VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

July 2024

Inside this edition

High Court Rulings

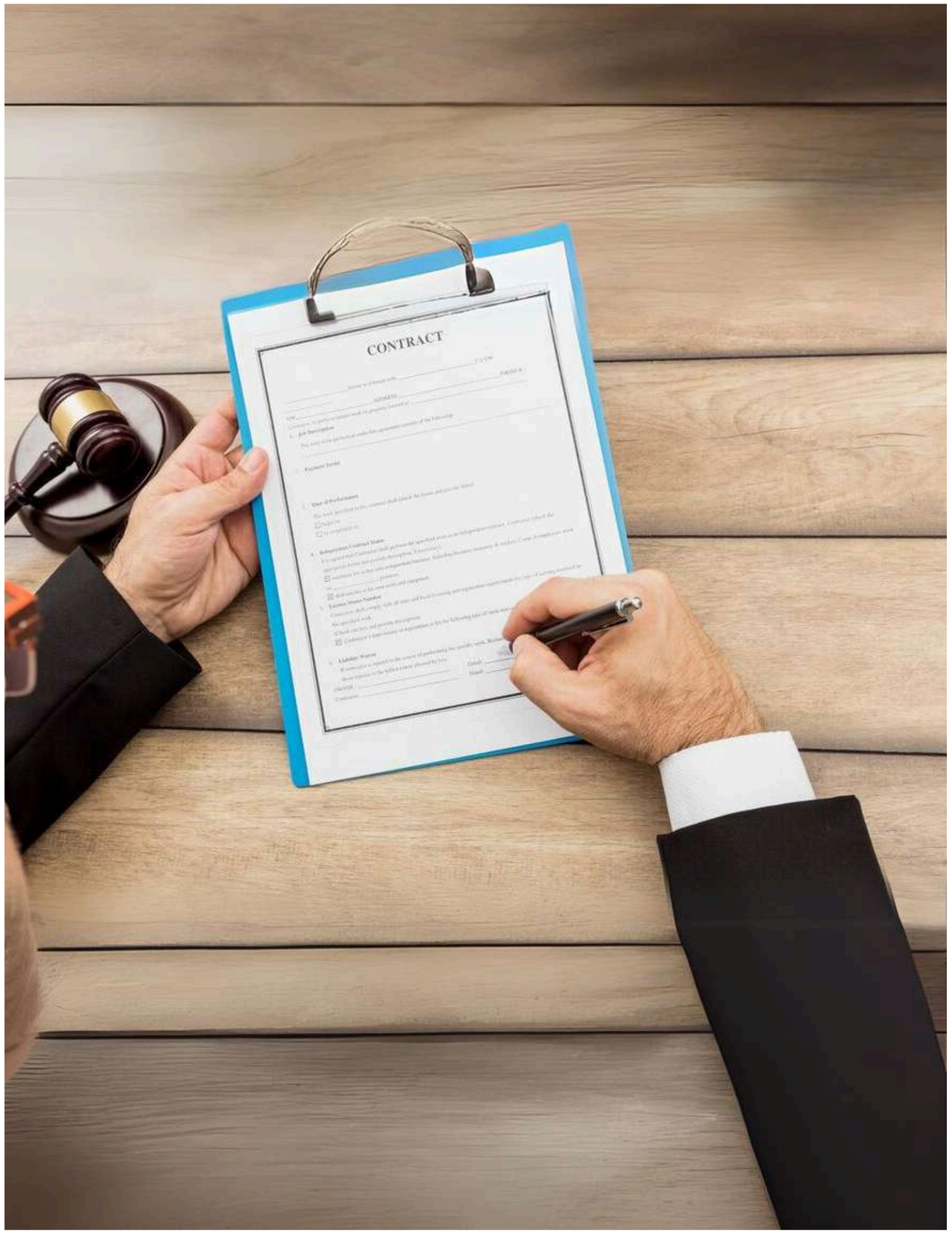
Where Tribunal were to admit additional question and proceed to accord relief to petitioner with respect to return of income, insistence of revenue on a revision of return being a precondition clearly failed to take into consideration plenary powers which stood conferred upon Tribunal by virtue of section 254

As per provisions of section 151A under faceless assessment scheme notice u/s 148 can be issued only by a Faceless Assessing Officer and not by a Jurisdictional Assessing Officer

