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(SHORT NOTES OF CURRENT CASES)

[2019] 72 ITR (Trib) (S. N.) 1 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "SMC" BENCH]

VALUE FIRST DIGITAL MEDIA P. LTD.
v.
ASSISTANT COMMISSIONER OF INCOME-TAX

R. K. PANDA *(Accountant Member)*

May 2, 2019.

AY ▶ 2014-15
HF ▶ Assessee

ASSESSMENT—AMALGAMATION OF ASSESSEE AND ASSESSEE NO LONGER EXISTING—ASSESSEE FILING RETURN AND FILING APPEAL AGAINST ASSESSMENT IN NAME OF NON-EXISTENT COMPANY AFTER AMALGAMATION—ASSESSEE CANNOT ARGUE ASSESSMENT FRAMED ON NON-EXISTENT COMPANY—ASSESSING OFFICER TO PASS APPROPRIATE ORDER—INCOME-TAX ACT, 1961.

The Assessing Officer completed the assessment making an addition of Rs. 45,35,355 on account of mismatch between the income according to form 26AS and the income declared in the income-tax return. The Commissioner (Appeals) upheld the addition rejecting the assessee's argument that the assessment had been framed of a non-existent company on the ground that the assessee itself had filed the appeal in the case of a non-existent company and directed the Assessing Officer to bring the amount to tax in the hands of the appropriate entity. On appeal :

Held, *that the assessee was amalgamated with effect from January 1, 2014 by the scheme of amalgamation between the assessee and V and the scheme was sanctioned by the Delhi High Court by order dated August 11, 2014 and*

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August 19, 2014 with effect from January 1, 2014. The assessee filed its return on September 29, 2014 in the name of its holding company. Under these circumstances the assessee could not argue that the assessment had been framed on a non-existent company. The issue was restored to the Assessing Officer with a direction to pass appropriate order.

SPICE ENTERTAINMENT LTD. *v.* CIT (I. T. A. Nos. 475 and 476/Delhi/ 2011 dated August 3, 2011) *followed*

I. T. A. No. 2183/Delhi/2018 (assessment year 2014-15).

Arun Chhabra and *Gaurav Mital*, Chartered Accountants, for the assessee.

Amit Jain, Senior Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 2 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "E" BENCH]

SURINCO WORKWEAR P. LTD.

v.

INCOME-TAX OFFICER

MAHAVIR SINGH *(Judicial Member)* and
RAMIT KOCHAR *(Accountant Member)*

May 1, 2019.

SS ▸ ITA 1961, s 271(1)(c)
AY ▸ 2009-10
HF ▸ Assessee

PENALTY—FURNISHING INACCURATE PARTICULARS OF INCOME—BUSINESS INCOME—REMISSION OR CESSATION OF TRADING LIABILITY—ASSESSEE MAKING ACKNOWLEDGMENT OF DEBT IN ITS AUDITED FINANCIAL STATEMENT FOR THE YEAR AND CONSISTENTLY AFFIRMING LIABILITY TO PAY SUM TO CREDITOR—ASSESSEE OFFERING BONA FIDE EXPLANATION OF EXISTENCE OF ITS LIABILITY TO CREDITOR WHICH WAS REFLECTED TO BE PAYABLE IN ITS BOOKS OF ACCOUNT—SUM BROUGHT TO TAX IN ASSESSMENT—NOT A CASE OF FURNISHING INACCURATE PARTICULARS OF INCOME—INCOME FROM HOUSE PROPERTY—INCOME FROM OTHER SOURCES—ASSESSEE DECLARING RENT UNDER HEAD "HOUSE PROPERTY" BUT ASSESSING OFFICER BRINGING IT UNDER "OTHER SOURCES"—CHANGE OF HEAD OF INCOME NOT A CASE OF FURNISHING INACCURATE

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PARTICULARS OF INCOME—PENALTY NOT LEVIABLE—INCOME-TAX ACT, 1961, s. 271(1)(c).

The assessee, for the assessment year 2009-10, showed a sum of Rs. 2,31,775 under the head sundry creditors payable to a creditor in its balance-sheet as at March 31, 2009. The assessee was asked by the Assessing Officer to file a confirmation from the party. The assessee was not able to file the confirmation from the party. The Assessing Officer held that the assessee could not prove the genuineness of the creditor and treated as the income of the assessee a sum of Rs. 2,31,775 under section 41(1) of the Income-tax Act, 1961. He initiated penalty proceedings under section 271(1)(c) against the assessee for furnishing inaccurate particulars of income.

