VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

July 2025

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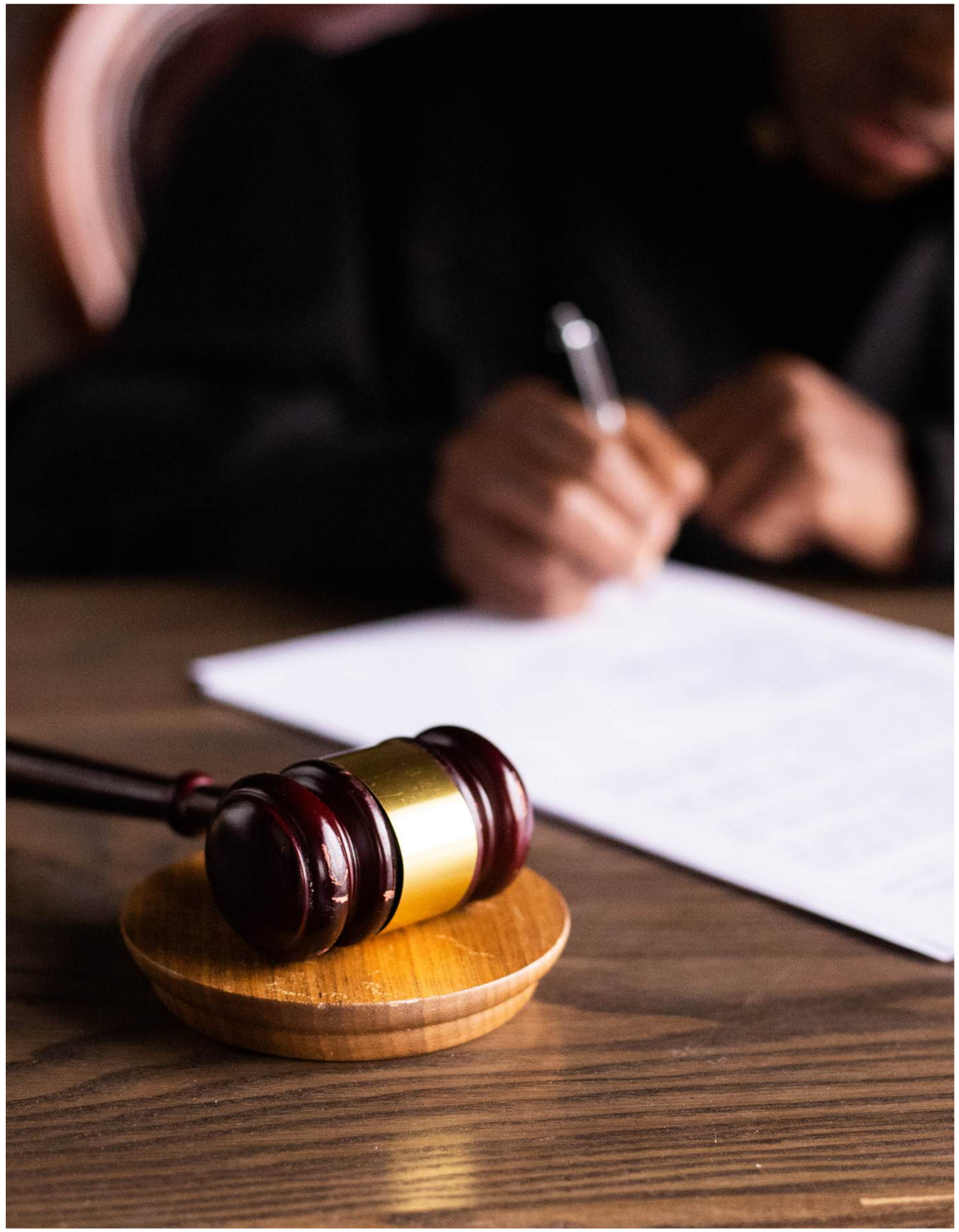

Section 2(22)(e) does not apply to trade advances arising from business transactions

