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

applicable and tax was deductible at source at 20 per cent. of the purchase consideration of Rs. 60,12,000 and, accordingly created a demand of Rs. 12,02,400 under section 201(1) and interest under section 201(1A) of Rs. 2,28,456 totalling Rs. 14,30,856. The Commissioner (Appeals) confirmed the action of the Assessing Officer. On appeal :

Held, *that V by virtue of having the power of attorney to transfer the immovable property had transferred it on behalf of the joint owners. The assessee brought to the notice of the Commissioner (Appeals) that V had given his permanent account number details and the entire sale consideration had been received through banking channel of V's account. Though in the eyes of law V had no title to the property he had been authorised by the co-owners of the immovable property to transfer the jointly held immovable property and, therefore, in law V was an agent acting under a power of attorney. The extent of the power of transfer depended upon the interest of the transferor or the limitation upon his authority given by the donor. V was only the power of attorney holder of the co-owners of the jointly held immovable property and could not be termed as the transferor of the immovable property. The tax at source had been deducted in the hands of the power of attorney holder. Since the joint owners' consideration for the entire property was Rs. 60,12,000 individually they would get Rs. 30,06,000 each which was below the taxable limit and the provisions of section 194-IA were not attracted. The apprehension of income escaping from the hands of the co-owners could have been easily addressed rather than finding fault with the assessee's omission of not doing due diligence to track down the permanent account number details of the co-owners of the immovable property and in any case the Department was empowered to find out the reality of the facts if the statute permitted and in accordance with law.*

I. T. A. No. 291/Jodhpur/2018 (assessment year 2016-17).

Sunil Porwat, Chartered Accountant, for the assessee.

P. K. Singh, Departmental representative, for the Department.

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

[2019] 72 ITR (Trib) (S. N.) 19 (Delhi)

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

RIZWAN PUNHANA

v.

INCOME-TAX OFFICER

BHAVNESH SAINI *(Judicial Member)*

May 1, 2019.

AY ▸ 2014-15
HF ▸ Department

APPEAL TO APPELLATE TRIBUNAL—DELAY IN FILING APPEAL—CONDONATION OF DELAY—REASONABLE CAUSE—MEANING OF—ASSESSEE MUST PROVE REASONABLE CAUSE FOR FAILURE TO FILE APPEAL WITHIN PERIOD OF LIMITATION—ASSESSEE AND HIS COUNSEL WHOLLY NEGLIGENT AND NOT TAKING ANY STEPS TO FILE APPEAL WITHIN PERIOD OF LIMITATION—ASSESSEE NOT PRODUCING BOOKS OF ACCOUNT OR OTHER DOCUMENTS TO THE SATISFACTION OF ASSESSING OFFICER—DELAY NOT CONDONED—INCOME-TAX ACT, 1961—LIMITATION ACT, 1963, s. 5.

The assessee did not produce the books of account or other information and documents sought by the Assessing Officer. The Assessing Officer accordingly computed the income of the assessee estimating the net profit at 3 per cent. The income was computed at Rs. 36,84,481 and reducing the income declared in a sum of Rs. 3,73,618 made an addition of Rs. 33,10,863. The Commissioner (Appeals) found that the explanation of the assessee that there was a delay of 441 days in filing the appeal and there was no reasonable cause explained for the delay in filing the appeal. Accordingly, he dismissed the appeal of the assessee holding it to be barred by time. On appeal :

Held, *that the assessee shall have to prove before the Commissioner (Appeals) that there exists a reasonable cause for failure to file appeal within the period of limitation. Reasonable cause would mean a cause which was beyond the control of assessee. Reasonable cause means that which prevents a reasonable man of ordinary prudence acting under normal circumstances without negligence or inaction or want of bona fides. The assessee contended that after the death of the mother of his counsel, his counsel came back to his office on March 15, 2017 and since then no appeal had been filed before the Commissioner (Appeals) till February 22, 2018. During this period of about one year, counsel for the assessee did not do anything in the matter. Only a*

general explanation had been given that he was a patient of liver and heart ailments which was not proved to the satisfaction of the Commissioner (Appeals). These facts, therefore, clearly showed that the assessee and his counsel were wholly negligent and did not take any steps in the matter to file the appeal before the Commissioner (Appeals) within the period of limitation. The assessee refused to accept the statutory notices and did not produce books of account or other documents to the satisfaction of the Assessing Officer. Thus, the assessee acted negligently and never acted bona fide in the matter.