The assessee had taken property on leave and licence basis from its director and sublet the premises. The assessee declared the rent received under the head "Income from house property" and claimed deduction under section 24(1) in respect thereof. The income from the subletting was brought to tax by the Assessing Officer as income under the head "Income from other sources" and denied the deduction under section 24(1). The Assessing Officer levied under section 271(1)(c) in respect of this addition. The Commissioner (Appeals) confirmed both the addition and the levy of penalty. On appeal :

Held, *(i) that penalty was not leviable because the assessee had acknowledged the debt in its audited financial statement for the year and consistently claimed that the liability had not ceased to exist and the assessee was liable to pay the sum to the creditor. The assessee made complete disclosure in the return as to the liability payable by the assessee and the sum stood reflected as payable by the assessee in its audited books of account. The auditors had also not made any adverse comments as to the subsistence of the liability. Merely because the contentions of the assessee stood dismissed by the Department in the quantum assessment wherein the additions to income were made under section 41(1) on the grounds that the liability had ceased to exist, the levy of penalty under section 271(1)(c) would not be automatic. The assessee had offered an explanation which was a bona fide explanation as to the existence of its liability to the creditor as on March 31,2009 which was also reflected to be payable in its books of account. The assessee did discharge the burden which lay on it under section 271(1)(c). The Department did not bring any incriminating material to prove that the liability ceased to exist and the assessee had obtained any benefit as was contemplated under section 41(1). Therefore no penalty under section 271(1)(c) was exigible on the assessee and the penalty was deleted.*

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(ii) That the Tribunal in the assessee's case for the assessment year 2003-04 deleted the penalty under section 271(1)(c) holding that there was no furnishing of inaccurate particulars of income nor was there concealment of income when the head of income to assess income was changed from business income to income from house property. Therefore penalty was not leviable.

I. T. A. No. 1290/Mumbai/2017 (assessment year 2009-10).

Ms. Heena Sheth for the assessee.

O. P. Meena, Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 4 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "F" BENCH]

SUNIL

(by legal representative)

v.

INCOME-TAX OFFICER

AMIT SHUKLA *(Judicial Member)* and
L. P. SAHU *(Accountant Member)*

April 26, 2019.

SS ▸ ITA 1961, s 148
AY ▸ 2006-07
HF ▸ Assessee

REASSESSMENT—NOTICE—SUBSTANTIVE ASSESSMENT IN HANDS OF ASSESSEE HINDU UNDIVIDED FAMILY—REOPENING TO MAKE PROTECTIVE ASSESSMENT IN HANDS OF ASSESSEE NOT FAIR—NO PROPER ISSUANCE AND SERVICE OF NOTICE AND CONSEQUENTLY ASSESSMENT ORDER QUASHED—INCOME-TAX ACT, 1961, s. 148.

The assessee challenged the order on validity of notice issued under section 148 of the Income-tax Act, 1961 and assessment of capital gains in his hands assuming the land as capital asset :

Held, *that in the reasons there was a reference to the substantive assessment that was in the hands of the assessee Hindu undivided family and it was only consequent thereto the protective assessment was made in the hands of the assessee. When the facts did not admit of any doubt that the substantive assessment in the hands of the assessee Hindu undivided family was made on*

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March 28, 2013, it would not have been possible for the Assessing Officer to record the reasons in this case on March 26, 2013. The reasons and the notice under section 148 were ante dated and that they were not properly recorded. There was no proper issuance or service of notice under section 148 and no reliance could be made on the reasons recorded in this matter. Therefore, the reassessment order was to be quashed.

SMT. SAVITA *v.* ITO (I. T. A. No. 2642/Delhi/2016) dated December 4, 2018) *followed*.

I. T. A. No. 2640/Delhi/2016 (assessment year 2006-07).

Mahvir Singh, Advocate, for the assessee.

Surender Pal, Senior Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 5 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "C" BENCH]

BHARAT IMMUNOLOGICAL AND BIOLOGICAL CORPORATION LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

BHAVNESH SAINI *(Judicial Member)* and
O. P. KANT *(Accountant Member)*

April 29, 2019.

