5th EDITION

MY LORDS

COMPILATION OF SELECT RECENT JUDGEMENTS

R SOGANI & ASSOCIATES

A BETWEEN US PUBLICATION

Dear Readers

With an ever- evolving legal landscape, where staying informed is not just an advantage but a necessity, we bring to you the 5th Edition of My Lords- A Between Us Publication.

We find immense privilege in presenting this journal to you where we embark on a journey through the dynamic realm of Direct Tax Laws. Through this journal, we aspire to give it our best shot in tracing the comprehensive analysis of some recent groundbreaking emergences in the Country reshaping the law via judgements of the various courts. We aim that our modest effort will not only benefit the aspiring CA students but also practitioners who are deeply entrenched in the intricate workings of Direct Tax Laws, ensuring that our publication serves as a valuable resource for individuals at all stages of their careers and expertise levels.

We express our deepest gratitude to our mentors for providing their unwavering guidance, support and wisdom throughout this path. The willingness and inquisitiveness of our fellow Tax Team members, who along with their own perspectives embarked on this pursuit of veracity with us is truly appreciated.

May the insights shared within these pages resonate with you as deeply as they have resonated with us during the crafting of this publication.

Let us engage in constructive discourse, respectful disagreement, and collective action to chart a course towards evaluating a more equitable, transparent and efficient tax regime.

The true sign of intelligence is not knowledge but imagination...

Tax Team

R Sogani & Associates

TABLE OF CONTENTS

- Cases reviewed by Adv. Ruchika Sogani
- Design and layout by Meghna Raghani & Aadish Jain

1. Section 80JJAA Deduction: Not Considered Part of Assets, Expenditure and Book Entries for Reopening Assessments Under Section 149(1)(b)

Hexaware Technologies Limited

v.

Assistant Commissioner of Income Tax

MANU/MH/2869/2024

May 3, 2024

Law Involved

- **Section 80JJAA (Deduction under Chapter VI A of Income Tax Act, 1961 ("IT Act")**

  If a taxpayer covered under Section 44AB incurs additional employee costs in their business, they can claim a deduction of an amount equal to 30% of the additional wages paid to new regular workmen employed by assessee for three assessment years, starting from the year in which the employment was provided, subject to specified conditions.

- **Section 147 of the IT Act**

  It empowers the Assessing Officer (AO) to reassess income if they have reason to believe that income chargeable to tax has escaped assessment. This section outlines the conditions under which the AO can reopen a completed assessment, subject to time limits and specific procedures.

- **Section 148 of the IT Act**

  Section 148 of the Income Tax Act, 1961 (IT Act) empowers the AO to issue a notice for reassessment of income if they have **reason to believe** that income has escaped assessment. The notice requires the taxpayer to file a return of income for the relevant assessment year, allowing the AO to reassess the income in accordance with law.

❖ **Section 149 of the IT Act**

Section 149 of the IT Act governs the time limits for issuing reassessment notices under Section 148. The new time limits under Section 149 were introduced by the Finance Act, 2021 which says;

"149. (1) No notice under section 148 shall be issued for the relevant assessment year, —
(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—
(i) an asset;
(ii) expenditure in respect of a transaction or in relation to an event or occasion; or
(iii) an entry or entries in the books of account,
which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]"

Factual Background

Assessee company is engaged in **IT consulting, software development, and business process services** and filed its income tax return for the Assessment Year 2015-2016, declaring a total income of Rs. 204.54 crores. The petitioner claimed a deduction of Rs. 6.54 crores under Section 80JJAA. The petitioner submitted the required **audit reports in Form 10DA** for claiming the deduction. The case was selected for scrutiny, and an assessment order was passed under Section 143(3) of the IT Act on 30.11.2017, accepting the returns filed by the petitioner.

After 3.5 years, the AO issued a notice under Section 148 of the IT Act, stating that he had **reason to believe** that income chargeable to tax for the A.Y. 2015-16 had escaped assessment under Section 147 of the Act.

Issue Involved

In this case law, several issues have been raised and discussed; however, the primary focus here is on the reopening of an assessment through the issuance of a notice under section 148 of the Income Tax Act.

The issue at hand is whether the notice issued under Section 148 on 27.08.2022 is valid or barred by limitation. This decision depends upon; whether the notice complies with the procedural requirements of the amended law, including adherence to section 147, section 148A and conditions prescribed under section 149. If the notice does not satisfy these conditions, it may be invalid or barred by limitation.

Assessing Officer ("AO")

In the original assessment, the AO had considered and allowed the claim of deduction under Section 80JJAA. The details of the deduction and the supporting evidences were reviewed and accepted during this assessment process.

Further, the Assessing Officer issued a notice under section 148 of the IT Act, asserting that there was reason to believe that income chargeable to tax for the A.Y. 2015-16 had escaped assessment. This notice was issued 3.5 years after the original assessment, based on the AO's belief that the income initially assessed might have been under-reported or overlooked **due to an ineligible claim of deduction under Section 80JJAA.**

The key reasons for reopening the assessment included that the petitioner did not meet the basic condition for deduction under Section 80JJAA (which requires profit from manufacturing in a factory). Since Hexaware is in the IT sector, this condition was deemed unfulfilled.

