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CHARTERED ACCOUNTANTS

Communiqué

Direct Tax

April 2025

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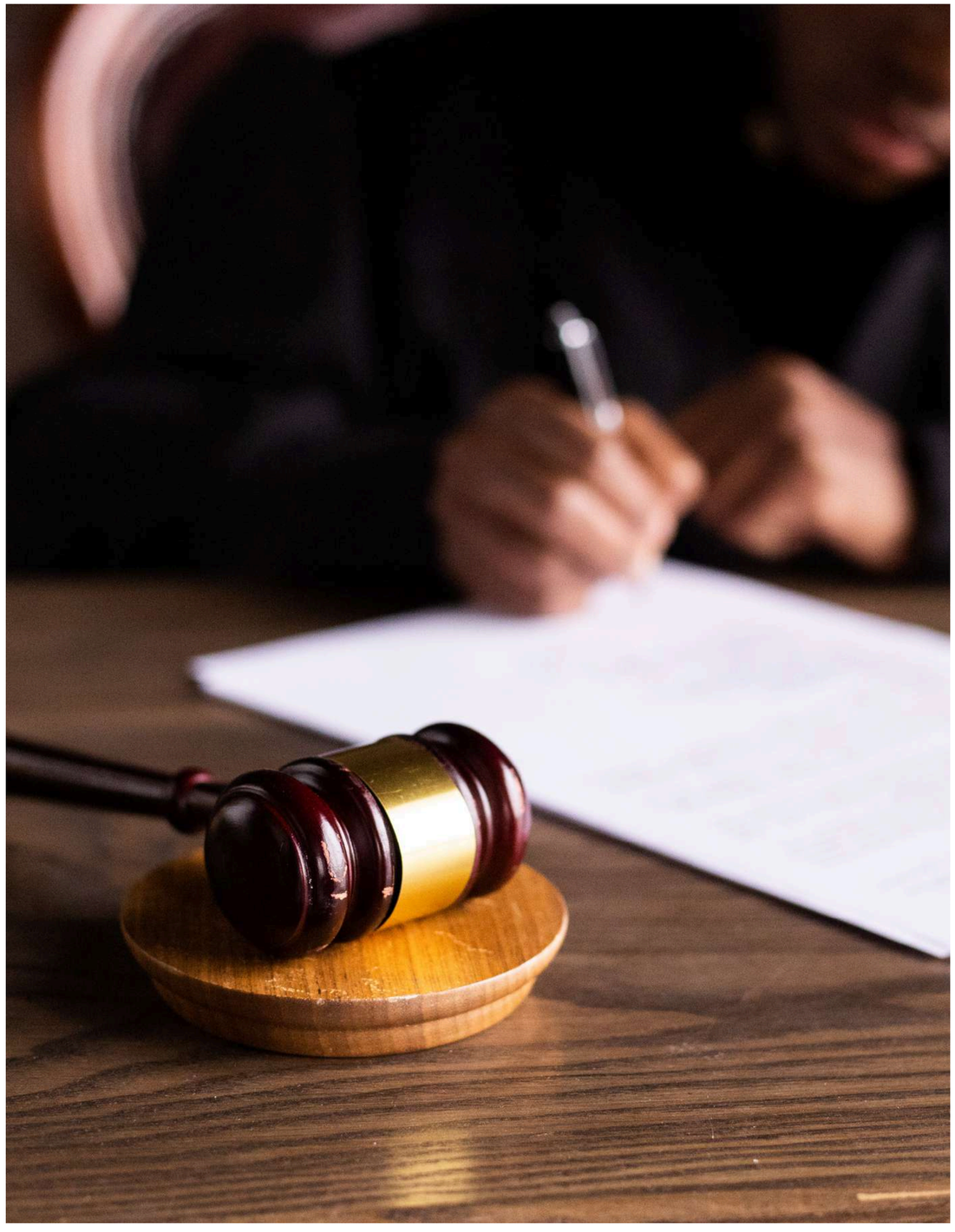
ITAT Rulings

Where petitioner was having a stressful life and was not in sound mind to take correct decisions on legal proceedings, delay of 1607 days in filing appeal against ex-parte orders passed by CIT(A) was condoned.



Revision u/s 263 disallowing claim of prior period expenses is unsustainable where such expenses had crystallized and were incurred in relevant year and are allowed in computation of book profit u/s 115JA.

