VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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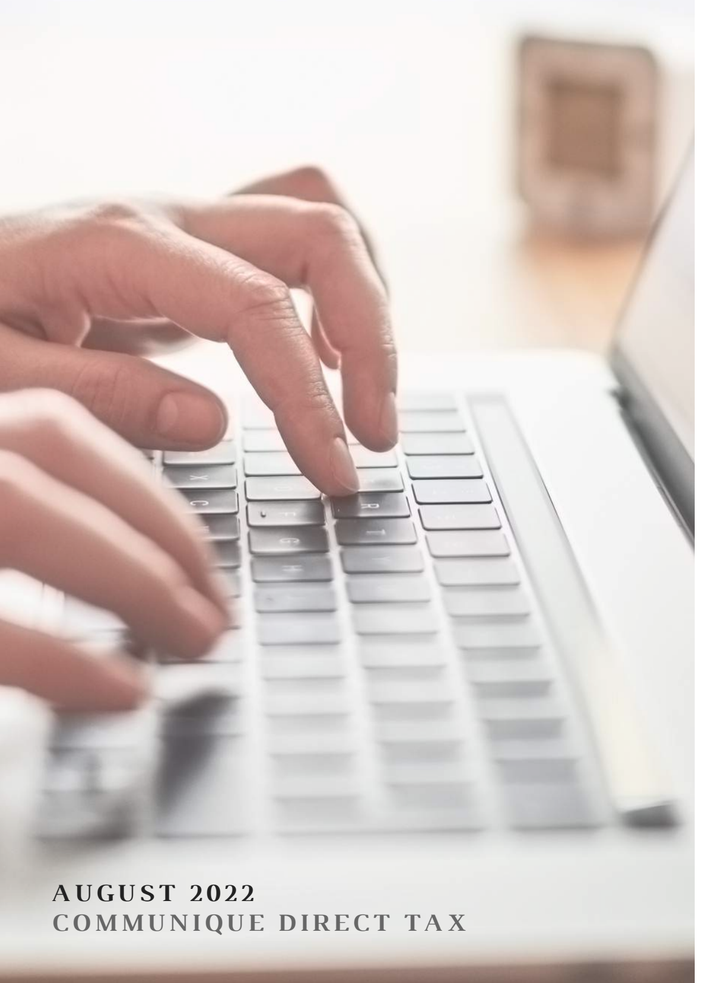
Communiqué

Direct Tax

VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Inside this edition

Appeal against Tribunal's decision shall lie to the HC in whose jurisdiction the AO who passed the assessment order is situated even in transfer of case under section 127



Facts

The assessee herein is a company engaged in the manufacture of writing and printing paper. For AY 2008-09, the assessee filed its return before the AO. The DCIT, New Delhi, issued a notice u/s 143 (2) and followed it up by assessment order dated 30-12-10, aggrieved with which, the assessee preferred an appeal to the CIT(A) - IV, New Delhi who allowed the appeal. Against this appellate order, the Revenue carried the matter to ITAT, New Delhi who by its order, upheld the order of the CIT(A) and dismissed the appeal filed by the Revenue. Against this order, the Revenue filed an appeal before the HC, Punjab & Haryana. While the matter was pending appeal before the CIT(A), New Delhi, a search operation under Section 132(1) was carried out at the office and factory of the assessee in Chandigarh and certain places in the State of Punjab, by the Directorate of Income Tax (Investigation), Ludhiana. After the search operation, an order u/s 127 dated 26-06-13 was passed, the CIT (Central), Ludhiana, centralized the cases of the assessee for the assessment years 2006-07 to 2013-14 and transferred the same to Central Circle, Ghaziabad. In view of the above transfer under Section 127, the DCIT, Ghaziabad, proceeded further and passed an assessment order on 31-03-15, aggrieved with which the assessee filed an appeal which came to be allowed by the CIT(A), Kanpur. Against this appellate order, the Revenue preferred an appeal to ITAT, New Delhi. As the decision of the ITAT dated 11-05-17 in the case of the assessee with respect to an earlier AY was already available, the ITAT, New Delhi, followed the said judgment and dismissed the appeal filed by the Revenue by its order dated 01-09-17. It is against this order that the Revenue filed ITA No. 130 of 2018 before the HC of Punjab & Haryana. Before the Revenue could file an appeal against the orders of the ITAT dated 11-05-17 (arising out of the original proceedings) and 01-09-17 (arising out of proceedings after transfer under Section 127), the cases of the assessee were re-transferred under Section 127 of the Act to the DCIT, Chandigarh, w.e.f. 13-07-17. Perhaps it is on the basis of the said transfer that the Revenue took a decision to file appeals before the HC of Punjab & Haryana who held that, notwithstanding the order under Section 127 of the Act which transferred the cases of the Assessee to Chandigarh, the HC of Punjab & Haryana would not have jurisdiction as the Assessing Officer who passed the initial assessment order is situated outside the jurisdiction of the High Court. The High Court followed the decision in the case of Commissioner of Income Tax v. Motorola India Ltd. and Commissioner of Income Tax (Central), Gurgaon v. M/s Parabolic Drugs Limited. With this view of the matter, the HC dismissed the appeal as not maintainable. Aggrieved by the decision of the HC, Punjab & Haryana refusing to entertain the appeals against the orders of the ITAT the Revenue filed the present appeals.

Ruling

SC held that appeals against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer who passed the assessment order is situated. Even if the case or cases of an assessee are transferred in exercise of power u/s 127 of the Act, the HC within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s).