HIND DEVELOPMENT CORPN. *v.* ITO [1979] 118 ITR 873 (Cal), VEDABAI *alias* VAIJAYANATABAI BABURAO PATIL *v.* SHANTARAM BABURAO PATIL [2002] 253 ITR 798 (SC), CIT *v.* RAM MOHAN KABRA [2002] 257 ITR 773 (P&H) *and* ASST. CIT *v.* TAGGAS INDUSTRIES DEVELOPMENT LTD. [2002] 80 ITD 21 (Cal) *followed*.

I. T. A. No. 7807/Delhi/2018 (assessment year 2014-15).

Rajeev Mago, Chartered Accountant, for the assessee.

S. L. Anuragi, Senior Departmental representative, for the Department.

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

[2019] 72 ITR (Trib) (S. N.) 20 (Pune)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — PUNE "B" BENCH]

KOLTE PATIL DEVELOPERS LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

MS. SUSHMA CHOWLA *(Judicial Member)* and
ANIL CHATURVEDI *(Accountant Member)*

May 3, 2019.

SS ▸ ITA 1961, ss 14A, 23(4) ; ITR 1962, r 8D
AY ▸ 2012-13
HF ▸ Assessee

INCOME—DISALLOWANCE OF EXPENDITURE RELATING TO EXEMPT INCOME—NO DISALLOWANCE WHERE ASSESSING OFFICER DOES NOT RECORD THAT EXPENDITURE OFFERED BY ASSESSEE NOT SATISFACTORY HAVING REGARD TO ACCOUNT OF ASSESSEE—DISALLOWANCE NOT PERMISSIBLE—INCOME-TAX ACT, 1961, S. 14A—INCOME-TAX RULES, 1962, R. 8D.

HOUSE PROPERTY—ANNUAL LETTING VALUE—RENTAL INCOME—DEEMED RENTAL INCOME—NO NOTIONAL ANNUAL RENTAL VALUE ON

UNSOLD FLATS HELD AS STOCK-IN-TRADE—INCOME-TAX ACT, 1961, S. 23(4).

The assessee had earned exempt income in the form of dividend and share of profits to the extent of Rs. 13.20 crores. The assessee claimed that no expenditure was incurred for earning exempt income but offered a sum of Rs. 5 lakhs suo motu as expenditure under section 14A of the Income-tax Act, 1961 on ad hoc basis. The Assessing Officer held that the provisions of section 14A were applicable to the assessee and on the basis of the method prescribed under rule 8D of the Income-tax Rules, 1962 worked out the disallowance at Rs. 4,82,14,704 and after giving credit of Rs. 5 lakhs, disallowed the balance amount of Rs. 4,77,14,704. The Commissioner (Appeals) held that in view of the assessee's own funds being more than the tax-free investments, no disallowance of interest under rule 8D(2)(ii) was called for. However, with respect to the disallowance of indirect expenses under rule 8D(2)(iii), he granted partial relief to the assessee. On appeal :

Held, *that rule 8D cannot be invoked where suo motu disallowance made by the assessee is not found to be not satisfactory by the Assessing Officer having regard to the accounts of the assessee. In the absence of recording of non-satisfaction in terms of section 14A(2) invocation of rule 8D is not permissible. Thus, in view of the absence of recording of necessary satisfaction in terms of section 14A(2) no disallowance of expenses under section 14A read with rule 8D was called for. The addition made by the Assessing Officer and upheld by the Commissioner (Appeals) was deleted.*