SS ▸ ITA 1961, s 271(1)(c)
AY ▸ 2008-09
HF ▸ Assessee

PENALTY—CONCEALMENT OF PARTICULARS OF INCOME OR FURNISHING INACCURATE PARTICULARS OF INCOME—ASSESSING OFFICER NOT MENTIONING IN SHOW-CAUSE NOTICE WHETHER NOTICE WAS FOR CONCEALMENT OR FURNISHING INACCURATE PARTICULARS—ENTIRE PENALTY PROCEEDINGS VITIATED AND NO PENALTY LEVIABLE—INCOME-TAX ACT, 1961, S. 271(1)(c).

The assessee made a provision for debt. The Assessing Officer noted that the provision was not allowable unless it was for an ascertained liability. The Assessing Officer accordingly made addition of the amount and assessed the net loss at Rs. 4.74 crores. The Assessing Officer on the basis of the addition

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levied penalty under section 271(1)(c) of the Income-tax Act, 1961. The Commissioner (Appeals) confirmed the penalty. On appeal :

Held, *that the Assessing Officer, in his show cause-notice he had failed to specify under which limb of section 271(1)(c) the penalty proceedings had been initiated, i. e., whether for concealment of particulars of income or furnishing inaccurate particulars of income. Therefore the entire penalty proceedings were vitiated and no penalty was leviable.*

CIT *v.* SSA's EMERALD MEADOWS [2016] 386 ITR (St.) 13 (SC) *followed*.

I. T. A. No. 5538/Delhi/2015 (assessment year 2008-09).

Dr. Rakesh Gupta and *Somil Aggarwal*, Advocates, for the assessee.

Smt. Rinku Singh, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 72 ITR (Trib) (S. N.) 6 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL —
MUMBAI "SMC" BENCH]

KAUSHIK D. MISTRY

v.

INCOME-TAX OFFICER

SAKTIJIT DEY *(Judicial Member)* and
MANOJ KUMAR AGGARWAL *(Accountant Member)*

April 23, 2019.

SS ▸ ITA 1961, ss 2(42A), *Expln (1)(i)(b)*, 48, 54, 54F
AY ▸ 2009-10
HF ▸ Assessee/Department

CAPITAL GAINS—LONG-TERM CAPITAL GAINS—CAPITAL ASSET—COST OF ACQUISITION—ASSESSEE ACQUIRING TENANCY RIGHT IN PROPERTY—INDEXED COST OF ACQUISITION—TO BE WITH REFERENCE TO YEAR IN WHICH PREVIOUS OWNER ACQUIRED ASSET AND NOT YEAR IN WHICH ASSESSEE ACQUIRED ASSET—INCOME-TAX ACT, 1961, ss. 2(42A) *Expln. (1)(i)(b)*, 48.

CAPITAL GAINS—EXEMPTION—CONSTRUCTION OF RESIDENTIAL HOUSE WITHIN STIPULATED TIME—ASSESSEE MUST PURCHASE OR CONSTRUCT NEW PROPERTY WITHIN SPECIFIED TIME—ASSESSEE NOT ACQUIRING OWNERSHIP RIGHTS IN NEW PROPERTY BUT MERELY ACQUIRING TENANCY

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RIGHT—NOT EQUATED WITH OWNERSHIP RIGHTS—ACQUISITION OF TENANCY RIGHTS NOT AMOUNTING TO PURCHASE OR CONSTRUCTION OF NEW PROPERTY—NOT ENTITLED TO EXEMPTION—INCOME-TAX ACT, 1961, ss. 54, 54F.

The assessee, a resident individual, inherited a share in agricultural land by the assessee from his father who had purchased it prior to April 1, 1981. The assessee sold the property during the previous year relevant to the assessment year 2009-10 for a consideration of Rs. 24 lakhs. The assessee worked out long-term capital gains at Rs. 3,32,561 and claimed deduction under section 54 of the Income-tax Act, 1961 for Rs. 3.55 lakhs in view of the fact that he had acquired tenancy rights in a certain property. Applying the provisions of section 50C, the sale consideration was adopted as Rs. 24,28,200 and the assessee's share in the property was worked out to be Rs. 8,04,948. The assessee claimed indexation of the cost from the financial year 1980-81 since the property was acquired by way of inheritance but the benefit of indexation, in the opinion of the Assessing Officer, was to be granted from the financial year 2000-01, being the first year in which the asset was first held by the assessee. The benefit of deduction under section 54 was denied since the deduction, in the opinion of the Assessing Officer, was not available for acquisition of tenancy rights in a rented property. The stand of the Assessing Officer was confirmed by the Commissioner (Appeals). On appeal :