Source: SC in the case of PCIT, Chandigarh vs ABC Papers Limited vide [2022] 141 taxmann.com 332 (SC)on August 18, 2022

Amount paid to a party & w/off is deductible as bad debts only if it is proven that amount was lent in ordinary course of money-lending business

Facts

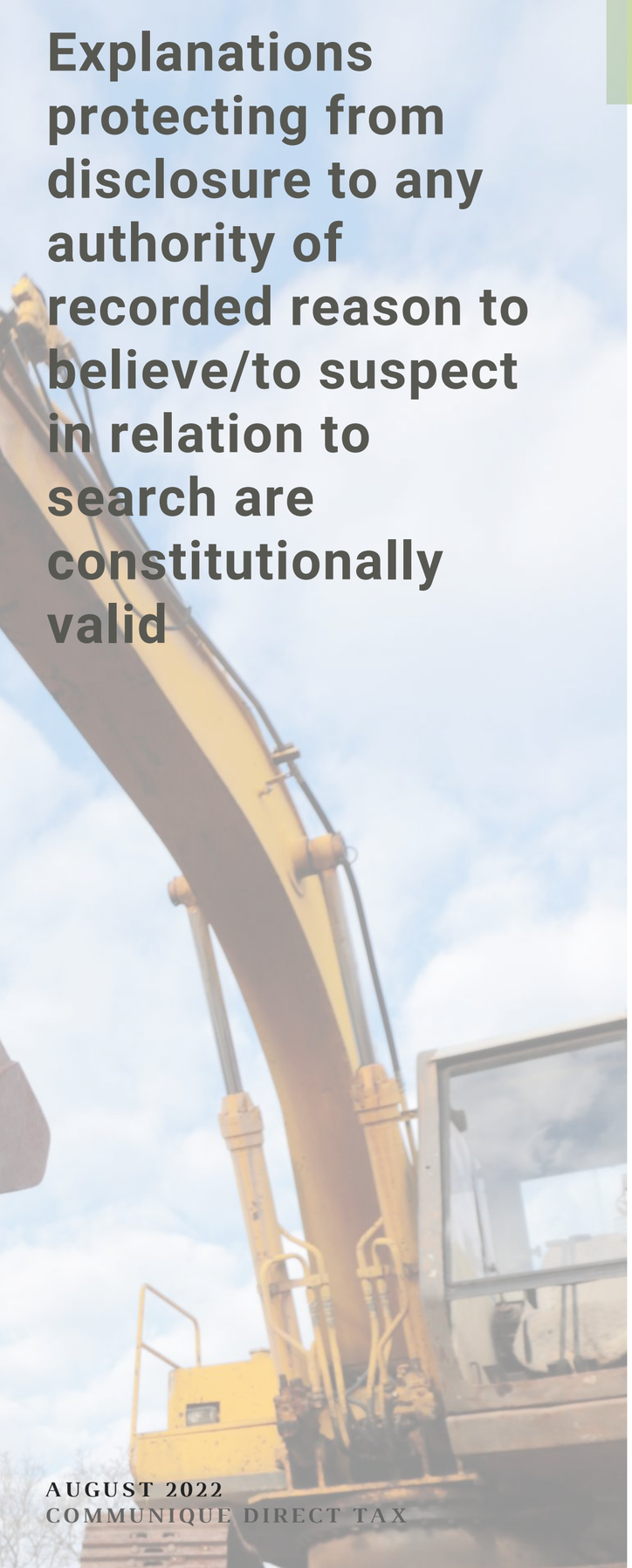
The assessee carries on real estate development business, trading in transferable development rights (TDR) and finance. The case of the assessee was selected for scrutiny for AY 09-10 and the assessment was completed by the AO u/s 143(3). The assessee had deposited an amount of INR 10 crores with one M/s C. Bhansali Developers Pvt. Ltd. towards acquisition of commercial premises two years prior to the AY in question (i.e., in 2007) and contended that the project did not appear to make any progress, and consequently, the assessee sought return of the amounts from the builder. However, the latter did not respond. As a result, the assessee's Board of Directors resolved to write off the amount as a bad debt in 2009. Further, the amount could also be construed as a loan, since the assessee had 'financing' as one of its objects. The AO disallowed the sum of INR 10 crores claimed as a bad debt in determining its income under PGBP. Aggrieved, the assessee appealed before the commissioner who confirmed the disallowance on account of bad debts and interest. A further appeal was preferred to the ITAT, which allowed the assessee's plea. The Revenue sought an appeal to the Bombay HC who contended that Section 36(1)(vii) gives benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the PY. This benefit is subject to Section 36(2) of the Act. It is obligatory upon the assessee to prove to the AO that the case satisfies the ingredients of both Section 36(1)(vii) and Section 36(2) and urged that the ITAT and the HC erred in accepting the assessee's contentions, which were not supported by any material or document. HC, in the given case ruled that no question of law requiring a decision arose in the appeal and consequently declined to entertain the Revenue's plea.

Ruling

SC stated that it is apparent that this court was satisfied that the disallowance of the amount, on account of bad and doubtful debt, did not preclude a claim for deduction, on the ground that the expenditure was exclusively laid out for the purpose of business. SC applied the test of whether the expense was incurred for business, or whether it fell into the capital stream. In the facts of the case, the tests were satisfied - the expenditure was for the purpose of business, and did not fall in the capital stream. SC also stated that the assessee had relied on a few HC judgments which have ruled that even if a claim for deduction under Section 36(1) is not allowed, the possibility of its exclusion under Section 37 cannot be ruled out. SC held that as a proposition of law, that enunciation is unexceptional, since the heads of expenditure that can be claimed as deduction are not exhaustive - which is the precise reason for the existence of Section 37. Therefore, in a given case, if the expenditure relates to business, and the claim for its treatment under other provisions are unsuccessful, application of Section 37 is per se not excluded.