ITAT Rulings

Where petitioner-company filed additional evidence before CIT(A) which was not admitted, since said additional evidence was crucial, matter was to be remanded back to AO for consideration after admitting additional evidence

Where Tribunal were to admit additional question and proceed to accord relief to petitioner with respect to return of income, insistence of revenue on a revision of return being a precondition clearly failed to take into consideration plenary powers which stood conferred upon Tribunal by virtue of section 254



Facts

The petitioner is an incorporated company and is a tax resident of Japan. For AY 2005-06, it filed its return of Income, declaring an income of INR 4.19 crores. A revised return thereafter came to be submitted enhancing the declared income to INR 61.05 crores which according to the petitioner, was on the basis of a sum of INR 53.82 crores being attributable to activities of its Liaison office in India and INR 3.06 crores in respect of actual sales made to the Delhi Metro Rail Corporation.

However, the AO while framing an order of assessment, refused to accept the aforesaid declarations and thus chose not to proceed in accordance with the settlement which had been alluded to. Aggrieved by the aforesaid action, the petitioner preferred an appeal before the CIT(A) with additional grounds assailing the aforesaid view as taken by the AO who dismissed those additional grounds. Aggrieved by the aforesaid, the petitioner approached the Tribunal who allowed the appeal for statistical purposes. The petitioner thereafter preferred a writ before the HC.

Ruling

HC held that Tribunal were to admit a question and proceed to accord relief, the same cannot be denied or be made subject to a Return of Income being revised. The insistence of the respondents on a revision of the return being a precondition clearly fails to take into consideration the plenary powers which stand conferred upon the Tribunal by virtue of Section 254. In light of our conclusions on the principal question which stood posited, HC observed that the challenge to the Circular of the CBDT does not really merit further consideration. All that need be observed is that once the Tribunal had called upon the AO to examine the issue afresh, the said direction could not have been disregarded by reference to a Circular issue by the CBDT.

Therefore, the writ petition was accordingly allowed and final assessment order was quashed insofar as they negate consideration of the additional grounds which had been urged by the writ petitioners. The AO shall consequently consider the same and pass fresh orders in accordance with law.

High Court, Delhi in the case of Mitsubishi Corporation vs ACIT vide [2024] 165 taxmann.com 79 (Delhi) on July 30, 2024

As per provisions of section 151A under faceless assessment scheme notice u/s 148 can be issued only by a Faceless Assessing Officer and not by a Jurisdictional Assessing Officer

Facts

This Writ Petition under Article 226 of the Constitution of India has been filed to challenge a notice dated 23-04-24 issued by the Jurisdictional Assessing Officer and not by a Faceless Assessing Officer as is required by the provisions of Section 151A to the Petitioner u/s 148 and also the underlying prior notice and order u/s 148A(b) and Section 148A(d) of the Act, respectively.

The petitioner contended that it is now well settled that for a notice to be validly issued for reassessment u/s 148, the Revenue would need to be compliant with Section 151A, which has been interpreted and analyzed in detail by a Division Bench of this Court in the case of **Hexaware Technologies Limited vs ACIT vide [2024] 162 taxmann.com 225 (Bombay).**

Ruling

HC held that it is apparent that the Revenue is not in compliance with the Scheme notified by the Central Government pursuant to Section 151A(2).). The Scheme has also been tabled in Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings u/s 148A

In view of the explicit declaration of the law in Hexaware, the grievance of the Petitioner insofar as it relates to an invalid issuance of a notice is sustainable and consequently, the very manner in which the proceedings have been initiated, vitiates the proceedings.

Learned Counsel for both the parties agree that the proceedings-initiated u/s 148 would not be sustainable in view of the judgment rendered in Hexaware and has also drawn our attention to a recent decision of this Court in **Nainraj Enterprises Pvt. Ltd. vs. DCIT**, whereby in similar circumstances, this Court has allowed the petition considering the provisions of Section 151A. HC held that in the light of the above discussion, and as there is no dispute that the Jurisdictional AO had no jurisdiction to issue the impugned notice, the Writ Petition is accordingly allowed and the impugned notice as well as order are quashed and set aside.