Held, *(i) that while computing capital gains arising on transfer of a capital asset acquired by an assessee under a gift or will, the indexed cost of acquisition has to be computed with reference to the year in which previous owner first held asset and not the year in which the assessee became the owner of the asset. The benefit of indexation would be available to the assessee from the financial year 1981-82 on the fair market value as on April 1, 1981.*

CIT *v.* MANJULA J. SHAH [2013] 355 ITR 474 (Bom) *relied on*.

(ii) That the assessee had not acquired ownership rights in the new property but merely tenancy rights which could not be equated with ownership rights. The condition of section 54 as well as section 54F is that the assessee must purchase or construct the new property within the specified time. The acquisition of tenancy rights was not tantamount to purchase or construction of a new property, in any manner. Therefore, the assessee would not be eligible to claim the deduction either under section 54 or under section 54F.

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I. T. A. No. 2801/Mumbai/2018 (assessment year 2009-10).

Nitesh Jain, authorised representative, for the assessee.

Chaitanya Anjaria, Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 8 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "C" BENCH]

GIAN SAGAR EDUCATIONAL AND CHARITABLE TRUST

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

H. S. SIDHU *(Judicial Member)* and **L. P. SAHU *(Accountant Member)***

April 8, 2019.

SS ▸ ITA 1961, ss 147, 148
HF ▸ Assessee

REASSESSMENT—ASSESSING OFFICER ACTING UPON INFORMATION THAT ASSESSEE DEPOSITED SUM IN HIS SAVINGS BANK ACCOUNT—NO ADDITION MADE FOR THAT AMOUNT AND EXPLANATION GIVEN BY ASSESSEE ACCEPTED—ASSESSING OFFICER ONLY ACTING UPON INFORMATION RECEIVED BY HIM AND NOT APPLYING HIS OWN MIND—REASSESSMENT PROCEEDINGS NOT VALID—INCOME-TAX ACT, 1961, SS. 147, 148.

The Assessing Officer received information from annual information returns that the assessee had deposited or made investments of Rs. 1,06,29,400 in his savings bank account on various dates. On the basis of the information, the Assessing Officer reopened the case under section 148 of the Income-tax Act, 1961 after recording the reasons under section 147. In response, the assessee filed a return declaring an income of Rs. 1,44,270. The Assessing Officer during the course of assessment proceedings, asked the assessee to furnish documentary evidence and source with respect to cash deposited in its bank amounting to Rs. 1,06,29,400 . In response, the assessee furnished a cash flow statement. The Assessing Officer asked the assessee about the source of cash brought forward amounting to Rs. 17,25,135. The Assessing Officer after considering the submissions of the assessee observed that the assessee had shown a net profit of Rs. 75,135 for the year ending on March 31, 2008, i. e., the preceding year, while the cash in hand was Rs. 17,25,135. He made an addition of the opening cash in hand of Rs. 17,25,135 in the hands of the assessee. The Commissioner (Appeals) was

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not satisfied with the reply of the assessee and sustained the action of the Assessing Officer in reopening the assessment. On appeal :

Held, *that the Assessing Officer mentioned that the assessee had deposited a sum of Rs. 1,06,29,400 in his savings bank account. However, no addition was made for that amount and the explanation of the assessee was accepted which showed that the Assessing Officer only acted upon the information received by him and did not apply his own mind. The Assessing Officer made the addition of Rs. 17,25,135 which was opening cash in hand brought forward from the preceding year. When the closing balance as on March 31, 2008, i .e., the preceding year was considered to be genuine and correct, there was no reason to doubt the same balance taken by the assessee on April 1, 2008 as opening cash in hand for the instant year. Thus, the addition made by the Assessing Officer and sustained by the Commissioner (Appeals) deserved to be deleted. The reassessment proceedings were not valid and were liable to be quashed.*

Signature Hotels P. Ltd. *v.* ITO [2011] 338 ITR 51 (Delhi) *relied on*.