Source: SC in the case of PCIT vs Khyati Realtors (P) Ltd. vide [2022] 141 taxmann.com 461 (SC)on August 25, 2022

Explanations protecting from disclosure to any authority of recorded reason to believe/to suspect in relation to search are constitutionally valid



Facts

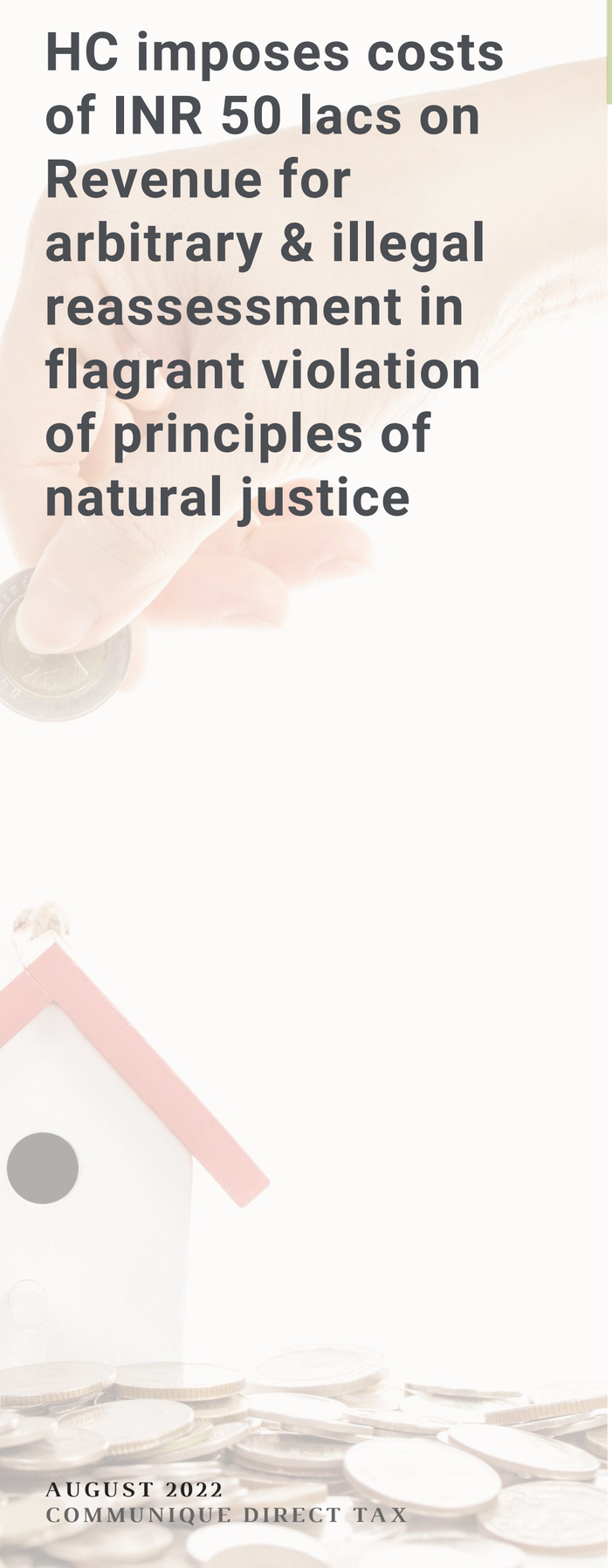
The assessee is primarily involved in the business of letting on hire the excavators, equipment and vehicles for sand mining activities to yard owners and various third-party clients involved in excavation activities and other related works. The assessee was not involved in sand mining. A search and seizure were conducted at the business premises of the assessee firm, residential premises of its partners and at several other places. During the course of search proceedings, the department claimed to have acquired several loose sheets, unverified diaries, unsigned and unsubstantiated books of accounts and such other inadmissible documents. On the basis of the entries in the loose sheets, the department sought to initiate proceedings to harass the assessee firm. The assessee has further given brief facts pertaining to other action initiated at the behest of the ACIT under the Prohibition of Benami Property Transactions Act, 1988, wherein the adjudicatory authority had passed an order in favour of the assessee firm. Therefore, the attachment of cash and gold seized was lifted by the adjudicatory authority and, therefore, the firm was not involved in any benami transaction. The two proceedings - one under the Benami Property Transactions Act, 1988 and the other by the CBI, remain favourable to the assessee on its challenge. The respondent yet issued notices under Section 142(1) referring to the contents of the sworn statements of various persons during search. The assessee firm sought an opportunity to cross-examine the persons mentioned in the notices and relied, but the department failed to afford an opportunity for it. The assessee firm, therefore, filed Writ Petition to challenge the order issued by the ACIT foreclosing the right of the assessee of cross-examination before the court who allowed and permitted the assessee to cross examine. The order aforesaid was passed in reference to the counter affidavit filed by the department disclosing that they are not going to use the sworn statements of those persons, who are not put for cross-examination, against the assessee. Thus, the writ petition was disposed of after recording the fact aforesaid, but the statements of those witnesses were relied not only going against the principles of natural justice, but going against the order of the court and thereby committing contempt of the court's order, where a specific reference of the counter affidavit of the department was given. An appeal has been filed by the department before the Tribunal.

Ruling

HC held that the assessing authority could not have relied on the statement of those witnesses for any purpose. If it is used to corroborate the material collected during the course of search and seizure, it could not have been without an opportunity of cross-examination. It is quite surprising that contrary to the sworn affidavit, the statements of the witnesses were used against the assessee firm. The order of the court in the earlier writ petition does not qualify aforesaid. We seriously deprecate the practice of the revenue in going against their own statement made before the court. HC also held that the revenue cannot be allowed to take a stand in contradiction to what was taken by them in the earlier Writ Petition and an order without a clarification that the reliance of the statement of witness would be for corroboration of the material collected during the course of search and seizure. It could have been otherwise after affording an opportunity of cross examination to the assessee, because even for corroboration, the statement was used against the assessee firm. The loose sheets could not have been relied upon in the absence of supportive evidence to prove it. Therefore, we conclude the issue aforesaid in favour of the assessee and against the revenue. The matter would thus require to be remanded for a fresh assessment.