Facts

The petitioner is a Public Limited Company carrying on the business of spinning. The return of income was filed with computation of income, both under the regular provisions as well as computing MAT for AY 1998-99. An intimation was issued u/s 143(1)(a) and the matter was taken up for assessment which was completed on 13-11-00 accepting the return filed, both under regular provisions as well as under MAT. While so, a SCN dated 29-11-01 was received for suo motu revision u/s 263. The CIT was of the view that the AO ought to have added back prior period expenses as far as the computation of MAT was concerned and hence proposed to revise the assessment. To this query, the appellant had explained that the prior period expenses were, in fact, not incurred in the prior period but were incurred only in the year in question.

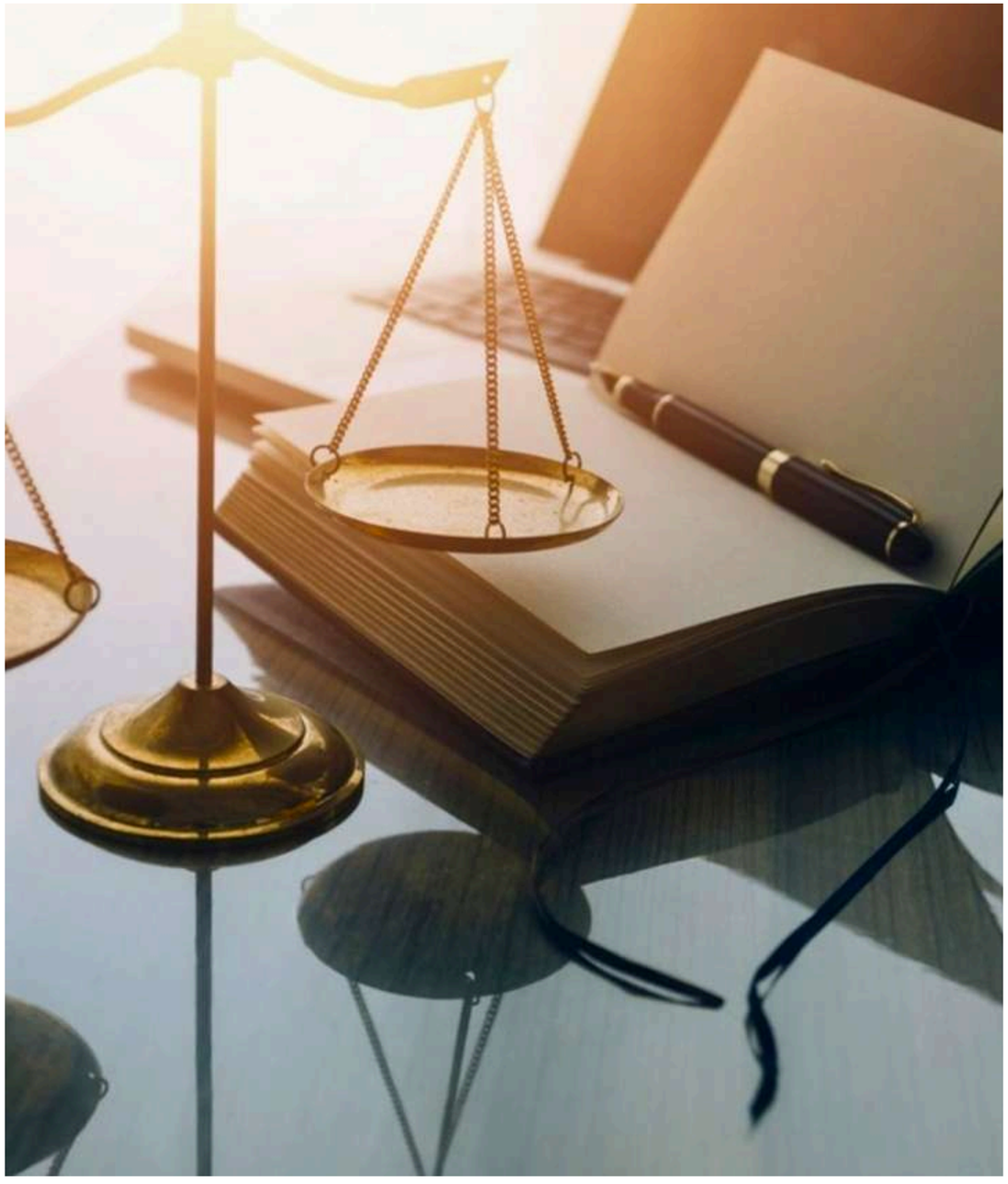
Overriding the objections raised, the CIT(A) placed reliance on **Supreme Court in the case of Apollo Tyres Ltd., vs CIT vide [2002] 122 Taxman 562/255 ITR 273 (SC)** and passed an order disallowing the amounts only in the computation of book profits u/s 115JA. As the computation under normal provisions had not been disturbed, the assessment u/s 143(3) in so