I. T. A. No. 6054/Delhi/2018.

Rajiv Saxena and *R. P. Mall,* Advocates, for the assessee.

Amit Katoch, Senior Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 9 (Ranchi)

[Before the Income-tax Appellate Tribunal — Ranchi Bench]

ST. BARNABAS HOSPITAL

v.

COMMISSIONER OF INCOME-TAX (EXEMPTIONS)

S. S. Godara *(Judicial Member)* and
Dr. A. L. Saini *(Accountant Member)*

April 5, 2019.

SS ▸ ITA 1961, ss 2(15), 12AA
AY ▸ 2018-19
HF ▸ Assessee

Charitable purpose—Registration—Objects of assessee to be examined—Assessee's main object of running a hospital—Assessee maintaining pharmacy medical shop inside hospital for in-house consumption of medicines and treatment packages and for

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urgent need of in-house patients—That assessee not maintaining separate books of account for medical shop does not mean assessee not entitled to registration—Income-tax Act, 1961, ss. 2(15), 12AA.

The assessee-society maintained a pharmacy medical shop inside a hospital, for in-house consumption of medicines and treatment packages and to meet the urgent needs of in-house patients. It filed an application for grant of registration under section 12AA of the Income-tax Act, 1961 before the Commissioner. The Commissioner was not satisfied about the genuineness of the charitable activities of the society on the ground that it had not maintained separate books for the pharmacy and rejected the application. On appeal :

Held*, that the objects of the society were not doubted by the Commissioner. In an application for registration under section 12AA only the objects of the assessee-society were to be examined. The assessee-society's main object of running a hospital was covered under section 2(15) as charitable purposes being medical relief. Therefore, non-maintenance of separate books could not be a ground for rejection of registration under section 12AA. The assessee-society also provided medical relief and facilities to every person, conducting camps for blood donation, eye operation, immunisation, family planning, and awareness in mother child safety, AIDS, malaria, T. B., leprosy to general public. Therefore, to run the medical shop inside the hospital was fully charitable purpose and not for commercial purpose. If the assessee did not maintain separate books of account for the medical shop that did not mean that the assessee was not entitled to registration under section 12AA. Therefore the Commissioner was to grant registration under section 12AA.*

I. T. A. No. 269/Ranchi/2018 (assessment year 2018-19).

M. K. Choudhury and *Manav Poddar*, Advocates, authorised representatives, for the assessee.

Chandan Mondal, Joint Commissioner of Income-tax, Departmental representative, for the Department.

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[2019] 72 ITR (Trib) (S. N.) 11 (Jaipur)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — JAIPUR "A" BENCH]

ASSISTANT COMMISSIONER OF INCOME-TAX

v.

ARIHANT TRADING CO.

VIJAY PAL RAO *(Judicial Member)* and
VIKRAM SINGH YADAV *(Accountant Member)*

March 19, 2019.

SS ▸ ITA 1961, ss 40(a)(ia), 194C
AY ▸ 2015-16
HF ▸ Assessee

BUSINESS EXPENDITURE—DISALLOWANCE—PAYMENTS LIABLE TO DEDUCTION OF TAX AT SOURCE—PAYMENT TO TRANSPORTERS—STATUTORY OBLIGATION OF ASSESSEE, ON RECEIPT OF PERMANENT ACCOUNT NUMBER OF RECIPIENT, NOT TO DEDUCT TAX AT SOURCE ON PAYMENTS—FAILURE BY ASSESSEE TO FURNISH PRESCRIBED INFORMATION AS REGARDS PERMANENT ACCOUNT NUMBERS OF SUCH RECIPIENTS TO INCOME-TAX AUTHORITIES—NOT TO ATTRACT DISALLOWANCE—INCOME-TAX ACT, 1961, ss. 40(a)(ia), 194C.