Source: HC, Madras in the case of SRS Mining vs Union of India vide [2022] 141 taxmann.com 272 (Madras) on August 10, 2022

HC imposes costs of INR 50 lacs on Revenue for arbitrary & illegal reassessment in flagrant violation of principles of natural justice



Facts

The assessee is a partnership firm engaged in the business of running a cold-storage and filed its return for AY 2017-18 declaring a total income of INR 11.55 lacs. The assessment was completed by the AO u/s 143(3) accepting the total income as declared by the assessee. The AO issued a notice to initiate proceedings u/s 147 alleging that an information has been received that the assessee has deposited a sum of INR 13.67 crores in its bank account which is undisclosed income and escaped assessment to tax. The assessee repeatedly requested the AO to supply the reasons recorded but instead of supplying the reasons, AO issued notice u/s 143(2) r.w.s. 147. The assessee filed its detailed objections before the AO submitting that the reasons recorded are neither correct nor proper nor honest which may give jurisdiction to the AO to issue notice u/s Section 148. However, without disposing of the objection of the assessee, the AO issued a notice u/s 142(1). Subsequently, objections raised by the assessee were rejected. Thereafter, without any whisper as to consideration of the reply of the assessee and the documentary evidences filed, the AO passed the impugned reassessment order u/s 147 r.w.s. 144B. Aggrieved with the order u/s 148 rejecting the objection and the reassessment order, the assessee filed the present writ petition on the ground that these are wholly without jurisdiction and submitted that according to own admission of the AO, information on the basis of which proceeding u/s 147/148 was sought to be initiated was totally unfounded and yet the misleading counter affidavits have been filed by them which resulted in creation of illegal demand of income Tax of INR 16.90 crores.

Ruling

HC observed that "the prevailing state of affairs clearly reflects that in the absence of any effective system of accountability of the erring officers, the harassment of the assessee's and breach of principles of natural justice by the Officers is resulting in uncontrolled situation. The practice of frequently violating principles of natural justice, non-consideration of replies of assessee's under one pretext or the other or rejecting it with one or two lines orders without recording reasons for rejection, is gradually increasing which needs to be taken care of immediately by the respondents at the highest level, otherwise prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assessee's who pay revenue to the Government, but also may develop a perception amongst people/assessee's that it is difficult to get justice from the authorities in statutory proceedings". HC, therefore allowed the writ petition with cost of INR 50 lacs on the respondents, which shall be deposited in Prime Minister National Relief Fund within three weeks from date of order.

Source: HC, Allahabad in the case of S R Cold Storage vs Union of India vide [2022] 141 taxmann.com 305 (Allahabad) on August 11, 2022

Taxes paid subsequently when bona fide claim under section 54F was not accepted by Revenue; No prosecution can be initiated for willful evasion of tax

Facts

The assessee filed his return for AY 2012-13 admitting a total income of INR 26,73,830. The case was selected for scrutiny and it was found that the assessee had sold property situated at MTH Road, Chennai for a sale consideration of INR 1,61,32,000 wherein the entire sale consideration was received in cash. Subsequently, the assessee had purchased a property and claimed to have spent INR 1,39,89,530 on civil construction on the said property. Accordingly, the accused declared long term capital gain of INR 16,24,088 after claiming deduction u/s 54F of INR 1,12,06,199. The AO further observed that out of the cash receipt of INR 1,39,89,530, the assessee claimed to have spent INR 1,26,70,000 on construction which was incurred in cash. The AO disallowed the deduction claimed by the assessee under Section 54F and passed an order determining the total income of at INR 1,39,89,530. As against the order of Assessment, an appeal was preferred by the assessee, which was dismissed. As the assessee has not invested the sale consideration to acquire residential house as provided u/s 54F, since he has invested in an industrial property, the Assessment Order passed by the Assessing Authority was upheld by the Appellate authority. The Assessment Order was also upheld by the Appellate Tribunal. The assessee thereafter preferred the present appeal.

Ruling

HC, Madras in the light of above judgement quashed the proceedings on the ground that the assessee had failed to pay the tax liability and held that in this case income has not been suppressed whereas only exemption has been claimed. In such a view of the matter this Court is of the view that continuation of the prosecution is nothing but futile exercise and abuse of process of law. Accordingly, the complaint pending on the file is quashed and the Criminal Original Petition is ordered.

Source: HC, Madras in the case of R Vasudevan vs DCIT, Central Circle vide [2022] 141 taxmann.com 472 (Madras) on August 16, 2022

HC imposes costs of INR 50 lacs on Revenue for arbitrary & illegal reassessment in flagrant violation of principles of natural justice

Facts

A notice u/s 143(2) was issued to the assessee after filing return of income for AY 18-19 stating that there are certain issues which need further clarification for which the return of income filed by the assessee has been selected for scrutiny and such issues initially are regarding method of accounting and ICDS compliance and adjustment to which the assessee submitted that they are following mercantile system of accounting and submitted a working of the cost and market price of shares along with the fact that closing stock has been calculated on the basis of market price of listed shares. The assessee requested the Revenue to supply adverse materials and documents and the copy of the materials gathered on the basis of enquiry, if any. The assessee also requested for an opportunity to cross examine the persons who might have given adverse deposition in connection with the subject matter upon which notice u/s 148A has been issued. The assessee further requested for the copy of the approval of the specified authority which had been given to the AO before issuance of the notice to show cause u/s 148A. The AO did neither of the above two but proceeded to pass the order under Clause (d) of Section 148A which clearly show that there has been gross violation of the principles of natural justice. The assessee filed the writ petition challenging the order passed under Section 148A(d).

Ruling

HC held that we are fully satisfied that there has been gross violation of the principles of natural justice and the assessee did not have adequate opportunity to put forth their objection in an effective manner as the information sought for by the assessee was not furnished. Further we have held that the notices dated 21-03-22 and 30-03-22 though purported to have been issued under Clause (b) of Section 148A, on a reading of the annexure, it is clearly seen that the annexure does not contain information but it is a questionnaire. If that is so, then it goes without saying that what was intended by the AO is to conduct an enquiry after receiving information from the assessee and the notice is deemed to be a notice under Section 148A(a).

Thus, there is gross procedural error from the very inception of the proceedings rendering the same as bad in law. In the result, the assessee's appeal is allowed, the order passed in the writ petition is set aside.