CIT *v.* ASIAN PAINTS LTD. (I. T. A. No. 1564 of 2016, dated February 6, 2019 (Bombay) *relied on.*

The assessee was holding closing stock of 32 unsold flats and shops. The Assessing Officer was of the view that since the assessee was the owner of two or more house properties, the provisions of section 23(4) would be attracted and the assessee should have offered deemed rental income from the properties. The Assessing Officer was of the view that deemed rent in terms of the provisions of section 23(4) was chargeable. The Assessing Officer thereafter on the basis of the annual letting value as per PMC worked out the aggregate value for 32 unsold flats and shops at Rs. 14,10,590 and made its addition. The Commissioner (Appeals) upheld the order of the Assessing Officer. On appeal :

Held, *that no notional annual rental value on unsold flats held in stock-in-trade could be made in the assessee's hands.*

CIT *v.* NEHA BUILDERS P. LTD. [2007] 164 Taxman 342 (Guj), C. R. DEVELOPMENTS P. LTD. *v.* CIT (I. T. A. No. 4277/Mumbai/2012, dated

May 13, 2015), COSMOPOLIS CONSTRUCTION *v.* ITO (I. T. A. Nos. 230 and 231/Pune/2018, dated September 12, 2018) *relied on*.

I. T. A. No. 2206/Pune/2016 (assessment year 2012-13).

Nikhil Pathak for the assessee.

Sudhendu Das for the Department.

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

[2019] 72 ITR (Trib) (S. N.) 22 (Chennai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHENNAI "B" BENCH]

INCOME-TAX OFFICER

v.

SMT. JAGADEESWARI

N. R. S. GANESAN *(Judicial Member)* and **S.JAYARAMAN *(Accountant Member)***

May 17, 2019.

SS ▸ ITA 1961, s 80-IB(10)
AY ▸ 2009-10
HF ▸ Assessee

HOUSING PROJECT—SPECIAL DEDUCTION—PROJECT DESIGNED AS A COMPOSITE PROJECT AT PROPOSED SITE—PROJECT IN AN AREA OF MORE THAN ONE ACRE—APPROVALS OBTAINED ON UNIT BASIS ONLY FOR BENEFIT OF TAKING ADVANTAGE OF RELEVANT RULES OF LOCAL AUTHORITY—CLAIM ALLOWED IN EARLIER YEARS—ASSESSEE ENTITLED TO DEDUCTION—INCOME-TAX ACT, 1961, S. 80-IB(10).

For the assessment year 2009-10, the assessee claimed deduction under section 80-IB(10) of the Income-tax Act, 1961 in respect of its project. For the assessment year 2007-08 also, the assessee had claimed deduction under section 80-IB(10) in respect of this project. The Assessing Officer denied the deduction for the reasons that : (i) the assessee was only a contractor and not a developer as envisaged under section 80-IB(10) ; (ii) the assessee had not obtained the completion certification from the local authority ; and (iii) the units constructed by the assessee exceeded the maximum limit of 1500 square feet per unit laid down in section 80-IB(10). Though the Commissioner (Appeals) allowed the assessee's claim for the assessment year 2007-08, apart from the reasons mentioned in the assessment year 2007-08, the Assessing Officer denied the assessee's claim, inter alia, on the ground that the assessee

had obtained approval for construction from the competent authority for each block separately at a different point of time and it was not a composite project comprised in a area of one acre as envisaged in the section. On appeal :