far as it related to computation of income under normal provisions has attained finality. The petitioner filed an appeal before the ITAT assailing the assumption of jurisdiction as well as the direction of the CIT to modify the order of assessment adding back the expenses amounting in toto to a sum of INR 29,16,167.

Ruling

Reliance has been placed on Tamil Nadu Cements Corporation Ltd. wherein this Court has considered the treatment of prior period accounts in arriving at the book profit u/s 115JA. The petitioner in that case had prepared its case on net profit as per profit and loss account after reducing the prior period expenses/ extraordinary items. This was contested by the revenue on the ground that reduction of prior period expenses did not find mention in clause (i) to (ix) of Explanation to Section 115JA(2). Further, reference was made to AS and to the judgment of the Delhi High Court in Khaitan Chemicals & Fertilizers Ltd. post which, the High Court has held that AS - 5 stipulates that prior period items are income or expenses which arise “in the current period” because of errors or omissions in the preparation of financial statement of one or more prior periods.

In the present case, the components of bonus, internal audit fees and power charges had, admittedly, been crystallized only in the relevant previous year, therefore, the proposal for revision does not hold any merit and substantial question of law is answered in favour of the petitioner.



Source: High Court, Madras in Ramakrishna Mills (CBE) Ltd. vs JCIT vide [2025] 173 taxmann.com 918 (Madras) on April 22, 2025

No penalty u/s 271E for non-compliance of section 269T to be levied upon where repayment of loan was made in contravention of modes prescribed u/s 269T on proving the reasonable cause that finance company had insisted upon to make repayment of loan in cash.

Facts

The assessment u/s 143(3) r.w.s. 147 for the AY 2012-13 was completed on 23-12-17 holding that the petitioner had made repayment of loan to M/s. Tata Finance Corporation to the extent of INR 14,59,688 in cash against the loan taken for commercial vehicle and accordingly proceeded to initiate penalty proceeding u/s 271E on the ground that repayment of loan to the extent of more than INR 20,000 which is in violation of provisions contained in Section 269T. The petitioner held that due to failure on her part to pay installments in time, the financer by letter dated 05-11-12 insisted upon her to make cash payment, which the petitioner also, in turn, filed copy of the financer's letter issued by M/s Tata Finance Corporation, however, the AO did not accept the explanation and proceeded with the impugned assessment order.

Feeling aggrieved and dissatisfied with the order of penalty for non-compliance of Section 269T, the petitioner filed an appeal before the CIT(A), NFAC, who dismissed the appeal leading to filing of further appeal before the ITAT. The ld. ITAT by its impugned order dismissed the appeal holding that noncompliance of the provisions contained in Section 269T would invite penalty u/s 271E which the AO has rightly levied. The petitioner thereafter approached the High Court.

Ruling

In the opinion of the High Court, the cause shown by the petitioner that on the insistence of M/s Tata Finance Corporation to pay the amount of loan in cash vide its letter would constitute a reasonable cause within the meaning of Section 273B and in light of the decision of the **SC in Kum. A.B. Shanthi's** case, reasonable cause has been shown by the petitioner for non-compliance with the provisions contained in Section 269T. HC also stated that the transaction under consideration is genuine and bona fide which is not disputed by all the three authorities, however, all the three authorities ignored the provision contained in Section 273B and proceeded to levy penalty rendering the provision contained in Section 273B otiose, as the provision contained in section 271E for imposition of penalty for non-compliance of Section 269T is subject to Section 273B.

HC stated that the order imposing penalty is set-aside holding that the petitioner has shown reasonable cause within the meaning of Section 273B, therefore, the petitioner is not liable to pay penalty u/s 271E for non-compliance of Section 269T.

