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CHARTERED ACCOUNTANTS

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Facts

Issue w.r.t. DIN:

The assessment order, computation sheet and the notice of demand were issued without DIN. The absence of DIN according to the petitioner makes the order nullity as the CBDT Circular No. 19/2019 dated 14-08-19, mandatorily requires generation, allotment and quoting of DIN in notices, orders, summons, letters and other correspondence issued by the Income Tax Department. According to the petitioner, the order dated 12-08-22 was passed manually and did not bear a DIN and was not uploaded in the system at least till 23-01-23. The same was not either physically or electronically served on the petitioner and it was admitted by the Respondents in their communication received by the petitioner issued pursuant to the directions of this Hon'ble Court. The petitioner emphasized that as the year referred to in the DIN raises serious doubt for quoting incorrect financial year, interference of this Court is warranted.

Issue w.r.t. limitation period:

The petitioner held that the assessment order uploaded on the portal only on 23-01-23 was invalid and bad-in-law as it was passed beyond the period

of limitation as provided u/s 153. The petitioner further submitted that Section 153(1) provides that no order of assessment shall be made u/s 143 at any time after the expiry of the period specified therein. It is well settled that an assessment order can be regarded as “made” when it is signed and dispatched and is out of the control of the AO. This is normally done, when the same order or decision is made public or notified in some form or when it can be said to have left the office of the AO. Reference was made to Collector of Central Excise, Madras vs. M.M. Rubber [1992 taxmann.com 555].

Ruling

HC held that so far as the issue relating to DIN is concerned, ld. Counsel of the Respondent referred to the judgement of this Hon'ble Court in PCIT v. Tata Medical Centre Trust, [2023] 154 taxmann.com 600/295 Taxman 501/459 ITR 155 (Calcutta), this Court dismissed the appeal filed by the Department upholding the conclusion of the Tribunal that the order passed u/s 263 did not satisfy the requirements mandated by CBDT circular, DIN not being mentioned in the body of the order u/s 263 and the order also not furnishing particulars of approval of higher authority in the prescribed format.

Source: High Court, Calcutta in the case of Philips India Ltd. vs DCIT vide [2025] 172 taxmann.com 698 (Calcutta) on March 12, 2025

Limitation period of 10 years for issuance of notice u/s 153C is to be reckoned from end of AY relevant to FY in which decision for reopening of assessment was initiated.

Facts

A search was conducted at various premises in connection with 'Om Kothari Group' of Rajasthan. During investigation, evidence was found regarding details of flats sold in a project named 'Pallacia' and cash components collected from sale of such flats. The petitioner was one of the purchasers of the flats in question and had purchased a flat at the total sale consideration of INR 9.30 crores. It was alleged that the consideration of INR 2.33 crores was paid in cash by the petitioner. The impugned notice was issued u/s 148A(b) wherein the petitioner was suggestive of escaping the income from assessment. The petitioner contented that the initiation of proceedings in respect of AY 2014-15 was beyond the period of limitation which was not accepted by the AO who proceeded to pass an order u/s 148A(d) directing for issuance of a notice u/s 148.

Ruling

HC held that absent recording of any satisfaction note that the books of accounts or documents or assets seized u/s 132 or requisitioned u/s 132A belong(s) to the petitioner or contains information pertaining or relating to the petitioner, the date on which the notice u/s 148A(b) was issued is required to be construed as the date on which the AO has decided to initiate an action against the petitioner. Thus, the period of ten years block is required to be computed with reference to the end of the AY relating to the FY in which such decision to initiate proceedings is taken. ITAT placing reliance on the decision of **Dinesh Jindal v. Asstt. CIT [2024] 164 taxmann.com 746/469 ITR 32 (Delhi)** also held that the relevant AY in question (AY 2014-15) is beyond the period of ten years as contemplated u/s 153C read with Section 153A from the end of the AY. The petition was accordingly allowed.

Source: High Court, Delhi in the case of Synod Farms and Infra Developers (P.) Ltd. vs Chief CIT vide [2025] 172 taxmann.com 723 (Delhi) on March 20, 2025.