Held, *that the assessee had claimed deduction under section 80-IB(10) for the same project from the assessment year 2007-08 onwards. The Tribunal had allowed the assessee's claim for the assessment year 2007-08. The High Court had decided in favour of the assessee for the assessment year 2007-08 but held that the assessee was entitled to deduction in respect of the built up area exceeding 1500 square feet on a proportionate basis. For this assessment year, the Commissioner (Appeals) gave a finding, inter alia, that the project was designed as a composite project at the proposed site. The project of the assessee was in an area of more than one acre. The approvals were obtained on unit basis only for the benefit of taking advantage of the relevant rules of the local authority. On identical facts and circumstances, the Tribunal had allowed the assessee's appeal for the year 2007-08. However, the assessee was entitled to deduction in respect of the built up area exceeding 1500 square feet on a proportionate basis. The Assessing Officer shall examine this aspect and allow the deduction.*

I. T. A. No. 1846/Chennai/2014 (assessment year 2009-10).

Sridhar Dora, Joint Commissioner of Income-tax, for the Department.

T. Banusekar, Chartered Accountant, for the assessee.

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

[2019] 72 ITR (Trib) (S. N.) 24 (Kolkata)

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

ASSISTANT COMMISSIONER OF INCOME-TAX

v.

IMAX INFRASTRUCTURE P. LTD.

(and vice versa)

P. M. JAGTAP *(Vice-President)* and
S. S. VISWANETHRA RAVI *(Judicial Member)*

May 1, 2019.

SS ▸ ITA 1961, s 153C
AY ▸ 2008-09, 2009-10, 2012-13
HF ▸ Assessee

SEARCH AND SEIZURE—ASSESSMENT OF THIRD PERSON—CONDITION PRECEDENT—SATISFACTION OF ASSESSING OFFICER THAT SEIZED MATERIAL BELONGED TO THIRD PERSON—SATISFACTION NOTE RECORDED BY ASSESSING OFFICER OF ASSESSEE AND NOT BY ASSESSING OFFICER OF PERSON IN RESPECT OF WHOM SEARCH CONDUCTED—NO FINDING RECORDED ABOUT DOCUMENTS PERTAINING TO ASSESSEE OR STEPS TAKEN TO DETERMINE THAT SEIZED MATERIAL BELONGING TO ASSESSEE—SATISFACTION RECORDED BY ASSESSING OFFICER NEITHER ADEQUATE NOR PROPER—ASSESSMENTS NOT VALID—INCOME-TAX ACT, 1961, S. 153C.

A search and seizure action under section 132 of the Income-tax Act, 1961 was conducted in the case of various assessees belonging to P group of companies. In consequence of the action, a survey under section 133A was carried out at the business premises of the assessee, which was connected with the P group. During the course of survey, books of account identified relating to the assessee were found and impounded. The Assessing Officer noticed that the assessee had received share capital and share premium amounts aggregating to Rs. 4,04,00,000 during the previous year relevant to the assessment year 2008-09 while a sum of Rs. 2,30,00,000 was received as share application money during the previous year relevant to the assessment year 2009-10. The Assessing Officer made an addition of Rs. 67,28,150 by way of disallowance under section 40(a)(ia) on account of payments made by the assessee to contractors without deducting tax at source. The Commissioner (Appeals) deleted the additions for all the three years. On appeal :

Held, *that the satisfaction note was recorded by the Assessing Officer of the assessee and not by the Assessing Officer of the person in respect of whom*

the search was conducted as required by the provisions of section 153C. The documents identified were found and impounded during the course of survey operation carried out at the business premises of the assessee and there was no specific reference in the satisfaction note to any documents found during the course of search and seizure action conducted in the P group of cases. There was nothing even to indicate how these vaguely referred to documents were found to belong to the assessee. There was no recording about the contents of these documents allegedly pertaining to the assessee and the Assessing Officer nowhere had explained the steps taken by him to determine that the seized material belonged to the assessee. There was no specific satisfaction recorded by the Assessing Officer as to how the seized material belonged to the assessee. There was a failure on the part of the Assessing Officer to provide clear and cogent reasons, which could explain why the seized material belonged to the assessee. The satisfaction recorded by the Assessing Officer was neither adequate nor proper and since it did not meet the requirement of the concept of satisfaction as used in section 153C the initiation of proceedings under section 153C was bad in law and the assessments completed in pursuance of such initiation were liable to be cancelled being invalid.