High Court, Bombay in the case of Reliance Jio Infocomm Ltd. Vs DCIT vide [2024] 165 taxmann.com 547 (Bombay) on July 30, 2024

Where petitioner-company filed additional evidence before CIT(A) which was not admitted, since said additional evidence was crucial, matter was to be remanded back to AO for consideration after admitting additional evidence

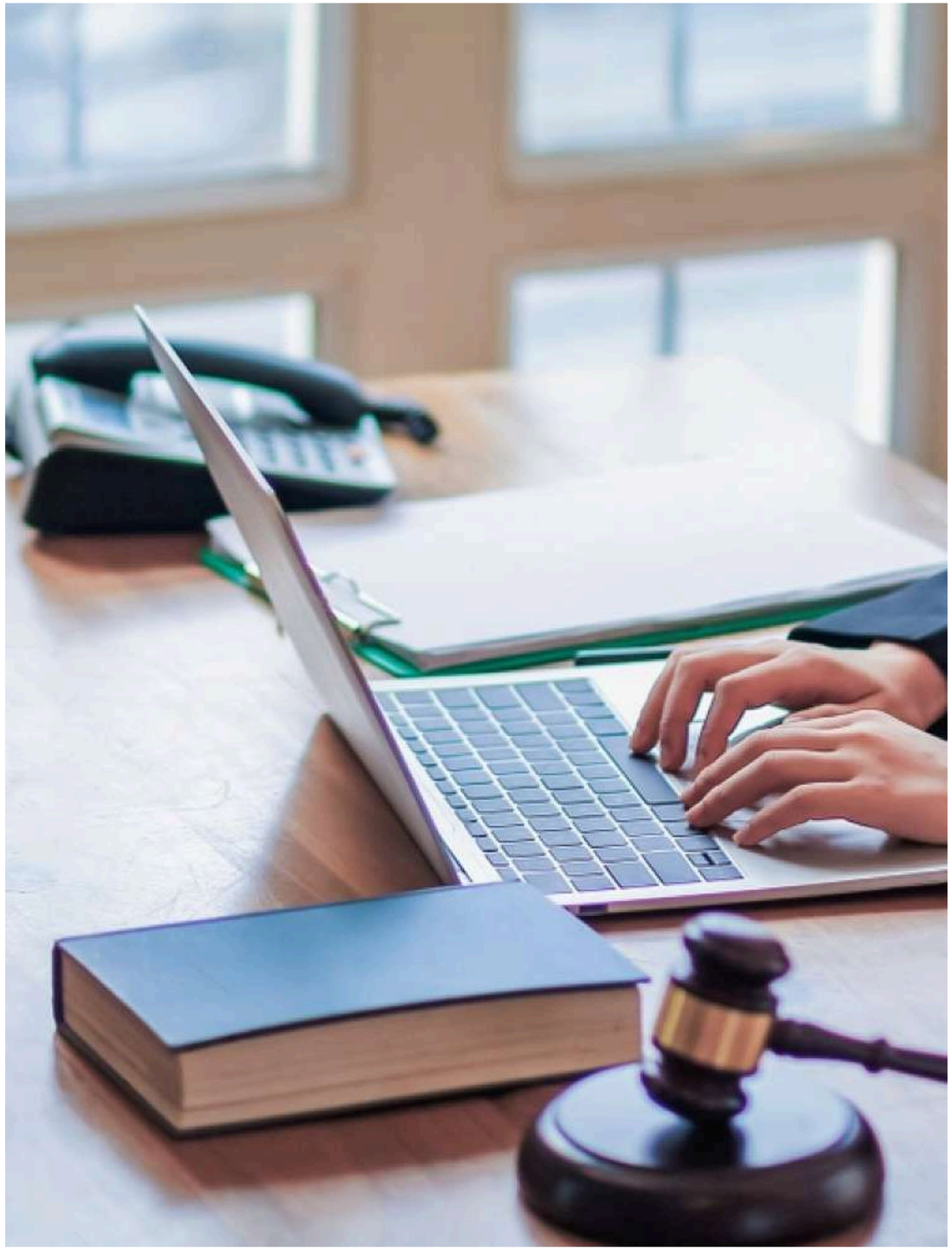
Facts

The petitioner filed return of income declaring nil income. The case was selected for scrutiny through CASS. The assessment was completed on 30-12-17 u/s 143(3) and total income was determined at INR 14.53 crores after making an addition of INR 85 crores u/s 56(2)(viib). Aggrieved by the said order, petitioner appealed before the ld. CIT(A) who confirmed the addition. In doing so, he also inter alia did not admit the additional evidences. Against the above order, petitioner has filed this appeal before the Tribunal taking the under mentioned grounds which the AO/CIT(A) have failed to appreciate:

-that FMV of shares of the Appellant company has been calculated in accordance with provisions of Rule 11 UA(2)(b) (i.e. DCF Method) and as such is in accordance with law.

