitioner has failed to discharge legal obligation to prove the genuineness of the transaction and the credit worthiness of the investor which has shown to be so by a "round tripping" of funds. For all the above reasons, the revenue succeeds.

ITAT, Calcutta Bench in PCIT vs BST Infratech Ltd vide [2024] 161 taxmann.com 668 (Calcutta) on April 23, 2024

Calculating cost of property as on 01-04-81 at INR 10 lakhs by applying reverse method of indexation, since indexed cost of acquisition of INR 54 lakhs were higher than sale consideration, it would result into a long-term capital loss and, therefore, addition made by AO on account of LTCG was to be deleted

Facts

The petitioner is an individual and on the basis of information about sale of immovable property, case was reopened u/s 147 after obtaining necessary approval from the Competent Authority. The regular return of income for AY 2016-17 was furnished declaring total income at INR 3.46 lacs. The ld. AO after serving valid notices alongwith questionnaires asked the assessee to explain the transaction of sale of immovable property during the year. After considering the submissions, the ld.

AO observed that the petitioner being 50% owner of immovable property received sale consideration at INR 50 lakhs and the cost of acquisition as on 01-04-81 was taken at INR 10 lacs.The ld. AO noticed that the cost of property has been computed by Registered Valuer on the reverse method of indexation and practically the sale consideration and indexed cost of acquisition are the same. The ld. AO was not satisfied with this calculation and in absence of Circle rate of the said property, he estimated the indexed cost of acquisition at INR 5 lacs and made an addition for long-term capital gain at INR 45 lakhs. Aggrieved, petitioner preferred in appeal before the ld. CIT (Appeals) and failed to succeed. The matter was taken up before the Tribunal.

Ruling

ITAT, however, failed to find merit in the finding of both the lower authorities for the reason that ld. AO has himself noted that the cost of acquisition as on INR 5 lacs (50% of cost at Rs.10,00,740/-), but while calculating the long term capital gain has not given the benefit of indexation and in case he has applied the indexation benefit (i.e. INR 5,00,370 divided by 100 x 1081), the index cost of acquisition would work out at INR 54,09,000, which is more than the sale consideration. The ld. AO has nowhere disputed the sale consideration. Even ld. CIT (Appeals) has also adopted the same analogy and even he has considered the cost of acquisition at INR 5 lakhs, but again no benefit of indexation has been given. ITAT held that it has been observed that the ld. AO has himself considered the cost of acquisition at INR 5 lacs based on the valuation report by Registered Valuer, which is fair market value of the property (petitioner's share).

For calculating the long-term capital gain, indexed cost of acquisition is reduced from the sale consideration. However, ld. AO has merely reduced the cost as on 01-04- 81 and has calculated the impugned addition. The ld. AO has not made any efforts to get the information about the Circle rate of the immovable property. Under these given facts and circumstances, where fair market value of the property as on 01-04-81 as calculated by the Registered Valuer has been accepted by the ld.

AO and there being no other evidence of the fair market value of property as on 01-04-81, we are inclined to hold in favour of the assessee observing that considering the cost of acquisition at INR 5 lakhs (adopted by ld. Assessing Officer), the indexed cost of acquisition would be INR 54.09 lacs and since it is higher than the sale consideration, it would result into a long-term capital loss. Therefore, we set aside the finding of ld. CIT (Appeals) and delete the impugned addition made in the hands of petitioner.

ITAT, Kolkata Bench in Millie Dey vs ITO vide [2024] 162 taxmann.com 45 (Kolkata – Trib.) on April 23, 2024

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