Revenue was on the verge of concluding the assessment proceedings where reopening notice was issued on ground of non-compliance of certain terms of section 13A; Limited protection was afforded for a very shorter period.

Facts

A SCN was issued u/s 148A(b) on 09-02-24 for the AY 2017-18 on the ground of violation of the proviso to Section 13A, as also on the ground that the respondents had on the basis of information available with them found discrepancies in the deposits made in the petitioner's various bank accounts, and on the basis thereof had ascertained the differential figure of income as income escaped from assessment. The ld. Counsel of the petitioner submitted that special provisions have been made relating to income of political parties so as to not include certain income in the total income of such political party, subject to compliance of certain conditions as set forth therein, which has duly been complied by the petitioner. The ld. Counsel of the petitioner also highlighted the fact that the approval has been granted stating that no reply had been received to SCN issued u/s 148A(b)

Ruling

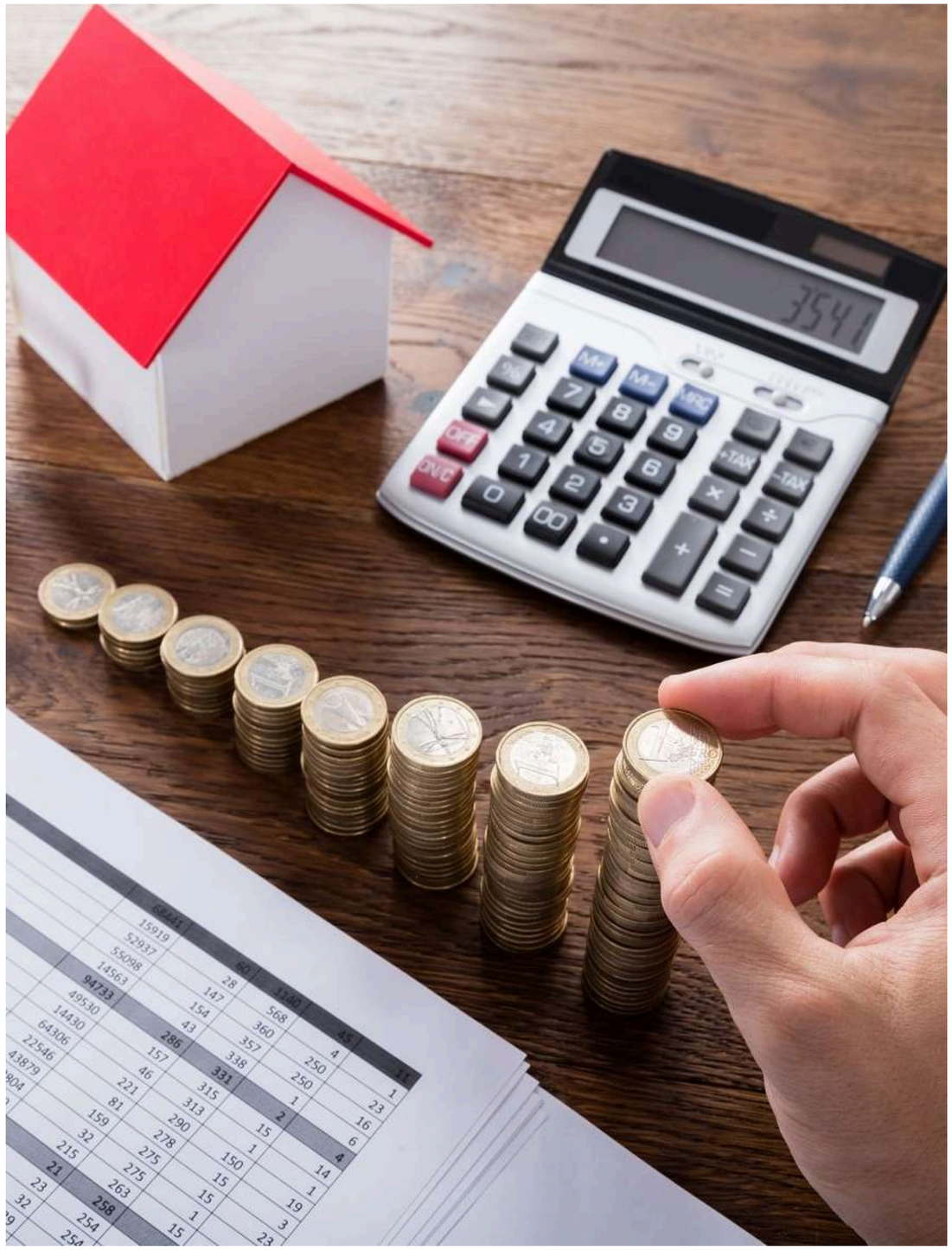
HC stated that it is not so fatal to disentitle the petitioner from maintaining the writ petition though the same becomes a relevant consideration for grant of interim relief. HC also stated that since the respondents are on the verge of bringing the assessment proceedings to a conclusion, the petitioners despite having made out a prima facie case is not entitled to stay of further proceedings, though a limited protection may be afforded. HC granted liberty to the petitioner to respond to the notice proposing variation dated 13-03-25 by 29-03-25 stating that, if a response is filed, the Faceless Assessment Unit shall upon accepting such response and upon providing opportunity of hearing, if sought for, shall take the proceeding u/s 148A to its logical conclusion.