Source: High Court, Chhattisgarh in Kamaljeet Kaur Gill vs JCIT vide [2025] 174 taxmann.com 17 (Chhattisgarh) on April 24, 2025

Where AO issued a reopening notice and passed an order disposing of objections without dealing with such objections raised by the petitioner; matter was to be remanded back to AO to pass a fresh order disposing of objections raised.

Facts

After service of notice u/s 148 to reopen the assessment for the AY 2015-2016, the Petitioner requested the reasons which were supplied. Post which, the petitioner filed a detailed objection which were disposed of. On perusing the impugned order, it was concluded that the AO has not dealt with any of the objections raised. The objections were detailed but have not been seriously dealt with. From the paragraph 2 to 6it was again held that the conclusion was drawn without applying the facts involved or in deciding the objections as raised.

Thus, in the entire impugned order, the AO has not bothered to deal with the Petitioner's objections but merely referred to some precedents on the subject. The petitioner brought to the notice that Paragraph 7 of the order was most unfortunate because the AO, without bothering to deal with the Petitioner's objections, has given himself a certificate that the Petitioner's objections “have been adequately and properly dealt with”.

The ld. AO gave a virtual warning stating that following this certificate, no further objections will be entertained under any circumstances because, in

the opinion of the AO, “objection followed by cross objection is an endless process, which in my opinion, should end at certain point”.

Ruling

HC held that such casualness in the matter of disposal of the petitioner’s objections to reopening the assessment must end. In several cases, the AO's do not seriously deal with the petitioner's objections, forcing to set aside such orders and remand the matters to the AO. The other alternative is for the Writ Court to evaluate the reasons and decide upon them. Besides, it is crucial that the AO, in the first instance, deals with the objections one way or the other so that judicial review can be limited to the reasoning of the AO disposing of the petitioners’ objections to the reopening of the assessment. By shirking their duty of deciding on the petitioner's objections, the AO's cannot frustrate the scheme provided in GKN Driveshafts India Ltd. The impugned order is an instance where the AO has virtually declined to exercise the jurisdiction vested in him and to discharge the duty expected of him. For these reasons, High Court set aside the impugned order and directed the AO to consider the Petitioner's objections filed and dispose of such objections within four weeks of uploading this order.

Source: High Court, Bombay in Modern Realty (P.) Ltd. vs DCIT vide [2025] 174 taxmann.com 64 (Bombay) on April 28, 2025

Where the Assessing Officer had expressed satisfaction with compliances made to the notices issued u/s 142() in the assessment order passed u/s 143(3), penalty u/s 272A(1)(d) could not be imposed.

Facts

The AO passed order thereby levying penalty of INR 20,000 in respect of non-compliance of the notices u/s 142(1). The ld. AR submitted that during the assessment, the AO issued notice u/s 142(1) dated 04-08-22 to the petitioner calling upon to file certain details and documents within merely five working days to respond to the said notice. Further, the AO again issued another notice u/s 142(1) dated 11-08-22 requesting the petitioner to file documents within six days. The petitioner was repeatedly given 'insufficient time' to respond to the notices, more particularly when during the relevant period, the COVID pandemic was continuing, and several petitioners were facing genuine hardship in making compliances. It was also submitted that during the proceedings, the petitioner filed a letter dated 15-09-22 to notice u/s 142(1). He also submitted that after considering the said submissions the AO made additions u/s 143(3) and levied penalty for non-compliance.

Ruling

ITAT after considering the facts of the present that the petitioner had specifically mention that the replies are being filed in respect of all the earlier notices and has thus assisted the AO in completion of the assessment. Moreover, the assessment order in the present case was passed u/s 143(3) and not u/s 144, which means that AO had expressed his satisfaction with compliances made by the petitioner.