Source: HC, Calcutta in the case of Swal Limited vs Union of India & Ors. vide MAT 1020 of 2022 on August 25, 2022

No deduction is admissible under section 54F or 54B where farmland is plotted and sold and sale proceeds invested in another farmland

Facts

The assessee (JB) and the related party (SB) purchased an immovable property for INR 112.91 lacs in view of which notice u/s 148(1) was issued. In response, assessee relied on her earlier return declaring income from music classes and knitting/sewing work, on INR 0.67 lacs. SB returned a capital gain of INR 14.09 lacs on the sale of these plots of land at INR 47.96 lacs claiming exemption u/s 54B, i.e., for investment of the sale proceeds in agricultural land, in full, resulting in a net income of INR 0.06 lacs. The income in both the cases was assessed u/s. 147 r/w s. 143(3) at the returned income, except for minor differences. In both the cases, the AO regarded the capital gains as assessable in the hands of the assessee, though entitled to exemption u/s 54F, i.e., for investment of the sale proceeds in the construction of a residential house. These discrepancies were noted by the Revenue Audit Party, though initially also by the Internal Audit Party in case of SB who held that the assessee's were, not entitled to exemption u/s 54F, as allowed by the AO. It was further noticed by the RAP that the sale proceeds of the land stated as belonging to the HUFs, were invested in the name of the wives of the respective kartas. The matter, taking remedial action u/s 263, was accordingly set aside by the revisionary authority, directing fresh assessment after proper enquiry, in accordance with law. In the set aside proceedings, the assessee explained the source of investment on account of sale of plot. The assessee's claim of it being a HUF property was not accepted by the AO in view of it being wholly unsubstantiated. Also, the claim for deduction u/s 54F was found invalid as the assessee has purchased agricultural land and the claim u/s 54B was again found ineligible as what has been sold by the assessee's was not agricultural land, but residential plots. Assessee being aggrieved of the order passed by the Ld. CAO preferred an appeal before the Ld. CIT(A) who decided the appeal in favour of the assessee holding that the land sold did not belong to her but to the HUF (of her late husband) and, therefore, capital gain could not be assessed in the hands of the individuals. The Revenue's appeals there against, initially dismissed in limine due to low tax effect u/s 268A. Aggrieved, the Revenue is in appeal before Ld. ITAT.

Ruling

ITAT held that the assessee's objection, attractive at first blush, does not survive the test of scrutiny. For SB, the capital gain was returned by the assessee, though was denied exemption u/s 54B. It is the denial of exemption u/s 54B that was appealed against by the assessee, also now claiming, i.e., before the CIT(A), that the land sold (capital asset) did not belong to her. How could these issues, on which the assessee is aggrieved by her assessment, then, be a part of the RAO, which only concerns the areas on which the assessment is found deficient or inconsistent, warranting a remedial action. The original assessments in both the cases, which were not appealed against, attaining finality, the capital gain on sale of residential plots was brought to assessment, even as deduction u/s 54F was allowed, and the said deduction is the subject matter of the revenue audit objection. We, therefore, find no substance in the argument raised by the Revenue, which is, under circumstances, misconceived. ITAT further stated that firstly, there is nothing on record to show so, with, in fact, as also afore-noted, it was the Revenue which was in appeal before the Tribunal, whose appeals before it stood dismissed u/s 268A, and not recalled, as was the case for the assessee's in the instant case. That apart, it is only where the same income is taxed twice in the case of an assessee, that it qualifies to be regarded as double taxation. In fact, even here, it is trite that income has to be taxed for the right year, and it being taxed in another year furnishes no ground for it being not taxed in the year in which it is assessable. As regards it being taxed in the hands of HUFs, which claim to be valid would have to be, firstly, for both the additions and, two, also exhibit the denial of deduction u/s 54B/54F. Two, it is only the right person who is to be taxed, and merely because a wrong person is taxed with respect to a particular income, the AO is not precluded from taxing the right person with respect to that income. Accordingly, Revenue's appeal was partly decided.

Source: ITAT, Jabalpur Bench in the case of ITO vs Seema Bhattacharya vide [2022] 141 taxmann.com 274 (Jabalpur-Trib.) on August 05, 2022

AO cant withdraw interest under section 244A(2) in rectification under section 154 when exclusion of period for interest has not been decided by the Commissioner