Bombay High Court

Revenue's Contention:

- **Notice Validity:** The notice under Section 148 was valid and within the statutory time limits prescribed under Section 149 of the IT Act.
- **Compliance of New Provisions**: Revenue claimed that the notice adhered to new procedural requirements and was not barred by limitation.
- **Not a Change of Opinion:** Stated that the reassessment was based on valid grounds beyond mere change of opinion.

Assessee's Contention:

- **Non-Compliance with Section 149(1)(b)**: Assessee contended that the reassessment notice did not meet the requirements of section 149(1)(b),

which mandates that the income or expenditure alleged to have escaped assessment should be represented as an **asset, expenditure or entry in the books of account**.

- Even if the claim is **Patently Incorrect**, the Assessing Officer cannot reopen the case unless the conditions prescribed under section 149(1)(b) are satisfied. This includes the requirement that the escaped income exceeds Rs. 50 lakhs, along with other criteria mandated by the statute for reopening an assessment beyond the standard 3-year limitation period.
- **Consistency in Deduction:** Pointed out that the deduction under Section 80JJAA had been consistently allowed in previous years, and thus there was no reason to believe that income had escaped assessment.

Judgement:

In the judgment, the court addressed the contentions raised by both parties and concluded as follows:

- The court ruled that the claim for deduction under section 80JJAA does not qualify as escaped income under section 149(1)(b) of the Income Tax Act, which requires escaped income to be represented **as an asset, expenditure, or an entry in the books of account.** The deduction under section 80JJAA does not fit into any of these categories, as it does not relate to an asset, an expenditure from a transaction, or an entry in the books. Therefore, the reopening of the assessment based on this deduction is not valid.
- The court agreed with the assessee that the notice did not adequately specify the **"form of asset" or "expenditure"** as required by Section 149(1)(b), impacting the validity of the reassessment.

In summary, the court ruled that the notice under Section 148 was invalid due to procedural non-compliance and limitations on reassessment, thereby quashing the notice.

Cases Relied Upon

Mon Mohan Kohli v. CIT *[2022]* 432 ITR 389 (Delhi); Ashish Agarwal v. Income Tax Officer [2022] 431 ITR 175 (SC);

Cases Set aside

Tata Communications Transformation Services Ltd. vs. Assistant Commissioner of Income Tax and Ors. MANU/MH/1061/2022; (2022) 443

ITR 49 (Bom); **Siemens Financial Services (P.) Ltd. vs. Deputy Commissioner of Income Tax** MANU/MH/4292/2023; (2023) 154 taxmann.com 159 (Bombay) **Union of India & Ors. vs. Ashish Agarwal.**

Analysis

The court's decision in favor of Hexaware Technologies Limited reaffirmed the principles of **finality in tax assessments and protection against unjustified reassessments**. The court held that the conditions prescribed under the relevant provisions, specifically Section 149(1)(b), were not met, thereby rendering the reassessment notice legally untenable.

Additionally, the reopening of the assessment was **Patently Incorrect** because the notice failed to clearly specify the form of asset or expenditure in question. Moreover, not only with respect to the deduction under Section 80JJAA, but for **any deduction claimed under Chapter VI-A, such deductions cannot be classified as either an expenditure or an asset.**

-Nitin Satani

2. Reopening of Assessment for AY 2013-14 Barred by Limitation even under new law

Gajlaxmi Steel (P.) Ltd.

v.

Income-tax Officer
[2024] 163 taxmann.com 25 (Bombay)
May 08, 2024

Law Involved

- **Section 148A of the Income-tax Act, 1961 ("IT Act")** Relates to conducting an inquiry, providing an opportunity before issuing a reassessment notice when income has escaped assessment.

- **Section 148 of the IT Act**
  Empowers the Income Tax Officer to issue a notice for the reopening of assessments where income has escaped assessment.

- **Section 149 of the IT Act**
  Prescribes the time limit for issuing a notice for reassessment, beyond which a notice cannot be issued.

Factual Background

The Assessee, Gajlaxmi Steel (P.) Ltd., received a reopening notice in June 2021 for the Assessment Year 2013-14, alleging that certain income had escaped assessment. However, the limitation period under section 149 had already

expired on 31-03-2020. The notice was issued based on provisions prior to the 2021 Finance Act Amendment. The Assessee challenged the notice, and the Bombay High Court ruled in favor of the Assessee, holding that the notice was barred by limitation.

Issue Involved

Whether the reopening notice issued in June 2021 for the Assessment Year 2013-14, after the limitation period under section 149 of the Income-tax Act expired on 31-03-2020, was valid, given that the notice was issued under provisions existing prior to the Finance Act, 2021 Amendment.