-that under Rule 11 UA(2)(b), the option is given to the Appellant to choose the method of valuation and hence the Appellant was justified in law and on facts, in exercising the said option.

-that Valuation Report dated 09-09-14 has been prepared by a subject matter expert based on the projected data provided by the management as per the Management Business Plan which were based on growth



-prospects/future possibilities and the AO/CIT(A) has no basis for rejecting the same.

-that the true objective of Section 56(2)(viib) is to prevent conversion/circulation of unaccounted money, and hence in view of the facts and circumstances of the case, the transaction of the Appellant is not covered by Section 56(2)(viib).

-the CIT(A) has erred in rejecting application for admission of additional evidence u/ Rule 46A moved by the Petitioner, which contained MBP on the basis of which Valuation Report was prepared.

Ruling

ITAT held that in the substantial interest of justice, the additional evidences need to be admitted. Hence, ITAT directed that these additional evidences are admitted and the matter is remitted to the file of AO who is directed to consider the additional evidences and after duly considering the same, should pass appropriate order. The appeal was therefore allowed for statistical purposes.

ITAT, Delhi in the case of ADM Agro Industries Kota & Akola (P.) Ltd. vs DCIT vide [2024] 164 taxmann.com 564 (Delhi - Trib.) on July 10, 2024

Where petitioner along with his two brothers under JDA had only permitted developer to develop property belonging to owners only as a licensee, it would not result in transfer of property to licensee and, thus, no capital gain was chargeable

Facts

The Department is in appeal before Hon'ble ITAT, Nagpur on the ground that the ld. CIT(A) is erred in deleting the addition of INR 3.18 crores in the case of Shri Naresh Vasantrai Trivedi made by the AO as LTCG in respect of JDA entered with M/s Concrete Developers for development of the land. During the course of search proceedings in the case of M/s Concrete Developers certain documents were found and seized. On verification of the seized material, it was seen that the JDA was made between the three brothers Shri Naresh Vasantrai Trivedi, Shri Ashok Vasantrai Trivedi, Shri Ajay Vasantrai Trivedi, and M/s Concrete Developers for property at Mouza Somalwada CTS No. 504, Nagpur.The Stamp duty value of the property as per the JDA was INR 9.62 crores.

The Department contended that a JDA was entered into, between Smt. Arpita and M/s Concrete Developers to develop land at Mouza Somalwada City, Survey No. 504 Nagpur. According to this agreement, 42.5% of land was to be constructed (in the form of 55 flats constructed in the project) and given by the developer, M/s Concrete Developers to Arpita Trivedi and the balance 57.5% of land was to be retained by the developer.The security deposit of INR 75 lacs was received at the time of agreement.

Subsequently, the above land was gifted by Smt. Arpita Trivedi to her three brothers Shri Naresh Vasantrai Trivedi, Shri Ashok Vasantrai Trivedi, and Shri Ajay Vasantrai Trivedi vide gift deed. The petitioner along with his two brothers has then entered into a modified JDA with M/s Concrete Developers.

Based on facts on record, all the conditions of sub-clause (v) of section 2(47) are satisfied in the case and therefore it had to be inferred that a transfer did take place within the meaning of Section 2(47)(v). The Ld. CIT(A) has not appreciated that the amount to be taxed u/s 45(1) is not dependent upon the receipt of the consideration.

Ruling

Applying the principle as crystallized by the Apex Court reproduced herein above, to the facts of the present case, it can be seen that the development agreement permitted construction on the land in question only as a licensee which did not have the effect of transmitting possession in favour of the licensee within the meaning and spirit of Section 53A of T.P. Act. If that is so, then there would be neither any tangible material nor any reason for the assessing officer to believe that 'any income chargeable to tax had escaped assessment' and the action of the assessing officer, therefore, would be without jurisdiction.