The assessee incurred an amount on account of freight expenses but did not deduct tax at source on the ground that in terms of the provisions of section 194C(6) of the Income-tax Act, 1961 no deduction is required to be made on a sum paid or credited where the transporters had furnished their respective permanent account numbers to the assessee. The Assessing Officer held that for availing of the benefit of section 194C(6) and 194C(7), the assessee was bound by law to furnish the information, in respect of the transporters whose services it had availed of, to the prescribed income-tax authority and that the onus was upon the assessee to furnish the information it was entrusted to collect on behalf of the Income-tax Department from the transporters, to remain free from the provisions of section 40(a)(ia). The Commissioner (Appeals) held that the assessee had filed the requisite details about the permanent account number of the transporters at the time of payment of freight and the Assessing Officer had not disputed the veracity of such permanent account number details although he had raised a doubt whether such permanent account number details were received at the time payment of freights. Regarding non-filing of tax deduction at source return and whether it would attract the provisions of section 40(a)(ia) the Commissioner (Appeals) held that no tax required to be deducted on the payment made to

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the transporters if the conditions prescribed in section 194C(6) was satisfied and the provisions of section 40(a)(ia) were not applicable. The Commissioner (Appeals) held that the provisions of section 194C(6) and 194C(7) were independent of each other and when the conditions as mentioned in section 194C(6) had been satisfied, no deduction of tax under section 194C was required to be made by the payee. The Assessing Officer was not justified in applying the provisions of section 40(a)(ia) for non-deduction of tax as the conditions mentioned in section 194C(6) had been satisfied and as far as the assessee's non-compliance with the provisions of section 194C(7) were concerned, there were penal provisions in terms of sections 234E and 271H which had to be followed as per the law by the Assessing Officer. On appeal :

Held, *that all that was required for non-deduction of tax deduction at source on payment to the transporter was that the latter furnishes his permanent account number to the person responsible for paying or crediting the amount to him. The primary onus was thus on the recipient to furnish his permanent account number to the payer and the payer, on receipt of such permanent account number was under a statutory obligation not to deduct tax deduction at source on such payments. Further, the payer was under a statutory obligation to furnish the information in the prescribed forms to the income-tax authority. The statutory obligation to furnish the information regarding the receipt of permanent account number and non-deduction of tax at source was a consequence of the first statutory obligation to not deduct tax at source on receipt of her permanent account number. However, merely because there was failure by the assessee to furnish the prescribed information to the income-tax authorities, that could not lead to a conclusion that the assessee had not complied with the first statutory obligation. There were separate penal provisions for non-compliance therewith and the Assessing Officer had in fact invoked those penal provisions whereby the assessee had been called upon to show cause under section 234E/271H. In the instant case, once the assessee was in receipt of permanent account number and had not deducted tax at source, it had complied with the first statutory obligation cast upon it and could not be penalised for non-deduction of tax at source. The provisions of section 40(a)(ia) which were deeming fiction relating to non-deduction of tax at source have to be read in the limited context of non-deduction of tax deduction at source and could not be extended and even where the assessee complies with his statutory obligation not to deduct tax at source on receipt of permanent account number, merely because the subsequent obligation in terms of filing of the prescribed forms had not been complied with, the assessee should not suffer thirty per cent. of disallowance of the expenditure.*

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SOMA RANI GHOSH *v.* DY. CIT (I. T. A. No. 1420/Kolkata/2015 dated September 9, 2016) *followed*.

I. T. A. No. 1113/Jaipur/2018 (assessment year 2015-16).

K. C. Gupta, Joint Commissioner of Income-tax, for the Department.

P. C. Parwal, Chartered Accountant, for the assessee.

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[2019] 72 ITR (Trib) (S. N.) 13 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "F" BENCH]

NEELAM NANANNI

v.

INCOME-TAX OFFICER

SAKTIJIT DEY *(Judicial Member)* and
N. K. PRADHAN *(Accountant Member)*

March 8, 2019.

SS ▸ ITA 1961, ss 48(1), 54
AY ▸ 2005-06
HF ▸ Assessee/Department

CAPITAL GAINS—COST OF ACQUISITION—COST OF DEVELOPMENT AND IMPROVEMENT—ONUS OF DEMONSTRATING INCURRING OF EXPENDITURE ENTIRELY UPON ASSESSEE—EXCEPT FURNISHING PHOTOGRAPH OF BUILDING ASSESSEE NOT FURNISHING ANY OTHER EVIDENCE TO SUPPORT CLAIM THAT AMOUNT SPENT TOWARDS COST OF IMPROVEMENT AND DEVELOPMENT—CLAIM NOT ALLOWABLE ON MERE FACE VALUE—INCOME-TAX ACT, 1961, s. 48(1).