Source : High Court, Calcutta, in the case of All India Trinamool Congress vs ACIT vide [2025] 173 taxmann.com 125 (Calcutta) on March 28, 2025.

Sale consideration cannot be added in hands of the petitioner as LTCG where Petitioner along with his brother had sold one property, since the brother had paid the entire purchase consideration and was in actual possession and had 100% rights over said property and declared sale consideration in his return.

Facts

The petitioner is an individual who had earned income from salary, capital gains on equity shares and mutual funds. As per the petitioner, since the taxable income was below the basic exemption limit for the year under consideration, he did not file the return of income. Subsequently, based on the information received that the petitioner has sold immovable property, notice u/s 148 was issued and proceedings u/s 147 were initiated. As per the information received, the petitioner, inter alia, sold the immovable property for a total consideration of INR 54 lakhs. In response to the notice issued, the petitioner submitted that the immovable property was originally purchased on 23-06-04 by his brother, and the name of the petitioner and his father was added to the property as joint owners out of natural love and affection. During the year, the property was sold on 19-09-14, sale proceeds of which was entirely credited to the bank account of the petitioner's brother. Thus, the petitioner submitted that even though the property was purchased in the joint name, but the actual possession and the 100% right of the property belonged to his brother, as the whole consideration was paid by him at the time of purchase of the said property. In support of the



aforesaid submission, the petitioner also furnished the original purchase deed, bank statement of his brother highlighting the receipt of consideration in his account, Form 26AS stating that the TDS on the property has been fully deducted on the PAN of his brother, sale agreement, and the ITR of his brother. The AO vide order u/s 147 r.w.s. 144B, disagreed with the submissions of the petitioner and held that after the demise of the father, the said property belonged to the petitioner and his brother, and they have equal shares in the said property.

The ld. CIT(A) also upheld the addition made by the AO and dismissed the ground raised by the petitioner on this issue ignoring the facts submitted by the AR. The ld. CIT(A) submitted that to purchase the property, the petitioner's brother also availed the home loan, which was entirely discharged by the petitioner’s brother. Thus, it was submitted that even though the property was purchased in the joint name, however, the actual possession and 100% rights of the said property belong to the petitioner's brother. To support the aforesaid submission, petitioner submitted the balance-sheet of his brother, wherein the residential flat was shown as the fixed asset. It was further submitted that after the sale of the said property, during the year under consideration, the amount of sale consideration, was not only received in the bank account of the petitioner, but the petitioner’s brother also declared the same in its return and claimed benefit of exemption u/s 54F by purchasing another house property. Thereafter,

against the order passed by CIT(A), the petitioner is in appeal before the ld. Tribunal.