ITAT further stated that we note that the Court held that section 53A of the Transfer of Property Act, 1882 would not be attracted in a case where a license was given to another for the purpose of development of flats and selling the same and granting such license could not be said to be granting possession within the meaning of section 53A of the Transfer of Property Act, 1882. In the present case also, as discussed above, clause 6 of the modified agreement of Joint Development, Construction and Sale clearly shows that the owners which includes the petitioner confirmed the license and permission given to the developer by the previous owner to enter into upon the said property. The said license to the developer is personal) and under no circumstances the developer shall transfer the same to any third party.

Therefore, the argument of ld. DR is not acceptable that the license and permission is a right itself gives rise transfer of property u/s. 2(47)(v) of the Act.

Thus, ITAT find no infirmity in the order of CIT(A) in holding that there is no transfer u/s. 2(47)(v) of the Act and no capital gain is chargeable thereon in the year under consideration. Thus, the grounds raised by the Revenue fails and are dismissed.

ITAT, Nagpur Bench 'SMC' in the case of ACIT vs Naresh Vasantrai Trivedi vide [2024] 165 taxmann.com 544 (Nagpur - Trib.) on July 18, 2024

Even if petitioner did not pay STT at time of acquisition of shares, still it was eligible for exemption under section 10(38)

Facts

The petitioner was established as a trust through a trust deed dated May 12, 2006 and registered under the Registration Act, 1908. Though the petitioner applied for "VCF" status to the SEBI on 18th May, 2006, yet it got the Certificate of registration only on October 10, 2008.Thus the petitioner became a Venture Capital Fund as per the Securities and Exchange Board (Venture Capital Funds) Regulations, 1996. The Venture Capital Funds are entitled to invest in Venture Capital Undertakings as per SEBI Regulations. The petitioner identified a VCU, viz., M/s Dixon Technologies Limited, which was an unlisted company then and made investments in the said VCU by subscribing to its shares over a period of time. All the subscribed shares were sold by the petitioner from September, 2017 to November, 2017. There is no dispute that all the shares qualify as LTCA. Consequently, the petitioner earned LTCG of INR 247.67 crores during AY 2018-19. In the return of income, the petitioner claimed exemption of LTCG u/s 10(23FB). The provisions of sec. 10(23FB) provides for exemption of any income of VCF from investments made in a venture capital undertaking. Besides the above, the petitioner had also earned dividend income of INR 3.97 lacs and claimed the same as exempt u/s 10(35). The return of income filed by the petitioner was processed u/s 143(1)(a), wherein the claim of exemption u/s 10(35) was denied. The ld. AR fairly admitted that the petitioner did not challenge the addition of INR 3.97 lacs made by the CPC while processing the return of income u/s 143(1)(a). Later, the AO took up the return of income filed by the petitioner for scrutiny and took the view that the petitioner is not eligible for exemption of LTCG u/s 10(23FB). Hence, the petitioner made an alternative plea that the LTCG should be exempted u/s 10(38). The above-mentioned alternative contention was also rejected by the AO on the reasoning that the petitioner is a VCF and hence the investors only are entitled to claim exemption u/s 10(38). The AO also observed that the petitioner did not pay STT at the acquisition of shares. Accordingly, he held that the petitioner is not eligible for exemption u/s 10(38). The assessment was therefore completed by the AO assessing the LTCG and dividend income as income of the petitioner, i.e., the AO rejected the claim for exemption of LTCG u/s 10(23FB) &10(38) and also rejected the claim for exemption of dividend income. In the appellate proceedings, the ld. CIT(A) upheld the view of the AO that the petitioner is not eligible for exemption u/s 10(23FB). However, he accepted the alternative plea of the petitioner and acordingly held that the petitioner is eligible to claim exemption of LTCG u/s 10(38). The ld. CIT(A) also allowed exemption of dividend income u/s 10(35), following the decision rendered by the Tribunal in the case of **Aditya Birla Real Estate Fund v. Asstt. CIT [IT Appeal No. 7504 (Mum.) of2019, dated 13-8-2021].** Aggrieved by the order passed by Ld CIT(A), the revenue has filed this appeal challenging the exemption granted by ld. CIT(A) u/s 10(38) in respect of LTCG and u/s 10(35) in respect of dividend income.