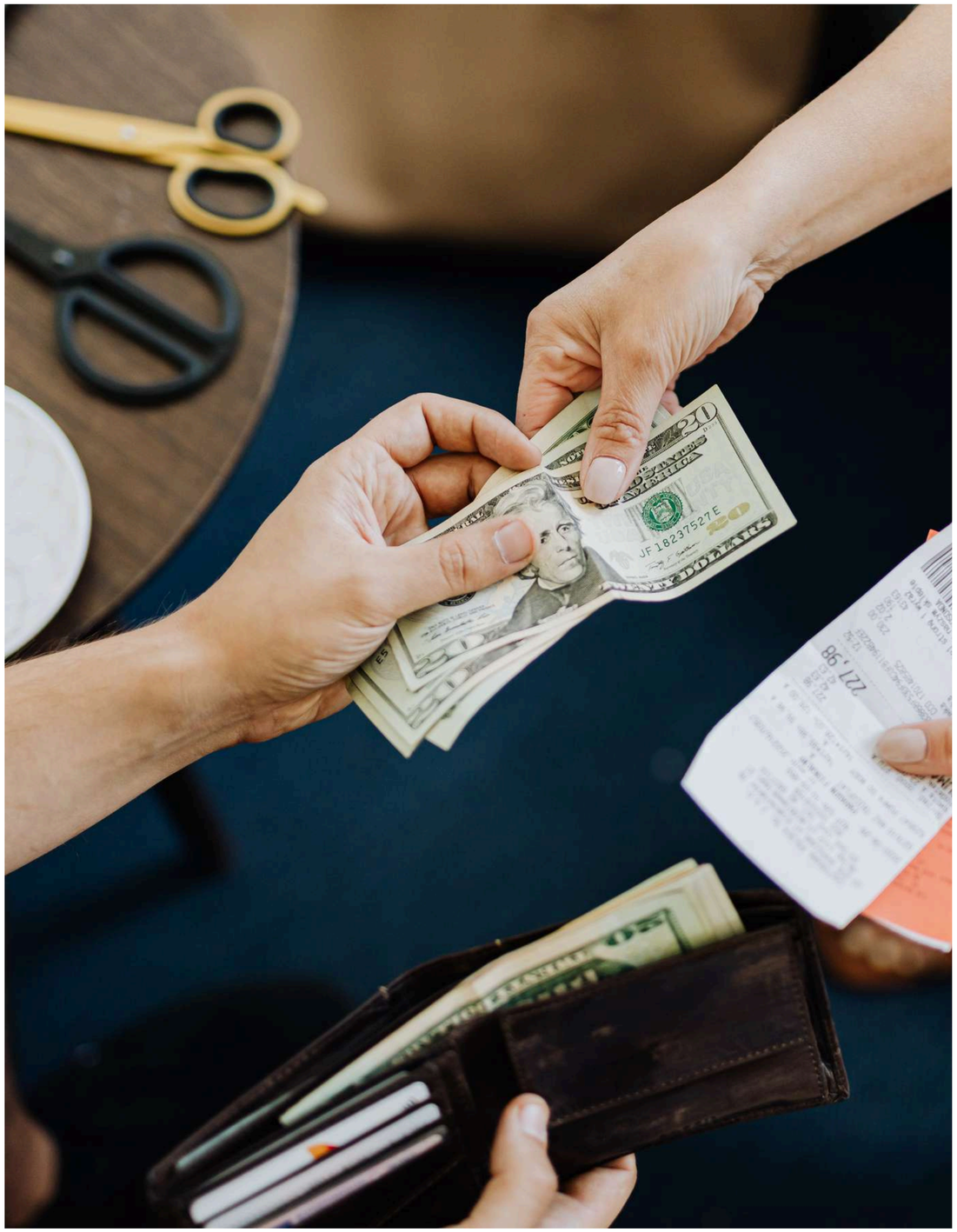
Therefore, ITAT, in view the principles laid down in the decision of Coordinate Bench in **Bhavana Modi v. ITO**, deleted the penalty of INR 20,000 u/s272A(1)(d). ITAT further set aside the order of Ld. CIT(A) and directed the AO to delete the penalty.

Source: ITAT, Mumbai in Shilpa Shetty Kundra vs DCIT vide [2025] 173 taxmann.com 342 (Mumbai - Trib.) on April 04, 2025

Transaction not to be considered as a transfer as per section 2(47)(v) where merely licence to permit construction on land to developer has been granted but no possession in land as contemplated under section 53A of Transfer of Property Act, 1882 has been given.