CAPITAL GAINS—EXEMPTION—CONSTRUCTION OF RESIDENTIAL HOUSE WITHIN PRESCRIBED TIME—NO RESTRICTION OR CONDITION IMPOSED MANDATING INVESTMENT OF CAPITAL GAINS OR SALE PROCEEDS TOWARDS PURCHASE OF NEW HOUSE—INVESTMENT IN PURCHASE OF TWO FLATS WITHIN PERIOD STIPULATED—QUANTUM OF INVESTMENT MUCH MORE THAN LONG-TERM CAPITAL GAINS COMPUTED BY ASSESSING OFFICER—"A RESIDENTIAL HOUSE" DOES NOT MEAN "ONE RESIDENTIAL HOUSE"—ASSESSEE ENTITLED TO EXEMPTION—INCOME-TAX ACT, 1961, s. 54.

In the course of assessment proceedings, the Assessing Officer while verifying the computation of long-term capital gains by the assessee noticed that the assessee had claimed deduction of an amount of Rs. 40 lakhs under

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section 48(1) of the Income-tax Act, 1961 towards the cost of development and improvement. The assessee could not furnish the required details and sought adjournment time and again. The Assessing Officer disallowed the assessee's claim of deduction of Rs. 40 lakhs towards the cost of improvement. The Commissioner (Appeals) sustained the disallowance on the ground that except furnishing a photograph of a bungalow the assessee could not produce any other evidence to demonstrate that she had incurred expenditure towards improvement and development of the property. On appeal :

Held, *that from the copy of sale deed by virtue of which the assessee purchased the property from the original owner for a consideration of Rs. 18 lakhs, the property purchased by the assessee was a plot admeasuring 420 square metres whereas the sale deed dated July 12, 2004, under which the assessee sold the property mentioned the existence of a house constructed over an area of 6,500 square feet. Therefore, the assessee's claim that it had constructed a house over the plot of land could not be discarded at the threshold. The onus of demonstrating incurring of expenditure for construction of the building lay entirely upon the assessee. The assessee had to furnish credible evidence to demonstrate that after purchase of the plot the assessee had constructed the building and the actual amount of expenditure incurred by it towards construction of the building. Once the assessee brought all the evidences on record to justify its claim, the onus would shift to the Assessing Officer to consider the allowability of the assessee's claim qua the evidence furnished. Except furnishing the photograph of the building the assessee had not furnished any other evidence even at this stage also to support the claim that an amount of Rs. 40 lakhs was spent towards the cost of improvement and development. Therefore, the assessee's claim could not be allowed at mere face value. For enabling the assessee to justify its claim by furnishing the credible supporting evidence, the issue was restored to the file of the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee.*

Against the long-term capital gains derived from sale of immovable property, the assessee claimed deduction under section 54 towards investment made in purchase of new flats amounting to Rs. 68,84,388. The Assessing Officer disallowed the assessee's claim of deduction under section 54 on two grounds. Firstly, the flat was purchased in the financial year 2003–04 relevant to the assessment year 2004–05 and secondly, the investment made towards purchase of new flats was not out of the assessee's own funds. Though the Commissioner (Appeals) agreed with the assessee that the investment in purchase of a new residential house was made within the time

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allowed under section 54 he upheld the disallowance agreeing with the reasoning of the Assessing Officer that the assessee was unable to prove that the investment in the new residential house was out of her own funds. on appeal :

Held, *that there was no restriction or condition imposed mandating investment of the capital gains or sale proceeds towards purchase of a new house for claiming exemption under section 54. What the provision postulates was, for claiming exemption the assessee had to make investment in purchase of a new house one year before or two years after the date on which the transfer of original asset took place. The deposit of capital gains in the capital gains account scheme in sub-section (2) of section 54 becomes applicable only in a case where the capital gains are not utilised for the purchase of new house within the stipulated time. The investment in purchase of a new house had been made within the period stipulated under section 54(1). Moreover, the investment made in purchase of a new house was of Rs. 68,84,388, whereas the net long-term capital gains computed by the Assessing Officer himself without allowing the assessee's claim of cost of development and improvement were in a sum of Rs. 58,13,728. Therefore, the quantum of investment made by the assessee towards purchase of a new house was much more than the long-term capital gains computed by the Assessing Officer. Therefore the provisions of section 54(2) did not apply. In terms of the provisions of section 54 applicable to the assessment year 2005-06, the expression "a residential house" used in section 54(1) did not mean "one residential house". Moreover, there was no allegation by the Department that the flats were not in the same building or were not interconnected.*

I. T. A. No. 3489/Mumbai/2016 (assessment year 2005-06).

Vipul Joshi for the assessee.