Ruling

ITAT held that the petitioner was formed as a Trust under the Registration Act. Hence, as such, it is a "Person" under the Income tax Act. The petitioner got registration as "Venture Capital Fund". The ld. AR submitted that a Venture Capital Fund will acquire the character of "Passthrough entity", only if it is granted exemption in terms of sec. 10(23FB). As per the provisions of sec. 10(23FB), the income earned by VCF on the investments made in the Venture Capital Undertaking is exempt and if the said exemption is given, then the income is liable to be assessed in the hands of investors in terms of sec. 115U. However, in the instant case, the petitioner's claim for exemption u/s 10(23FB) has been rejected by the tax authorities, meaning thereby, the status of the petitioner as a "passthrough entity" has not been accepted by the tax authorities in this year.

Hence the question of applying the provisions of sec.115U will not arise in this year. Further, the tribunal also held that the petitioner, being a trust is legal entity and would fall under the definition of "person" under the Income tax Act. Hence it is assessable under the Act for the income earned by it and consequently, it is entitled to avail all types of eligible exemption provided under the Act. Accordingly, the petitioner would be entitled to claim exemption of LTCG u/s 10(38). In the preceding paragraphs, we have upheld the decision of ld. CIT(A) in holding that the petitioner is eligible for exemption u/s 10(38).

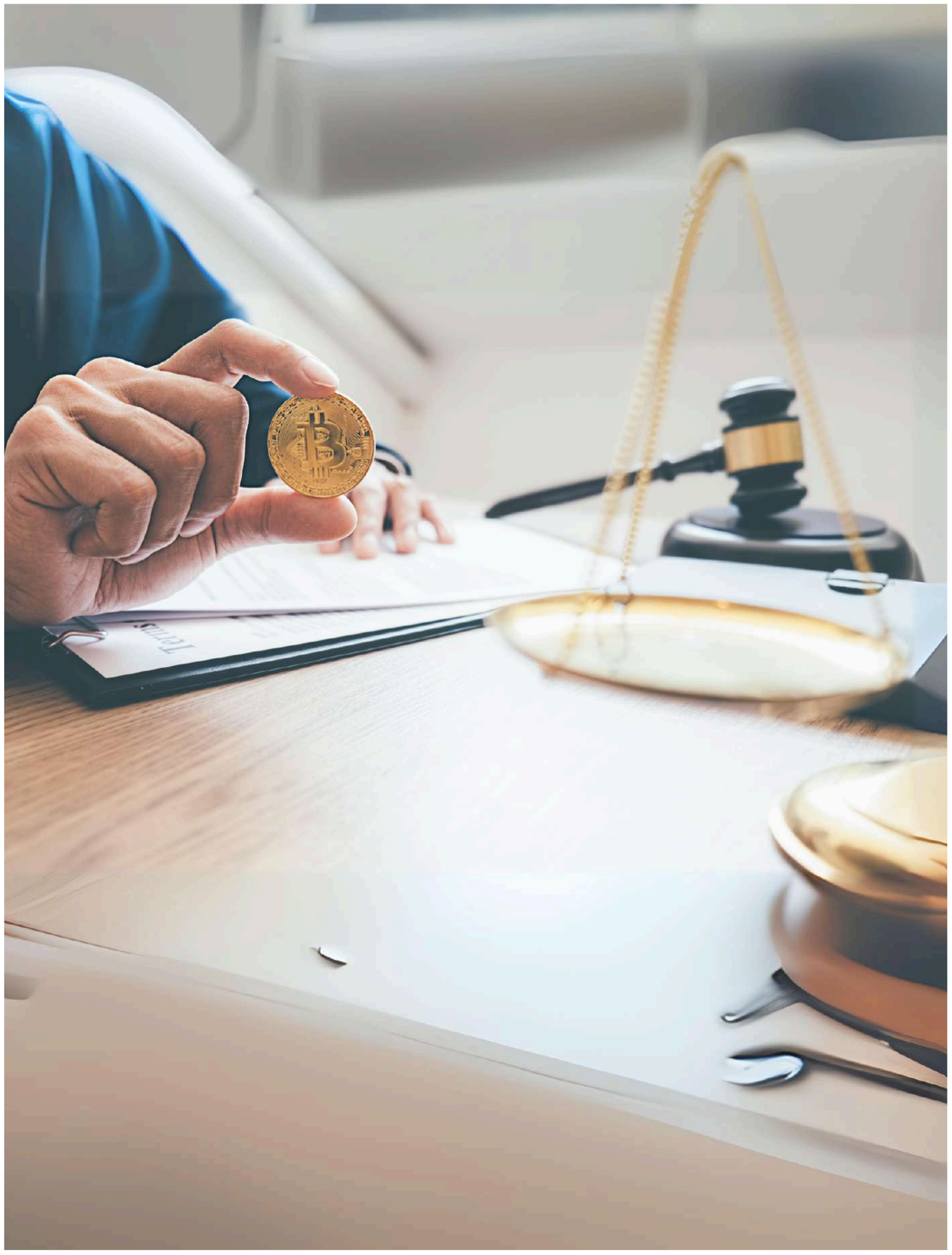
In the result, the appeal filed by the Revenue is partly allowed and the cross objection of the petitioner is dismissed.