Facts

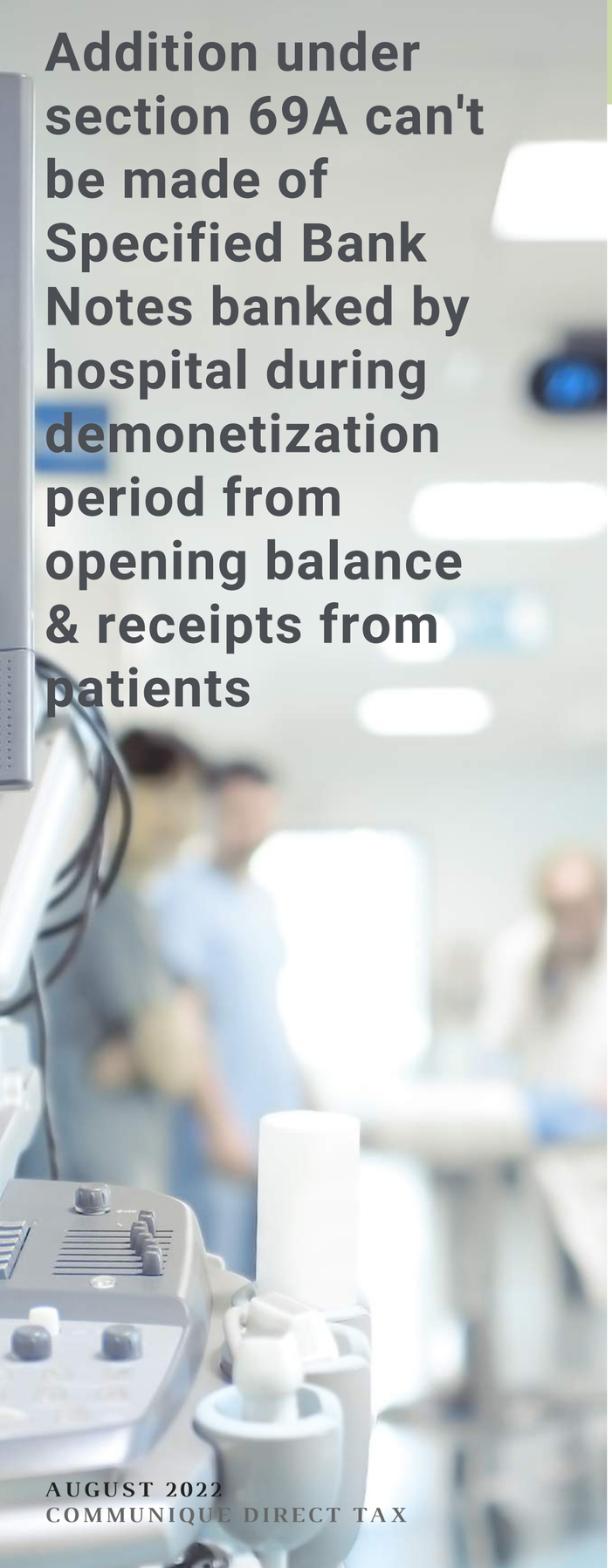
The assessment in the present case of the assessee was finalized under section 143(3). Subsequently, however, the Assessing Officer withdrew the interest granted under section 244A(2) on the ground that "it is undisputed fact that in the income tax return filed u/s 139(1) on30-9-2010, the TDS claim was INR 10,62,11,325 which was enhanced to INR 13,70,80,237 by filing revised return on 29-3-2012" and "thus, the delay was on the part of the assessee to make correct claim of refund". The interest payment of INR 43,71,038 was thus withdrawn, disregarding the plea of the assessee that on merits such a claim could not have been declined, and, in any event, such a withdrawal of interest is beyond what is permissible under section 154. The assessee carried the matter in appeal but without any success. The assessee is in second appeal before the Ld. Tribunal.

Ruling

ITAT held that we find guidance from section 244A(2) itself which inter alia provides that "where any question arises about the period to be excluded (for which interest is to be declined), it shall be decided by the PCCIT/CCIT/PCIT or the CIT whose decision thereon shall be final". Clearly, therefore, final call about the period to be excluded for grant of interest is to be taken by the higher authority and that exercise is admittedly not done in the present case. The ld. Tribunal placed reliance on the decision of the co-ordinate bench in the case of DBS Bank Ltd. v. DDIT [(2016) 157 ITD 476 (Mum)] and held that given the limited scope of section 154 for rectification of mistakes apparent on record and given the fact that the period to be excluded for grant of interest has not yet been taken a call on by the PCCIT/CCIT/PCIT or the CIT, the impugned withdrawal of interest undersection 244A(2) is beyond the scope of rectification of mistake under section 154. The order under section 154 is accordingly set aside. In result, the appeal of the assessee was allowed.

Source: ITAT, Mumbai Bench 'H' in the case of Otis Elevator Company (India) Ltd. vs DCIT vide [2022] 141 taxmann.com 391 (Mumbai -Trib.) on August 18, 2022

Addition under section 69A can't be made of Specified Bank Notes banked by hospital during demonetization period from opening balance & receipts from patients



Facts

The assessee is a partnership firm engaged in the business of running hospital under the name and style of M/s. M. C. Hospital and in the business of Pharmacy who filed its return reporting total income of INR 89.71 lacs as income from business. Case was selected for scrutiny through CASS for examination of "large payment of tax in cash during demonetization period and cash deposits made during the demonetization period". Statutory notices were issued which were complied with by the assessee. Ld. AO noted that assessee had deposited INR 3.83 crores in its bank accounts during the demonetization period for which he issued show cause notice to explain the nature and source of said deposit of cash. While dealing with the issue raised in respect of cash deposit during the demonetization period, ld. AO embarked on the assessment proceedings and findings relating to the preceding year i.e. AY 2016-17 and observed that opening cash balance of INR 57.12 lacs for the year under consideration cannot be taken into account. The assessee held that it is a fact on record that the regular assessment for AY 2016-17 was completed u/s. 143(3) wherein after verification of books of account accepted the cash in hand of INR 57.12 lacs. Aggrieved, assessee went in appeal before the Ld. CIT(A) who called for a remand report from the Ld. AO. Ld. CIT(A) in the conclusion, deleted the addition of INR 3.83 Cr. made by the Ld. AO u/s. 69A of the Act but at the same time, by observing that there is some lingering doubt about the correctness of the results due to lack of reconciliation between opening stock of medicines and other minor discrepancies as pointed out by the Ld. AO in the remand report, he made an upward estimation and directed the AO to increase the declared book profit by 4% of the total amount deposited by the assessee in SBNs. He, thus made an addition on estimate basis by quantifying it at INR 13.32 lacs (4% of INR 3.30 crores) to be treated as business income of the assessee. Aggrieved by the above findings, Revenue is in appeal before the Tribunal in respect of INR 3.83 Crores and the assessee is in cross objection in respect of the upward adjustment of INR 13.32 lacs.

Ruling

ITAT held that in furtherance to the above observation and finding, we note that balance of cash in hand as on 08-11-16 is out of opening cash balance (duly subject to assessment in AY 2016-17) and receipts during the year on account of sale of medicines and hospital receipts. Income derived from sale of medicines and hospital receipts have been subject to tax while accepting the income returned at INR 84.71 lacs. Thus, we find that cash balance being part of sale of medicines and hospital receipts, cannot be brought to tax at the hands of the assessee again which will otherwise lead to taxing the same amount twice. ITAT also held that considering the factual matrix and circumstances of the case, books of account, submissions and explanations made by the assessee and the Revenue, remand report of the ld. AO, judicial precedents, notification issued by the Department of Economic Affairs and other corroborative material placed on record, we find no reason to interfere with the finding of the Ld. CIT(A) in respect of deletion of addition of INR 3.83 Cr. relating to balance of cash in hand on the date of announcement of demonetization. Accordingly, the addition so made by the Ld. AO of INR 3.83 Cr. stands deleted. Grounds of appeal raised by the revenue are dismissed. On second aspect of Cross Objection filed by the assessee, ITAT held that we do find force in the submissions made by the Ld. Counsel in the above respect and are inclined to direct for the deletion of the addition of INR 13.32 lacs made by the ld. CIT(A) on an estimate basis, more particularly when the doubts referred by him have been cleared by the assessee by reference to corroborative material placed on record. Accordingly, the direction by the Ld. CIT(A) to the ld. AO for making the addition of INR 13.32 lacs is set aside and grounds of cross objection of the assessee are allowed.