Facts

The petitioner is a Private Limited Company and filed its return of income for the AY 2016-17 on 17-10-16 declaring total income of INR 5.84 lacs. Thereafter, the Company was amalgamated with Relitrade Stock Broking Pvt. Ltd., vide order dated 27-06-19. The respondent had issued notice u/s 148 on 26-03-21 in the name of erstwhile Company. In response of the notice, the petitioner had filed return of income declaring income of the same income as was declared in the original return. Further, the petitioner had raised objection to the reassessment proceedings with detailed submission. It was categorically contended in the objection that re-opening is based on facts incorrect data and the transactions were already examined in original assessment proceedings.

The petitioner held that it had received unsecured loan of INR 6.08 crores during the year under consideration from Relitrade Stockbroking Pvt. Ltd. which include F&O Trading, payment, receipts, margin and interest on margin. It further held that CBDT vide Circular no.19/2017 dated 12-06-17 has clarified that trade advances are not subject to Provision of Section 2(22)(e), hence, provision 2(22)(e) does not apply.

Ruling

HC had placed reliance on Delhi HCs ruling in the case of **CIT vs Aankitech (P) Ltd. [2011] 11 taxmann.com 100 (Delhi)** in which it was held that legal fiction created u/s 2(22)(e) enlarges definition of dividend only and it cannot be extended further for broadening concept of shareholders. The ruling relied upon also stated that where loans and advances are given in normal course of business and transaction in question benefits both payer and payee companies, provisions of section 2(22)(e) cannot be invoked." Placing reliance on this ruling, the HC quashed the notice u/s 148.

Source: High Court, Gujarat in the case of Relitrade Stock Broking (P.) Ltd. vs ITO vide [2025] 176 taxmann.com 509 (Gujarat) on July 07, 2025.

Impugned order, demand and notices were stayed where petitioner under a slum rehabilitation scheme issued Transferable Development Rights (TDRs) to developers without deducting TDS; Section 194C/194LA does not cover payments in kind unlike sections 194B/194R.

Facts

Thepetitioner issued Transferable Development Rights to the developers under a slum rehabilitation scheme and AO treated petitioner as petitioner-in-default for not deducting TDS u/s 194C/194LA in lieu of compensation for lands acquired for public purposes from the original owners as contemplated under section 126 of the MRTP Act, 1966. The petitioner stated that since payment was not in money and said provisions did not cover payments in kind unlike sections 194B/194R, impugned order, demand and notices were to be stayed.

According to the petitioner, the words "or by any other mode" appearing in Section 194C would have to be read ejusdem generis to the words "payment thereof in cash or by issue of a cheque or draft". The petitioner also held that Section 194C does not contemplate deduction of TDS when payment is made by issuing TDR Certificates. The petitioner submitted that when payment is made in kind (and not by way of a monetary amount) certain sections of the Income Tax Act make a specific provision for deduction of TDS in relation thereto.

Ruling

HC held that as far as interim relief is concerned, at least, prima facie, the argument canvassed by the petitioner that the words "or by any other mode" appearing in Section 194C would have to be read ejusdem generis to the words "payment thereof in cash or by issue of a cheque or draft". Similarly, in Section 194LA, the words "or by any other mode" would have to be read ejusdem generis to the words "payment of such sum in cash or by issue of a cheque or draft".

HC is therefore of the view that Section 194C and Section 194LA would not apply when TDR Certificates are issued in lieu of compensation. HC placed support for his reasoning by referring to Section 194B as well as Section 194R, which in fact contemplate as to what is to be done when payment is to be made entirely in kind or partly in cash and partly in kind. Those provisions are conspicuously absent in Section 194C as well as Section 194LA. HC held that the petitioner has made out a strong case for grant of interim relief and had ordered that pending the hearing and final disposal, implementation and operation of the order passed u/s 201 and 201(1A) is stayed.

HC, Bombay in the case of Pune Municipal Corporation vs ACIT, TDS vide [2025] 176 taxmann.com 950 (Bombay) on July 28, 2025.