Ruling

Placing reliance on the facts of the case, ITAT is of the considered view that once the petitioner's brother has paid the entire purchase consideration for the purchase of the property and was in actual possession and had 100%rights over the said property, in such circumstances, even though petitioner's name was mentioned in the purchase deed as one of the joint owner, the consideration received on the sale of the said property cannot be added in the hands of the petitioner once his brother has declared the entire consideration in his return of income for the year under consideration. Therefore, ITAT did not find any basis in making the addition on account of LTCG in the hands of the petitioner in the facts and circumstances of the present case, when petitioner's brother was the sole owner of the property for all practical purposes and petitioner's name appears to have been added only out of natural love and affection. ITAT also held that the petitioner is not a beneficial owner of the said property. Accordingly, the addition u/s 54 made in the hands of the petitioner is deleted.

Source : ITAT, Mumbai in the case of Vinod Nihalchand Jain Ltd. vs ITO vide [2025] 172 taxmann.com 581 (Mumbai - Trib.) on March 12, 2025

Exemption u/s 10(23C) allowed even when the educational institution is not registered u/s 12A provided approval u/s 10(23C)(i) read with section 10(23C)(vi) has been granted.

Facts

The petitioner is an educational institution; namely, 'Niranjan Institute of Education Technology, who had filed its return declaring Nil income. During processing u/s 143(1), the CPC show caused the petitioner proposing adjustment/addition of INR 77.44 lakhs on the reasoning that the petitioner was not registered u/s 12A; therefore, it could not claim any benefit u/s 11 & 12. The approval u/s 10(23C)(i) r.w.s. 10(23C)(vi) for the relevant year was not sanctioned not only on or before the processing of the ITR u/s 143(1) but also on or before the assessment order. In response, the petitioner claimed exemption u/s 10(23C)(iiiad) even it was not registered u/s 12A. The CPC did not entertain the new claim u/s 10(23C)(iiiad) while processing the ITR. Consequentially, he enhanced the income, aggrieved, the petitioner filed appeal before the ld. CIT(A), which was dismissed holding that the appellant changed its stand while responding to the prior communication issued by the AO, CPC proposing disallowance. The petitioner is therefore in appeal before the ld. Tribunal.

Ruling

The issue before the Tribunal that whether the adjustment of INR 77.44 lakhs in absence of approval u/s 12A and 10(23C)(i) r.w.s. 10(23C)(vi) can be done in the processing of ITR u/s 143(1). In principle, ITAT agreed with the finding of the JCIT(A) and held that the order is well reasoned. ITAT thereafter held that the anomaly has arisen after the approval u/s 10(23C)(i) r.w.s. 10(23C)(vi) vide order dated 08-07-24 for the relevant year as the petitioner's entire income having derived from the educational institution is fully exempted even after the said adjustment as the tax cannot be levied on the exempted income. In such facts and circumstances, ITAT had no option except to restore the matter back to the AO to give effect to the order passed u/s 10(23C)(i) r.w.s. 10(23C)(vi) for claiming the exemption. ITAT, therefore, directed the AO to allow the benefit as well as the consequential relief to the petitioner.

Source : ITAT, Delhi in the case of Smt. Ashrafi Devi Shiksha Samiti vs ITO (Exemption) vide [2025] 172 taxmann.com 568 (Delhi - Trib.) on March 19, 2025.

Term ‘relative’ as per section 56(2) would include stepbrother and stepsister by affinity.

Facts

The petitioner is an individual and nonresident Indian and does not have any income or source from India, therefore, he did not file any ITR in India. The petitioner had made an application u/s 197 in the month of January 2021 for lower deduction of tax on account of sale of property (Flat No. 80, Marlow, 62B, Sir Pochkhanawala road, Worli, Mumbai - 400 025). The said property was received by the petitioner as a gift from Ms. Vidhie Mukerjea on 21-01-16 by way of registered gift deed. According to the Id. AO the donor and done were not relatives as per the meaning contained in Section 56(2) and therefore, ld. AO had a reason to believe that receipt of the property without consideration was chargeable to tax and accordingly, reasons were recorded and notice u/s 148 was issued. The ld. AO in his order for disposing objection has referred to various Acts to define various relatives and held that stepbrother and step sister cannot be treated as relative.