Rajeev Gubgotra for the Department.

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[2019] 72 ITR (Trib) (S. N.) 16 (Indore)

[Before the Income-tax Appellate Tribunal — Indore Bench]

VIVEK CHUGH

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

Kul Bharat *(Judicial Member)* and
Manish Borad *(Accountant Member)*

March 28, 2019.

SS ▸ ITA 1961, s 271AAB
AY ▸ 2013-14
HF ▸ Assessee

Penalty—Penalty in search cases—Notice issued in casual fashion—Assessing Officer not applying his mind and no specific charge mentioned for which assessee required to be show caused—Defect not curable—Initiation of proceedings not sustainable—Income-tax Act, 1961, s. 271AAB.

A search and seizure operation under section 132 of the Income-tax Act, 1961 was carried out on the business as well as residential premises of the Chugh group of Indore including the assessee. Thereafter, a notice under section 153A was issued, in response to which the assessee filed his return including additional income of Rs. 35 lakhs declared during the search. The Assessing Officer observed that the assessee could not specify or substantiate the manner in which the undisclosed income had been derived and initiated penalty proceedings under section 271AAB. Subsequently, the Assessing Officer imposed a penalty of Rs. 7 lakhs at 20 per cent. of the concealed income. The Commissioner (Appeals) reduced the penalty to 10 per cent. of the undisclosed income, i. e., Rs. 3.50 lakhs. On appeal :

Held, *that the notice under section 274 read with section 271AAB had been issued in a casual fashion. The Assessing officer had not applied his mind and no specific charge was mentioned for which the assessee was required to show cause. In the absence of the requisite contents of specific charge the initiation of proceedings could not be sustained. The Commissioner (Appeals) reduced the penalty applying the provisions of section 271AAB(1)(a). There was no ambiguity under the law so far the powers of the Commissioner (Appeals) were concerned : he could modify the penalty order by enhancing or reducing the penalty. However, where the Act provides for two different rates under different two provisions of law the assessee ought to have been given an opportunity of hearing on this aspect. However, since in the present*

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case at the very inception the notice initiating penalty was not in accordance with the mandates of law and such defect was not curable under section 292BB, the penalty order was liable to be quashed.

I. T. A. No. 636/Indore/2017 (assessment year 2013-14).

Anil Kamal Garg and *Aprit Gaur*, Chartered Accountants, for the assessee.

Smt. K. C. Selvamani, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 72 ITR (Trib) (S. N.) 17 (Jodhpur)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — JODHPUR BENCH]

OXCIA ENTERPRISES P. LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

N. K. SAINI *(Vice-President)* and **A. T. VARKEY *(Judicial Member)***

May 6, 2019.

SS ▸ ITA 1961, s 194-IA
AY ▸ 2016-17
HF ▸ Assessee

DEDUCTION OF TAX AT SOURCE—PURCHASE OF IMMOVABLE PROPERTY—ASSESSEE PURCHASING PROPERTY FROM POWER OF ATTORNEY HOLDER OF JOINT OWNERS—CONSIDERATION FOR EACH TRANSFEROR BELOW PRESCRIBED LIMIT OF Rs. 50 LAKHS—SECTION 194-IA NOT APPLICABLE—INCOME-TAX ACT, 1961, s. 194-IA.

The assessee purchased a residential property for a consideration of Rs. 60,12,000. The property purchased was owned by joint owners. The sale was executed on behalf of the joint owners by V who held a power of attorney of the joint owners of the property to act on their behalf in relation to the property. The assessee deducted tax at source at one per cent. of the sale consideration quoting the permanent account number of V who was not the actual owner of the property and the owners of the property were joint owners. According to the Assessing Officer, tax should have been deducted at source in the name of the actual owners and not in the name of the power of attorney holder. The Assessing Officer found fault with the assessee not mentioning the permanent account number details of the joint owners and was of the view that the provisions of section 206AA of the Income-tax Act, 1961 were appli-

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