Sale of agricultural land situated beyond 8 kms from municipal limits of Gurgaon cannot be treated as capital asset u/s 2(14) where certificate from Nayab Tehsildar has been filed in support

Facts

The case of the petitioner was reopened u/s 147 for AY 2012-13 after recording the reasons and prior approval of the Pr. CIT, Gurgaon. In response to the notice, petitioner filed his return of income declaring an income of INR 5.88 crores on 26-04-19. During assessment proceedings, the AO based on the information available with him observed that, the petitioner along with his other relatives have sold their land for consideration of INR 8.75 crores to S.A. Infra Developers Pvt. Ltd. in which petitioner was having 1/3rd share (i.e INR 2.92 crores). The petitioner submitted that the above land is not a capital asset u/s 2(14)(b) and further submitted that the land is situated outside 8 kms. from the nearest municipal limit by relying on certain case laws and certificate issued by the Nayab Tehsildar, Municipal Corporation, Gurgaon.

After considering the information available with him, the Respondent treated the agricultural land as capital assets u/s 2(14) and held that the distance to be calculated from the outer limit of municipal limits, therefore, the issue under consideration falls u/s 2(14)(iiib), accordingly, he rejected the submissions of the petitioner and proceeded to determine the capital gain at INR 4.33 crores. Accordingly, he assessed the income of the petitioner at INR 4.39 crores. Aggrieved petitioner preferred an appeal before the ld. CIT(A) which was dismissed. Further, the petitioner filed appeal before the ld. Tribunal.

Ruling

ITAT observed that petitioner has sold an agricultural land along with other co-owners of the property, namely, Surender Saini and Jitender Saini, s/o late Shri Kanwal Singh Saini. The case of Shri Jitender Saini and petitioner's case were selected for reassessment proceedings by issue of notice u/s 148 and both the petitioners filed a certificate from the Nayab Tehsildar, Municipal Corporation, Gurgaon with the certificate of distance as per which the land was situated 8 kms. outside the last municipality of the Gurgaon region. The bench stated that it is brought to our notice that in the case of Shri Jitender Saini, the same certificate of distance was accepted by the AO and completed the assessment in his case whereas in the case of petitioner, the same certificate was rejected and held that the case of the petitioner falls within 8 kms. from the last municipality of Gurgaon. There cannot be two reasons to evaluate the same set of facts of the same transaction in the hands of two petitioners. The ld. Tribunal relied upon the coordinate Bench in the case of Ashish Gupta vs ITO [2024] 163 taxmann.com 739(Delhi - Trib.) and held that the facts in the case of Shri Jatinder Saini are exactly same, and it is established that it is situated beyond 8 kms. from the municipality and supported by the certificate issued by Tehsildar. The above certificate was accepted by the other AO, reaches the finality. There cannot be two views for the same transaction and accordingly, ITAT allowed the grounds raised by the petitioner.

Source : ITAT, Delhi in the case of Balbir Singh Saini vs ITO vide [2025] 176 taxmann.com 467 (Delhi - Trib.) on July 09, 2025.

Set-off of long-term capital loss on sale of shares was allowed from long-term capital gain from slump sale where transactions were executed through proper banking channels, substantiated by share certificates and CA valuation reports.

Facts

The respondent is a company who had filed its return for AY 2018-19 declaring a total income of INR 3.24 crores on 05-10-18.During the assessment proceedings, the AO (petitioner) found that the respondent has earned capital gains through slump sale u/s 50(B) by transferring an undertaking on a slump sale basis to M/s. Netam Sugar Private Limited vide SCs order dated 21-03-17. As per form 3CEA u/s 50B(3), the consideration received for slump sale was INR 130.16 crores and net worth of undertaking was determined at INR 77.68 crores.