ITAT, Mumbai in the case of DCIT vs Business Excellence Trust vide [2024] 165 taxmann.com 190 (Mumbai - Trib.) on July 26, 2024

Where petitioner, a woman, having elementary education and no knowledge of tax laws sold a property and received cash exceeding INR 20,000 as part of sale consideration, there was reasonable cause as mandated u/s 273B for failure to comply with section 269SS and, therefore, penalty under section 271D was not warranted and same was to be deleted

Facts

The Petitioner had sold a property on 15-06-16. Out of the sale consideration of INR 90 lacs, she had received in cash a sum of INR 49.10 lacs. For AY 2017-18, petitioner filed the return of income declaring total income of INR 3.93 lacs and had also disclosed the capital gains arising on the sale of property. The petitioner in the return of income claimed exemption u/s 54 with regard to investment made from sale proceeds of the property. The assessment was selected for scrutiny by issuance of notice u/s 143(2). The Assessment Order was passed u/s 143(3) accepting the returned income. However, during the course of assessment proceedings, it was noticed by the AO that petitioner was in receipt of cash of INR 49.10 lacs on account of sale of property on 15-06-16. The AO was of the view that accepting cash on account of sale of immovable property was in contravention of provision of section 269SS of the Act which was amended by Finance Act, 2015 w.e.f. 01-06-15, whereby the amount of cash received of more than INR 20,000 on account of sale of property was also included as violation of section 269SS. Accordingly, petitioner was issued SCN u/s 274 r.w.s. 271D on 11-01-22.



The AO rejected the above explanation of the petitioner and held that there is no "reasonable cause" for accepting the cash on account of sale of immovable property and imposed penalty u/s 271D for a sum of INR 49.10 lacs. Aggrieved, petitioner filed appeal before the First Appellate Authority. Before the FAA, petitioner reiterated the submissions made before the AO. The CIT(A), after extracting the relevant provisions, held that petitioner herself had accepted the fact that she has violated the provisions of section 269SS, out of ignorance of law and the same does not constitute "reasonable cause" as mandated u/s 273B. Accordingly, the penalty imposed by the AO was confirmed by the CIT(A). Aggrieved by the order of the CIT(A), petitioner has filed the present appeal before the Tribunal.

Ruling

In the present case, ITAT held that there was no intention, whatsoever, to generate unaccounted money/black money as the petitioner had recorded the receipt of entire cash in the registered sale deed and duly disclosed the same in the return of income filed. Petitioner had also claimed exemption u/s 54 towards construction of residential house. In this context, it is pertinent to note that the claim made by the petitioner u/s 54 has been allowed by the AO in the assessment completed. Therefore, it is clear that there is no unaccounted money/ black money in the transaction. Moreover, we find that in this case there was no agreement to sell executed between the parties as is evident from the sale deed.

Therefore, the petitioner had no legal right to enforce the sale. All the payments were made through DD and cheques and cash was paid to the petitioner only on the date of sale deed being executed. Hence, denial by the petitioner to receive the consideration in cash would have resulted in failure of sale of the said property. Moreover, the amendment effected by Finance Act, 2015, to section 269SS, which had laid a restriction for receiving cash for transfer of immovable property would not have come to the knowledge of the petitioner who is a woman having elementary education and no knowledge of tax laws. She would have not been under a belief that there was contravention of any provision of the Act. On identical facts, the following judicial pronouncements had held that there is "reasonable cause" as mandated under section 273B, we hold that on the facts of theinstant case, penalty under section 271D is not warranted and we delete the same.

ITAT, Bangalore in the case of Smt. Pushpalatha vs ITO vide [2024] 165 taxmann.com 767 (Bangalore - Trib.) on July 26, 2024

Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on

For any further assistance contact our team at kmt@vkalra.com