Source: ITAT, Chennai in the case of DCIT vs MC Hospital vide [2022] 142 taxmann.com 122 (Chennai-Trib.) on August 19, 2022

ITAT grants one more opportunity by remanding the matter decided ex-parte to CIT(A), based on assessee's full co-operation undertaking

Facts

The assessee has challenged the correctness of the ex-parte order, passed by the learned CIT(A) in the matter of assessment under section 143(3) r.w.s. 147 for the AY 2005-06. The assessee contended that on the facts and in the circumstances of the case and in law, the CIT(A) ought to have framed an ex-parte order inasmuch as the CIT(A) did not accept the letter of adjournment of the assessee on the date of hearing. Ld. Counsel for the assessee submits that the assessee had bonafide reasons for non-appearance on the scheduled date of hearing before the CIT(A), and the assessee had duly requested the for a short adjournment. He further assessee that given an opportunity the assessee will duly comply to the notices of hearing and ensure full cooperation for expeditious disposal of appeal on merits. Ld. DR, on the other hand, points out that the assessee was given fair opportunity of hearing and yet the assessee did not avail the same. He further submits that no useful purpose will be served by affording yet another opportunity of hearing to the assessee.

Ruling

ITAT stated that having heard the rival contentions and having perused the material on record, we are inclined to uphold the plea of the assessee and provide yet another opportunity of hearing to the assessee. We see no harm in providing one more opportunity of hearing to the assessee, and the assessee has assured us of his full cooperation. In case, however, the assessee does not fully cooperate in expeditious disposal of remanded proceedings, learned CIT(A) will be at liberty to take such action, apart from disposal of appeal based on material on record, as he deems fit and proper and judicious. The matter is thus restored to the file of the learned CIT(A) for adjudication de novo after affording yet another opportunity of hearing to the assessee, by way of a speaking order, and in accordance with the law. ITAT held that this aspect of the matter, as of now, is infructuous, and is dismissed accordingly.

Source: ITAT, Mumbai Bench 'G' in the case of Goldstone Trading Company (P) Ltd. vs ACIT vide [2022] 141 taxmann.com 392 (Mumbai-Trib.) on August 23, 2022

FMV as at 01-04-1981 can be opted as CoA of shares acquired prior to the said date for capital gains purposes, even if issued at Face Value

Facts

The issue in appeal lies in a very narrow compass of undisputed material facts. During the relevant previous year, the assessee sold 930 equity shares held by her in Somani & Co Pvt Ltd for a consideration of INR 8,46,30,000, but these shares were acquired in three lots, out of which the first lot of 225 equity shares was admittedly acquired prior to 1st April 1981. While computing the capital gains on the sale of these shares, the assessee took the cost of acquisition of Rs 100 each for the SCPL equity shares acquired after 1st April 1981, but, so far as the 225 equity shares acquired prior to 1st April 1981 are concerned, the cost of acquisition was taken as fair market value as on 1st April 1981 which was stated to be Rs 3,833. This valuation was done by dividing the net fair market value of the assets of the SCPL (i.e. INR 7,66,80,100) by the total number of equity shares (i.e. 20,000). The fair market value of the shares, as on 1st April 1981, was duly supported by the report of Govt approved Valuers, for the valuation of land held by the company-which was its most valuable asset. The AO, however, rejected this claim on the assessee for the following reasons:

- Despite the same the assessee has revalued the land in 1981 and subsequently stated that the value of the land in 1981 should be the value of the shares in 1981. The assessee has completely disregarded the difference between the asset sold i.e. shares and one of the asset's owned by the company i.e. land to determine the Fair Market Value of the shares.
- The term open market refers to a situation where price of goods and services is governed by the forces of demand and supply whereas the value at which the shares were traded in subsequent years had also not changed.
- The market value can also be determined by comparative precedents like the value which other individuals would pay to purchase the same commodity
- Further, considering that the Share Market in India was not developed it is difficult to imagine that the value of unquoted shares would be able to fetch any amount over and above the market value.