Facts

As per the information available with the Department, cash amounting to INR 10,11,000 was deposited by the petitioner in his bank account and immovable property amounting to INR 1,22,50,000 was sold during the year. Accordingly, notice u/s 148 was issued and in response to the same the petitioner furnished his return of income. In reply to notice issued u/s 143(2), the petitioner submitted that he has not sold any property but has entered into a development agreement on 05-05-11 with the builder and the same was registered on 18-05-11. Subsequently, supplementary development agreement was also entered into on 23-07-12. According to the development agreements, the petitioner was going to receive certain portion of constructed property in shape of flats in subsequent year and, therefore, the income in this year was not shown. However, the petitioner submitted that in subsequent AY 2013-14, he had received number of flats which were sold and the capital gain on sale of flats was disclosed in subsequent AY. The AO was of the view that since the development agreement was signed during the period under consideration, the property is said to be transferred during this period only & accordingly not satisfied with the above reply of the petitioner and completed the assessment u/s



143(3) r.w.s. 147 by determining the total income at INR 1,03,65,880 as against the income retuned. The ld. CIT(A) also dismissed the appeal stating that the transaction of transfer of land is complete and the consideration is received by the petitioner, making him liable to pay capital gains on the value of received consideration. Against such an order, the petitioner is in appeal before this Tribunal.

Ruling

The ld. ITAT stated that the commencement certificate & the building permission of the subjected property was issued on 20-06-12 by Nashik Municipal Corporation which is also in subsequent AY. ITAT also find that in consideration of said development agreement the petitioner has received 22 flats of value of INR 2,23,26,000 which were handed over to the petitioner in subsequent AY 2013-14 and not during the period under consideration. ITAT further held that these flats were sold by the petitioner in AY 2013-14 offering the respective capital gains. Therefore, in this regard, ITAT also find that the building permission was also given in subsequent AY. Considering the totality of the facts of the case and the evidence produced before the ITAT, & placing reliance on the judgement passed by Hon'ble Bombay High Court in the case of **Bharat Jayantilal Patel**. ITAT is of the opinion that capital gains income does not arise to the petitioner on transfer of development rights in its land to a developer, since petitioner had merely granted licence to permit construction on land to such developer but not given any possession in land as contemplated u/s 53A of of T.P. Act, 1882, there was no transfer as per section 2(47)(v) giving rise to any capital gain in hands of petitioner. In the result, the appeal filed by the petitioner was allowed.

Source: ITAT, Pune in Balasaheb Popatrao Phadol vs ITO vide [2025] 173 taxmann.com 589 (Pune - Trib.) on April 09, 2025

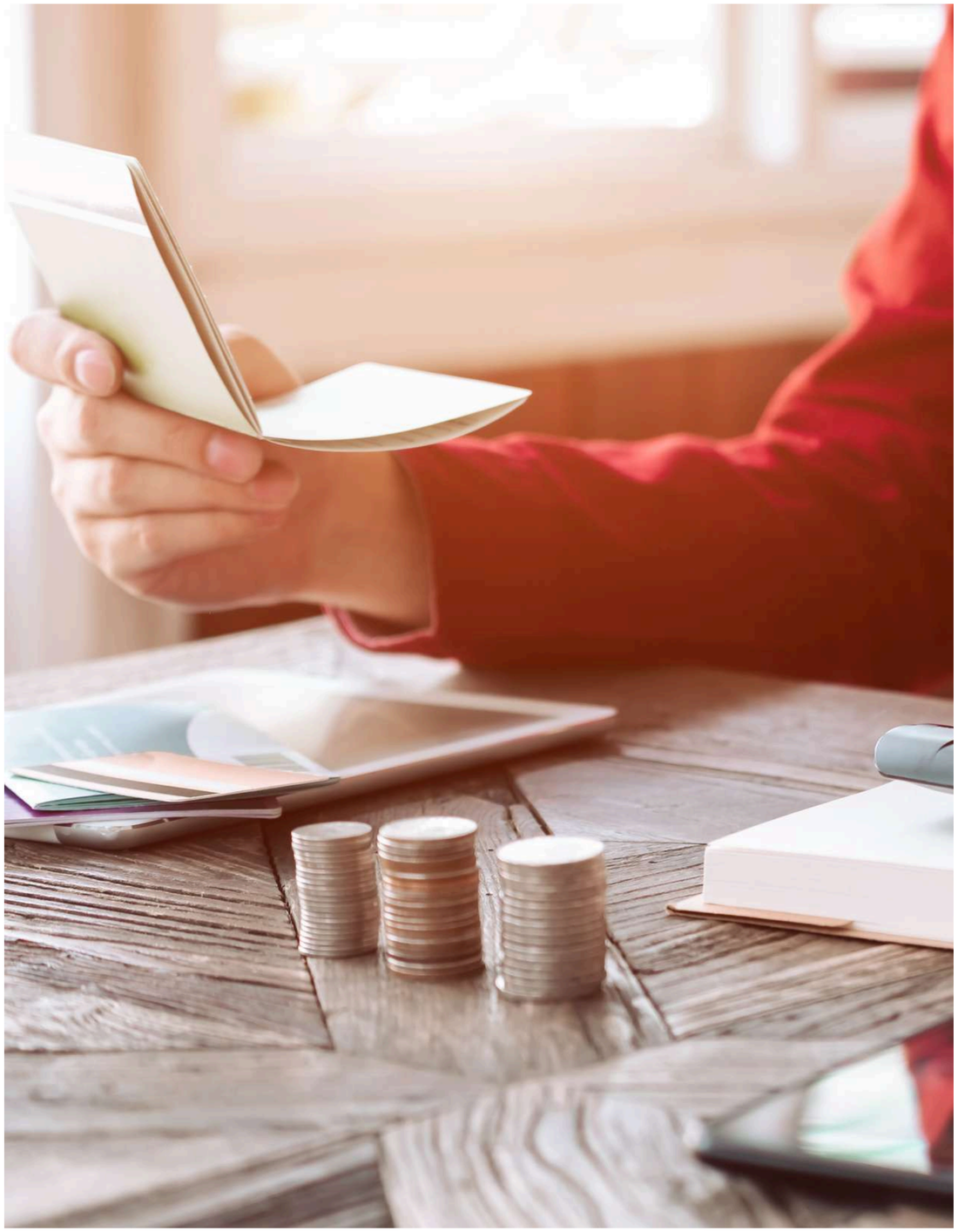
Petitioner claimed that he only had agricultural income source of though he himself submitted that cash deposit was income from shares transaction during appellate proceedings; since examination of facts went to root of matter, matter was to be remanded back to CIT(A)