The respondent had entered into business transfer agreement with the buyer on 04-04-15 and during the same time, the respondent had purchased shares of two closely held companies (Discovery Infoways Limited and Prudential Ammana Sugar Limited) for a consideration of INR 12.50 crores each. During the FY 2017-18, the respondent sold all the above shares claiming a LTCL INR 24 crores. The LTCL was set off against LTCG on sale of slump sale. The respondent filed the details of sale transactions, ledger accounts of Discovery Infoways Limited and Prudential Ammana Sugar Limited, bank statement reflecting the transaction. The respondent held that the shares were sold on the basis of value ascertained upon analysing financials of the respective companies as well as multiple market prevailing circumstances. Further, a debit note dated 31-03-18 pertaining to prudential stock and securities limited based on the financial statements for the AY 2014-15 was also submitted.

The AO (petitioner) observed that the slump sale of the undertaking took place on in AY 2018-19 giving rise to capital gain from slump sale amounting to INR 52.47 crores and the respondent should have paid the advance tax on the same. The AO concluded that the LTCL on sale of shares to the tune of INR 24 crores have not been supported by any valid and reasonable explanations and documents and hence was brought to tax. The ld. CIT(A) held the appeal in favour of the respondent, against which the department (petitioner) had filed an appeal before the Tribunal.

Ruling

On perusal of the impugned order, the CIT(A) examined the investment history, disclosure in statutory records, documentary trail of sale and purchase, valuation evidence from CA. Further, ITAT on the basis of CIT(A)s observation, held that the respondent had submitted before the AO that these companies have been regularly filing their income tax returns as well as assessed to tax and framed assessments in respect of these companies. ITAT upheld CIT(A)s decision that the capital loss arose from a real, demonstrable business decision. The AO's inferences were speculative and lacked evidentiary support. Hence, the respondent was entitled to claim set-off.

Further, ITAT held that no evidence was brought on record by the AO to suggest that the loss was pre-determined, the buyer of shares colluded with the respondent and the share purchase/sale consideration was not real. The burden to prove that a transaction is a “colourable device” is on the person who alleges. In the present case, the petitioner revenue cannot shirk their responsibility to prove the transaction as sham.

Based on the above factual matrix, legal principles, and evidentiary material available on record, the addition of INR 24 crores by disallowing the LTCL is unjustified and liable to be deleted. Accordingly, the appeal of the Revenue was dismissed, and the order of the CIT(A) was upheld.

Source : ITAT, Chennai in the case of ACIT vs Prudential Sugar Corporation Ltd. vide [2025] 176 taxmann.com 832 (Chennai - Trib.) on July 17, 2025

Assessment quashed where AO doesn't have jurisdiction; Notice u/s 143(2) and assessment framed by two different AOs without a valid transfer order u/s 127.

Facts

The notice u/s 143(2) in the present case was issued by the ITO-1(3), Raipur, whereas, the assessment was conclude u/s 143(3) by the ITO-2(2), Raipur and there was no order of transfer u/s 127 from the competent authority which is mandatory, therefore, in absence of any such order of transfer, the petitioner held that the assessment order is void ab initio and is liable to be quashed. The ld. Counsel of the petitioner placed reliance on the decision of the ITAT, Raipur SMC in the case of **Rahul Tyagi vs ITO vide [2025] 173 taxmann.com 981 (Raipur - Trib.)** wherein it was held that the first notice u/s 143(2) issued by the ITO, Ward-4(5), Raipur suffers from valid jurisdiction, resultantly then subsequent assessment framed by the ITO, Ward-3(1), Raipur becomes invalid and non-est in the eyes of law.

Ruling

ITAT placed reliance on the decisions on the same parity of reasoning, and held that the assessment framed by ITO-2(2), Raipur vide his order passed u/s 143(3) in the absence of an order of transfer u/s 127 and without any issuance of notice by him u/s 143(2), is held to be without valid jurisdiction, bad in law hence quashed. ITAT stated that once the assessment has been quashed for want of valid assumption of jurisdiction, then all the other proceedings subsequent thereto becomes non-est in the eyes of law. As the legal issue has been answered in favour of the petitioner, then the ground on merits becomes academic.

Source : ITAT, Raipur in the case of Bharat Patel vs ITO vide [2025] 176 taxmann.com 836 (Raipur - Trib.) on July 22, 2025.

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