PRINCIPAL CIT *v.* N. S. SOFTWARE (FIRM) [2018] 403 ITR 259 (Delhi) *and* PEPSI FOODS P. LTD. *v.* ASST. CIT [2014] 367 ITR 112 (Delhi) *relied on*.

I. T. A. No. 1312/Kolkata/2017, C. O. Nos. 74, 76 and 78/Kolkata/2017 and I. T. (S. S.) A. Nos. 20 and 22/Kolkata/2017 (assessment years 2008-09, 2009-10 and 2012-13).

A. K. Nayak, Commissioner of Income-tax-Departmental representative, for the Department.

S. M. Surana, Advocate, for the assessee.

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

[2019] 72 ITR (Trib) (S. N.) 26 (Delhi)

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

ASSISTANT COMMISSIONER OF INCOME-TAX

v.

S. S. BROTHERS

H. S. SIDHU *(Judicial Member)* and
PRASHANT MAHARISHI *(Accountant Member)*

May 7, 2019.

SS ▸ ITA 1961, s 37(1)
AY ▸ 2011-12
HF ▸ Assessee

BUSINESS EXPENDITURE—CHANGE IN DIRECT COST AS COMPARED TO PREVIOUS YEAR—FREIGHT OUTWARD NOT BE CONSIDERED AS DIRECT COST—DIFFERENCE IN DIRECT COST NOT TO BE ADDED—DISALLOWANCE OF A LUMP SUM TO COVER SUCH BILLS OR VOUCHERS NOT PRODUCED JUSTIFIED—DISALLOWING ONE-FOURTH OF TRAVEL EXPENSES WITHOUT ANY VALID REASON NOT JUSTIFIED—INCOME-TAX ACT, 1961, S. 37(1).

The assessee was engaged in business as a trader in raw and frozen meat and export of frozen buffalo meat. For the assessment year 2009-10, when the turnover of the assessee was comparable with that of the current assessment year the assessee showed the ratio of total direct expenses the turnover at 91.86 per cent. against 95.98 per cent. for the assessment 2011-12. Hence, the Assessing Officer disallowed 0.41 per cent. of the total turnover on account of excess unexplained direct expenses claimed by the assessee and Rs. 50,12,111 was added. The Assessing Officer disallowed a sum of Rs. 19,02,170 being 10 per cent. of expenses on account of unexplained expenses for failure to maintain proper bill and vouchers. The Assessing Officer disallowed one fourth of travelling expenses on the ground that no purpose or proof of foreign travelling expenses of Rs. 4,20,200 was furnished by the assessee. The Commissioner (Appeals) deleted the part additions. On appeal :

Held, *(i) that the Commissioner (Appeals) accepted that merely because there was some change in the direct cost as compared to the previous year, the addition could not be made to the income of the assessee. He had also accepted the proposition that freight outward could not be considered as direct cost as had been done by the Assessing Officer. Thus, the difference in the direct cost, which was one of the main reasons for the Assessing Officer to make the addition, was not justified and therefore the addition had rightly been deleted by the Commissioner (Appeals).*

(ii) That the assessee was a big exporter of meat having a turnover of over Rs. 122 crores. Besides, the product was perishable and the entire facilities had to run round the clock. The assessee had also put forward its point that it had incurred less expenses on such items as compared to earlier years. The Assessing Officer had not quantified the amount for which bills or vouchers were not produced but only disallowed 10 per cent. of the expenses claimed under the head on ad hoc basis. Hence, on reasonable basis, the Commissioner (Appeals) had rightly restricted the disallowance to a lump sum of Rs. 5 lakhs to cover such bills or vouchers not produced during assessment proceedings.