Facts

The petitioner had made cash deposits of INR 26,03,750 in his bank account source of which, he could not explain, therefore, the AO added the same in his hands which was confirmed by the Ld. CIT(A). During the proceedings before the revenue authorities, it has been pointed out by the petitioner that he is an agriculturist/farmer and having agricultural income and the source of the cash deposits is from such agriculture proceeds. However, the fact remains that the petitioner has neither filed return of income originally nor in compliance to notice u/s 148. Therefore, it was not possible for the department to determine and investigate regarding the source of such cash deposits in the bank account of the petitioner. During the appellate proceedings, a remand report was called for wherein the petitioner made submissions before the AO that the petitioner has done transaction of shares with a SEBI registered broker and therefore, in the remand report the AO has mentioned that there arises a doubt whether the cash deposits are from agricultural income or from income received through transaction of shares. At the time of hearing, the Ld. Counsel for the petitioner submitted that the earlier counsel who was dealing with the matter has wrongly reported before the AO at the time of remand proceedings by submitting that the petitioner dealt with shares through registered broker of SEBI, but the fact remains as has been disclosed as sworn in affidavit filed by the petitioner before the bench that the petitioner has never ever made any transaction through any broker of SEBI. Rather, the petitioner is only having agricultural income. These facts were also accepted by the Ld. Sr. DR. but even he could not provide any evidence refuting these facts or could not show that the petitioner did transact in shares.

Ruling

In the considered view of the ITAT, in the interest of justice, the factual matrix needs to be revisited through proper verification at the level of the Ld. CIT(A) to understand what exactly the source of income of the petitioner is. That as has been claimed in the affidavit that the petitioner is only having income from agriculture proceeds, these facts need to be verified. Further, it was contented by the Ld. Counsel that the amount of INR 26,03,750 which was deposited in the account of the petitioner was not a single transaction. Rather, it was the culmination of small amounts which was regularly deposited in the bank account of the petitioner. In the considered view of the ITAT, the petitioner deserves one final opportunity before the Ld. CIT(A) to represent the facts and the Ld. CIT(A) shall also call for a remand report from the AO to do the ground verification once again,



after being appraised of the proper facts by the petitioner. Therefore, ITAT set-aside the order of the Ld. CIT(A) and remanded back the matter to its file for denovo adjudication while complying with the principles of natural justice with the directions to dispose of the matter within 30 days from receipt of this order.The appeal is therefore allowed for statistical purposes.

Source : ITAT, Raipur in Shrikant Sharma vs ITO vide [2025] 173 taxmann.com 819 (Raipur - Trib.) on April 17, 2025

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