Accordingly based on his own interpretation, ld. AO rejected the claim of the petitioner holding that gift given by Ms. Vidhie Mukerjea to the petitioner who are stepsister and step brother do not fall in the category of Relatives and therefore, gifted property is taxable as income from other sources. The ld. CIT(A) has confirmed the action of the ld. AO and held that the definition

Source : ITAT, Mumbai in the case of Rabin Arup Mukerjea vs ITO vide [2025] 172 taxmann.com 855 (Mumbai - Trib.) on March 21, 2025.

stated in Section 56(2) is to be interpreted keeping the blood relationship, lineal ascendant and lineal descendant and hence, no further meaning could be ascribed to this term.

Ruling

ITAT held that as per the Dictionary meaning of the term 'relative', it includes a person related by affinity, which means the connection existing in consequence of marriage between each of the married persons and the kindred of the other. If the aforesaid Dictionary meaning is to be referred and relied upon, then the term 'relative' would include stepbrother and step sister by affinity. If the term brother and sister of the individual has not been defined under the Income Tax Act, then, the meaning defined in common law has to be adopted and in absence of any other negative covenant under the Act, ITAT held that, brother and sister should also include step brother and step sister who by virtue of marriage of their parents have become brother and sister. Accordingly, we hold that gift given by stepsister to a step brother falls within the definition of Relative, that is, they are to treated as brother and sister as per section 56(2)(vii) and consequently, property received by brother from sister cannot be taxed u/s 56(2). Accordingly, in the present case, the claim of the petitioner that gift received by his stepsister Ms. Vidhie Mukerjea is exempt from being taxed as income from other sources is accepted and accordingly, the addition made by the ld. AO is deleted.

Additions made towards unexplained credit u/s 68 stands unjustified where loan transactions (taken as well as repayment) were proved, and lender had duly filed its return encompassing such transactions.

Facts

The petitioner has challenged the jurisdiction assumed u/s 147 on the ground that pre-requisites for issuance of notice u/s 148 have not been fulfilled in the present case. Such allegation has been made on the ground of absence of 'reason to believe' in the reasons recorded; being vague and suffers from vice of non-application of mind; based on borrowed satisfaction without any specific and definite information of reliable character etc. The petitioner also challenged the issuance of notice u/s 148 on the grounds that the 'satisfaction' recorded by the Competent Authority and consequent approval thereon u/s 151 suffers from the vice of being mechanical, muted and non-descript. The petitioner claims that the approval granted by the Pr. CIT is omnibus approval without any comment towards any reason which induced him to grant such approval. The Petitioner to support his stance had quoted and relied upon several judgements to buttress the plea of substantial deficiencies in the formation of belief and competent approval thereon. On merits, the petitioner contended that pre-requisites for invocation of section 68 are sorely lacking in the present case and therefore, the additions u/s 68 and 69C towards incidental cost, are wholly untenable in law. The petitioner filed an appeal before the Tribunal post upholding of the assessment order by the ld. .CIT(A).

Ruling

ITAT held that it is trite that additions u/s 68 cannot be made merely based on some perception of culpability towards receipt of loan. The money in the instant case has been received from a company whose financial standing has been demonstrated to be fairly good. Besides, the loan itself having been repaid, the petitioner does not ultimately stand to gain any spurious benefit from such alleged unexplained cash credit. ITAT also held that the fact that loan has been repaid justifies the plea of the petitioner towards existence of bonafide transactions. In the totality of facts, where the trail for obtaining of loan and repayment thereof is proved and the lender has duly filed its return of income encompassing the transaction carried with the petitioner, the action of the Revenue cannot be countenanced in law. In the wake of peculiar facts subsisting in the present case, the additions towards unexplained credit u/s 68 and estimated addition u/s 69C is wholly unjustified.

In the light of the view expressed on merits in favour of the petitioner, ld. Tribunal, Delhi, is not inclined to examine the nuances of challenge to the jurisdiction assumed u/s 147, approval granted u/s 151, invocation of section 147 instead of section 153C and absence of DIN on the body of the assessment order, and, therefore, the order of the CIT(A) was set aside and the additions made by the AO were reversed.

Source : ITAT, Delhi in the case of Dazzling Construction (P.) Ltd. vs ITO vide [2025] 172 taxmann.com 860 (Delhi - Trib.) on March 26, 2025.

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