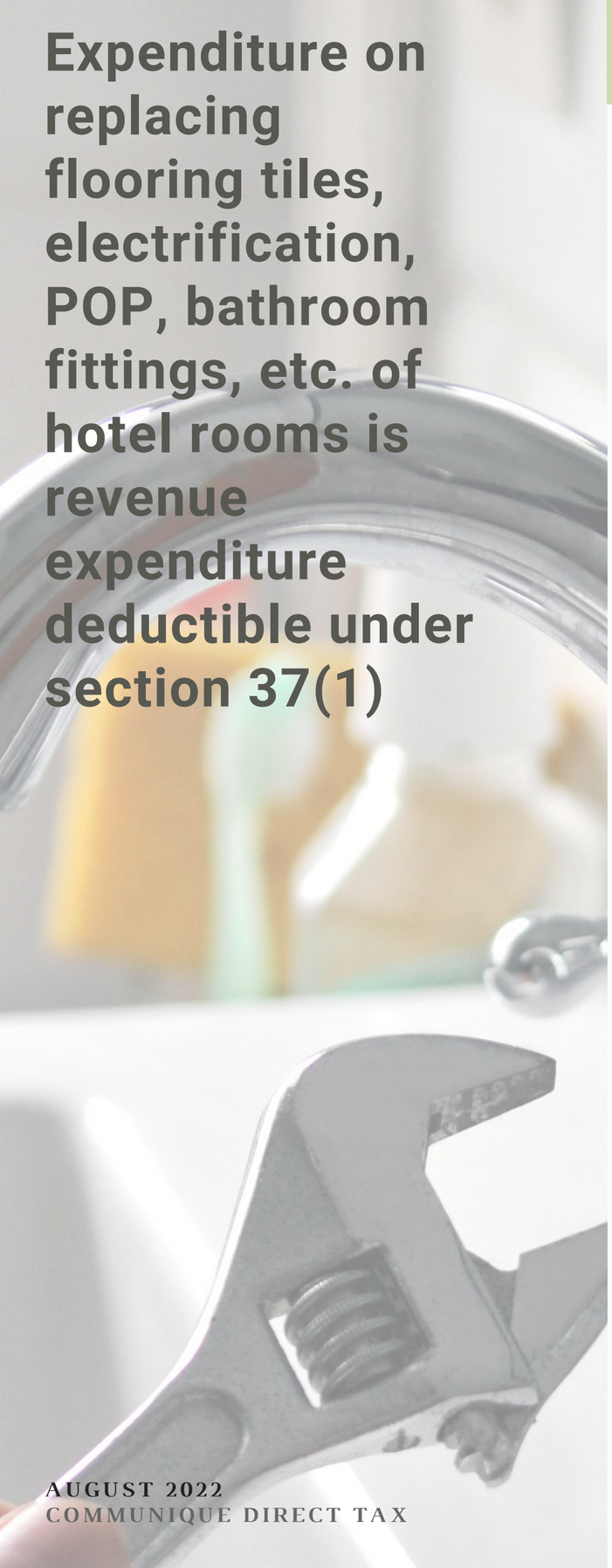
Aggrieved with the above, the assessee filed an appeal before the CIT(A) but without any success. The assessee not being satisfied preferred an appeal before the Tribunal.

Ruling

ITAT held that we find that there is no dispute that the shares were acquired before 1st April 1981 and that the assessee had the option to substitute its cost of acquisition by the fair market value as on 1st April 1981. The assessee has filed a Government Approved Valuer report evidencing its fair market value of the land held by the SCPL, and, taking into account the same, computation of the fair market value as on 1st April 1981 on the basis of the intrinsic value of the SCPL shares. The intrinsic value of shares, particularly in the case of the closely held private limited companies, is, in our considered view, a reasonable method of ascertaining the fair market value of the shares. The mere fact that the shares were issued after 1st April 1981 also at face value cannot negate its fair market value. When shares are issued by a company at face value, it does essentially imply that the market value of shares already issued does not exceed the face value of these shares; the reasoning adopted by the AO is simply fallacious and proceeds on the unrealistic assumption that the issue price of the shares reflects their fair market value. Any event, if the AO had any doubts on the correctness of valuation, it was open for him to refer the matter to the Departmental Valuation Officer, but that exercise has not been done, and the relevant financial period is more than a decade old. No other issues are raised by the authorities below with respect to the method adopted for the valuation of shares in question. In view of these discussions, and on the peculiar facts of this case, ITAT uphold the plea of the assessee, and directed the AO to adopt the valuation of Rs 3,833 computed by the assessee on the basis of the fair market value of the net assets providing relief to the assessee.

Source: ITAT, Mumbai Bench 'G' in the case of Sushiladevi R Somani vs ACIT vide [2022] 142 taxmann.com 123 (Mumbai-Trib.) on August 26, 2022

Expenditure on replacing flooring tiles, electrification, POP, bathroom fittings, etc. of hotel rooms is revenue expenditure deductible under section 37(1)



Facts

The assessee, M/s Sankamtal Hotel Pvt. Ltd. is engaged in the business of running a hotel filed its return reporting total income of INR 42,58,410. Subsequent to the completion of the assessment u/s 143(3), the case was reopened by invoking the provision of Section 147 read with Section 148, for which the notice u/s 148 of the Act was issued. In response to the notice, return was filed reporting the same total income as was reported originally. In the course of reassessment proceedings, Ld. AO noted that assessee has incurred expenditure on restaurant renovation amounting to INR 10,57,901 out of which INR 3,76,563 were in respect of purchase of tiles and the balance in relation to labour cost and other materials including sand, cement, plumbing material etc. Ld. AO also noted that the assessee has incurred expenditure on Neon Light Sign Board of INR 80,000. Assessee made submissions in respect of claim of these expenditures as revenue expenditure allowable u/s 31 and 37. However, Ld. AO completed the assessment by treating both the expenditures as capital in nature and made the addition after allowing depreciation on the same @ 10%. Aggrieved, assessee went in appeal before the Ld. CIT(A) who sustained the addition. Aggrieved with which, the assessee is in appeal before the Tribunal.

Ruling

ITAT held that admittedly, fact is that assessee is in the business of hotel/resort wherein the up-keep or maintenance of hotel/resort/property is of prime importance so as to give the customers best possible experience for their continued patronage. The regular maintenance including the replacement of worn out furnishing his continuous requirement of the hotel industry. ITAT also stated that the expenditure incurred by the assessee have been made to provide the same benefit as were available at the time of their initial installation. Further, there have been no addition to the number of rooms of the resorts/hotel or any other space to generate the additional income from that place. ITAT placed reliance on the decision of Hon'ble Jurisdictional High Court of Bombay, Bench at Goa in the case of Goa Tourism Development Ltd. (Supra) and also of Hon'ble Karnataka High Court in the case of Mac Charles (India) Ltd. (supra), and held that the expenses which have been treated as capital in nature by theLd. CIT(A) are to be allowed as revenue expenditure. Further, ITAT also answered the substantial question of law in favour of assessee and against the revenue.

Source: ITAT, Panaji in the case of Sankamtal Hotel (P.) Ltd. vs ACIT vide [2022] 142 taxmann.com 121 (Panaji-Trib.) on August 30, 2022

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