(iii) That the assessee being one of the leading meat exporters was required to incur expenses on account of travels of its employees and partners both inland and abroad. The expenses claimed were reasonable for a firm earning a turnover of over Rs. 122 crores. Therefore, the Assessing Officer was not justified in disallowing one-fourth of such expenses without any valid reason and the addition of Rs. 7,76,710 on account of travelling expenses was rightly deleted by the Commissioner (Appeals).

I. T. A. No. 5902/Delhi/2015 (assessment year 2011-12).

Smt. Naina Soin Kapil, Senior Departmental representative, for the Department.

R. K. Kapoor, Fellow Chartered Accountant, for the assessee.

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

[2019] 72 ITR (Trib) (S. N.) 27 (Cochin)

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

IBS SOFTWARE P. LTD.

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

CHANDRA POOJARI *(Accountant Member)* and
GEORGE GEORGE K. *(Judicial Member)*

May 1, 2019.

SS ▸ ITA 1961, s 28(va)
AY ▸ 2003-04
HF ▸ Assessee

INCOME—ACCRUAL—NON-COMPETE FEE—MERCANTILE SYSTEM OF ACCOUNTING—YEAR IN WHICH ASSESSABLE—RIGHT TO RECEIVE AMOUNT ACCRUED—LIABILITY TO PAY ENTIRE CONSIDERATION ARISING ON DATE

OF AGREEMENT THOUGH PAYMENT DEFERRED OVER A PERIOD OF TIME—ENTIRE AMOUNT RECEIVABLE AGAINST AGREEMENT ACCRUED IMMEDIATELY ON EXECUTION OF AGREEMENT ON 1-1-2000—AMOUNT ACCRUED IN ASSESSMENT YEAR 2000-01 AND NOT ASSESSMENT YEAR 2003-04—AMOUNT RECEIVED OR RECEIVABLE BROUGHT TO TAX DEPENDING SYSTEM OF ACCOUNTING ADOPTED BY ASSESSEE—INCOME-TAX ACT, 1961, S. 28(va).

The assessee was engaged in the business of software. The assessee had entered into a business co-operative agreement with IBS Software Services effective from January 1, 2000 in which the current business, the staff and software development facility of the assessee was to be handed over to IBS Software Services. Further, in terms of clause 2.2, the assessee had undertaken not to carry on the same or similar business during the subsistence of the agreement. During the previous year, relevant to the current assessment year 2003-04, the assessee had received a sum of Rs. 2,61,90,135 as compensation for discontinuance of business. The Assessing Officer brought to tax the sum of Rs. 2,61,90,135. The Commissioner (Appeals) confirmed the disallowance. On appeal :

Held, *that the assessee followed the mercantile system of accounting. From the terms and clauses of the agreement, the amount had accrued on the basis of the agreement entered. It was due to these facts the assessee had credited the full amount to the capital reserve account. The compensation paid by the payer was capitalised in its books of account as an intangible asset and depreciation was claimed. The liability though paid in instalments, had accrued when the agreement was entered into and was effective from January 1, 2000. The Assessing Officer relied on the provisions of section 28(va) which was inserted by the Finance Act, 2002 with effect from April 1, 2003. Therefore, section 28(va) was applicable for and from the assessment year 2003-04. But for section 28(va) the amount received by the assessee would have been a capital receipt and the receipt would not have been taxable. Section 28(va) did not speak of any deeming fiction whereby the amount received can be brought to tax on receipt basis. On the contrary, the amount received or receivable can be brought to tax, depending the system of accounting adopted by the assessee. Since the assessee had adopted the mercantile system of accounting and the amount had accrued in the assessment year 2000-01, the amount could not be brought to tax in the current assessment year.*

I. T. A. No. 102/Cochin/2019 (assessment year 2003-04).

M. Gopi Krishnan Nambiar and *Rajakannan* for the assessee.

Smt. A. S. Bindhu, Senior Departmental representative, for the Department.

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

[2019] 72 ITR (Trib) (S. N.) 29 (Pune)

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

DEVAKIKRISHNA KESHAV PRABHU

v.

DEPUTY COMMISSIONER OF INCOME-TAX

R. S. SYAL *(Vice-President)*

May 14, 2019.

SS ▸ ITA 1961, ss 14A, 37 ; ITR 1962, r 8D(2)(ii), (iii)
AY ▸ 2009-10
HF ▸ Assessee/Department

INCOME—DISALLOWANCE OF EXPENDITURE RELATING TO EXEMPT INCOME—NO DISALLOWANCE OF INTEREST PAID ON INTEREST BEARING LOANS—DISALLOWANCE OF 0.5 PER CENT. OF AVERAGE VALUE OF INVESTMENTS JUSTIFIED—INCOME-TAX ACT, 1961, S. 14A—INCOME-TAX RULES, 1962, R. 8D(2)(ii), (iii).

BUSINESS EXPENDITURE—FOREIGN TRAVEL EXPENSES—FOREIGN TOUR UNDERTAKEN WHERE MAJOR SALES IN FOREIGN COUNTRIES—ASSESSEE FILING COPIES OF BILLS AND VOUCHERS BEFORE ASSESSING OFFICER—NO DISALLOWANCE—INCOME-TAX ACT, 1961, S. 37.

Section 14A of the Income-tax Act, 1961 read with rule 8D(2)(ii) of the Income-tax Rules, 1962 stipulates that in a case where the assessee has incurred expenditure by way of interest during the year which is not directly attributable to any particular income, the disallowance shall be made for an amount computed in accordance with the formula given therein. The sum and substance of disallowance under rule 8D(2)(ii) is that the interest relatable to investments yielding exempt income is to be disallowed. The interest should be allowed so long as the capital borrowed, on which such interest is paid, is used for the purpose of business or profession. If, however, an assessee has its own interest-free surplus funds and such funds are utilised as interest-free

advances even for a non-business purpose, there cannot be any disallowance of interest paid on interest bearing loans.

The assessee, an individual, had capital of Rs. 13.40 crores. As against that, the balance of investment accounts stood at Rs. 10.08 crores. It received dividend from mutual funds and shares during the year 2009-10 to the tune of Rs. 22,09,471. No disallowance under section 14A was offered. Invoking the provisions of section 14A, the Assessing Officer computed disallowance at Rs. 7,62,226 in terms of rule 8D(2)(ii) and (iii). The Commissioner (Appeals) upheld the disallowance. On appeal :

Held, *that when interest-free funds in the form of share capital and reserves were more than the investment, no disallowance of interest could be made under section 14A. The disallowance made by the Assessing Officer had been wrongly sustained in the first appeal. It was deleted.*

Godrej and Boyce Manufacturing Co. Ltd. *v.* Dy. CIT [2017] 394 ITR 449 (SC) *applied.*

The Assessing Officer disallowed 0.5 per cent. of the average value of investments at Rs. 4,88,721. The Commissioner (Appeals) upheld the disallowance. On appeal :

Held, *that as the assessment year 2009-10 was after the insertion of rule 8D, the disallowance at 0.5 per cent. being the prescription of the rule, as made and sustained, was in order. The disallowance under section 14A was sustained at Rs. 4,88,721 and the assessee got relief of Rs. 2,73,505.*

The Assessing Officer made addition of Rs. 2,10,987 on the ground that the assessee failed to produce any submission on the performance of foreign tour and how it was related to business. The Commissioner (Appeals) sustained the addition. On appeal :

Held, *that foreign tour was undertaken to the U. S. A. where the assessee had customers. Not only that, the assessee also filed copies of bills and vouchers before the Assessing Officer during the course of assessment proceedings. The assessee genuinely undertook foreign visit to the U. S. A. Since his major sales were to foreign countries including the U. S. A., there could be no reason to disallow the foreign travel expenses incurred in this regard.*

I. T. A. No. 1687/Pune/2018 (assessment year 2009-10).

Sharad A. Vaze for the assessee.

Rajesh Gawali for the Department.

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

[2019] 72 ITR (Trib) (S. N.) 31 (Delhi)

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

ASSISTANT COMMISSIONER OF INCOME-TAX

v.

CENTRAL ELECTRONICS LTD.

N. K. BILLAIYA *(Accountant Member)* and
K. N. CHARY *(Judicial Member)*

May 16, 2019.

SS ▸ ITA 1961, ss 32, 147, 148
AY ▸ 2006-07
HF ▸ Assessee

DEPRECIATION—UNABSORBED DEPRECIATION—CARRY FORWARD AND SET OFF—EFFECT OF AMENDMENT OF SECTION 32(2) BY FINANCE ACT, 2002 WITH EFFECT FROM 1-4-2002—ASSESSEE ENTITLED TO SET OFF UNABSORBED DEPRECIATION BEYOND PERIOD OF 8 YEARS—INCOME-TAX ACT, 1961, S. 32(2).

REASSESSMENT—REASSESSMENT TO WITHDRAW SET OFF OF UNABSORBED DEPRECIATION ON GROUND NOT ALLOWABLE BEYOND EIGHT YEARS—AMENDMENT WITH EFFECT FROM 1-4-2002 TO REMOVE PREVIOUSLY LIMITED BENEFIT NOT SUBJECTED TO SUCH RESTRICTIONS—REASSESSMENT NOT VALID—INCOME-TAX ACT, 1961, SS. 147, 148.

The assessee claimed set off of unabsorbed depreciation of Rs. 6,78,59,423 pertaining to the assessment year 1997-98. The Assessing Officer was of the firm belief that by amendment by the Finance (No. 2) Act, 1996, the unabsorbed depreciation for the assessment year 1997-98 and earlier years could be carried forward up to a maximum period of 8 years from the year in which it was first computed and this period expired in the assessment year 2005-06, and the set off claimed by the assessee could not be allowed in the year 2006-07. The Assessing Officer, accordingly, disallowed set off of brought forward unabsorbed depreciation. The Commissioner (Appeals) directed the Assessing Officer to give relief to the assessee regarding brought forward unabsorbed depreciation of Rs. 6.78 crores. On appeal :

Held, *(i) that in view of the provisions of section 32(2) as amended with effect from April 1, 2002, the assessee's claim to set off unabsorbed depreciation beyond the period of 8 years had to be allowed. Thus, the Commissioner (Appeals) justified in deleting the addition of Rs. 6,78,59,423 on account of unabsorbed depreciation claimed for the assessment year 1997-98.*

MOTOR AND GENERAL FINANCE LTD. *v.* ITO [2017] 393 ITR 60 (Delhi) *relied on.*

(ii) That the assessee may not have appealed, but was free to defend the order before the appellate forum on all grounds including a ground which may have been held against him by the lower authority whose order was otherwise in his favour.

PR. CIT *v.* SUN PHARMACEUTICALS LTD. [2018] 408 ITR 517 (Guj) *relied on.*

A completed assessment was reopened after four years to deny claim of set off of unabsorbed depreciation while drawing support from the amendment by the Finance (No. 2) Act, 1996 by which the carry forward was allowed up to a maximum period of 8 years from the year in which the unabsorbed depreciation was first computed. On appeal :

Held, *that the benefit of carrying forward the depreciation was, in one sense, limited by the pre-existing ruling that could be done for eight years. All that amendment did with effect from April 1, 2002 was to remove the cap which meant that the previously limited benefit was now not subjected to such restrictions. Thus, the notice under section 148 was bad in law and consequent assessment claimed under section 147 of the assessee was hereby quashed.*

PR. CIT *v.* SUN PHARMACEUTICALS LTD. [2018] 408 ITR 517 (Guj) *relied on.*

I. T. A. No. 4102/Delhi/2016 (assessment year 2006-07).

Abhishek Kumar, Senior Departmental representative, for the Department.

R. S. Singhvi, Chartered Accountant, for the assessee.

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