Assessing Officer ("AO")

The Assessing Officer (AO) issued a reopening notice to Gajlaxmi Steel (P.) Ltd. in June 2021 for the assessment year 2013-14, claiming that certain income had escaped assessment. The AO based the notice on provisions existing before the Finance Act, 2021 Amendment, despite the fact that the limitation period under section 149 had expired on 31-03-2020. The AO asserted that the escaped income justified the reopening of the assessment, disregarding the expiration of the limitation period, which led to the initiation of the reassessment proceedings.

High Court

Revenue's Contention:

- The Revenue argued that the reassessment was necessary because certain earnings and transactions had escaped assessment for AY 2013-14.
- The Revenue maintained that the reopening notice was valid despite the issuance in June 2021, claiming that the reassessment procedures were in line with provisions that existed prior to the Finance Act, 2021 Amendment.

Assessee's Contention:

The Assessee, Gajlaxmi Steel (P.) Ltd., contended that the reopening notice was barred by limitation. According to the erstwhile Section 149, the limitation period for Assessment Year 2013-14 had expired on March 31, 2020, making the June 2021 notice invalid.

The Assessee highlighted that the Finance Act, 2021 did not have retrospective effect, and any notice issued for reassessment should have been in line with the

new law. Since the limitation period had already passed, the Revenue could not reopen the assessment by relying on the outdated provisions.

Judgement:

The Bombay High Court quashed the reopening notice issued to Gajlaxmi Steel (P.) Ltd. for AY 2013-14, ruling that it was barred by limitation. The notice, issued in June 2021, was based on pre-amendment provisions, despite the Finance Act, 2021 having introduced changes to the reassessment process. Since the limitation period under the old law had expired on March 31, 2020, the notice was invalid.

Cases relied upon:

Union of India & Ors. vs. Ashish Agarwal (2022) 444 ITR 1 (SC)

Analysis

The Finance Act, 2021, introduced changes to the reassessment process. However, these changes could not be applied to assessments for which the limitation period had already passed under the old law. The reopening notices were issued under old provisions, which were no longer valid.
The new provisions under section 149 of the ITA, which allow for a 10-year reassessment period do not extend the time limit for assessments that have already expired prior to the introduction of the new law.

The court followed its earlier judgment in New India Assurance Company Limited, affirming that reopening notices issued after the limitation period had expired cannot be validated simply because of procedural changes under new laws.

- Lakshya Singhal

3. Expenditure on Abandoned Software Development Project is Revenue Expenditure under Section 37(1)

Principal Commissioner of Income-tax-5

v.

Trigent Software Ltd.

[2023] 457 ITR 765 (Bombay)

December 02, 2022

Law Involved

- **Section 37(1) of the Income Tax Act, 1961 ("IT Act")**

  This section provides for the deduction of any expenditure incurred wholly and exclusively for the purposes of business or profession, provided it is not capital in nature.

Factual Background

The Assessee, Trigent Software Ltd., is engaged in the business of software development and management. Assessee incurred significant expenses for developing a new software product, which was treated as capital work in progress for the Assessment Years 2004-05 to 2007-08. However, the software product was never completed, and the project was abandoned. Subsequently, the Assessee claimed the entire capital work in progress as revenue expenditure in the Assessment Years 2006-07 and 2007-08.

- For the assessment year 2006-07, the Assessee claimed ₹7.09 crore as revenue expenditure.

- For the assessment year 2007-08, the Assessee claimed ₹81.82 lakh as revenue expenditure.

Issue Involved

Whether the expenditure incurred for developing the software product, which was later abandoned, should be treated as capital expenditure (and thus disallowed) or revenue expenditure (and thus deductible). Particularly when it was initially accounted for as "Capital Work in Progress".

Assessing Officer

The case was selected for scrutiny, and a notice was issued to the Assessee under section 143(2) of the Act. It was found that the Assessee had classified the expenditure incurred for software development as capital work in progress. Upon abandonment of the project, the Assessee claimed it as revenue expenditure. The AO determined that the expenditure was capital in nature and disallowed the claim, making additions of ₹7.09 crore for the assessment year 2006-07 and ₹81.82 lakh for the assessment year 2007-08.

CIT(A)

Against the order of the AO, the Assessee preferred an appeal before CIT(A). The CIT(A) reversed the order of the AO and affirmed that the expenditure, being incurred in the Assessee's existing line of business and resulting in no asset of enduring benefit, should be considered as revenue expenditure.

ITAT

The Revenue challenged the order of CIT(A) before the Hon'ble Tribunal. The Tribunal dismissed the Revenue's appeal, relying on its earlier rulings in **Indo Rama Synthetic (I) Ltd. v. CIT [2011] 333 ITR 18 (Delhi)** and **IL & FS Education & Technology Services (P.) Ltd. v. ITO [IT Appeal No. 765 (Mum.) of 2009]**, where expenses on abandoned projects were allowed as revenue expenditure in the absence of any new asset.

High Court

Revenue's Contention:

- Revenue argued that the **capital classification** of the expenditure in the company's books should remain unchanged, as the expenses were recorded as capital work in progress. Additionally, the fact that the project was abandoned did not automatically convert the capital expenditure into revenue expenditure.

Assessee's Contention:

- Assessee contended that since the software project was abandoned and no enduring benefit or capital asset was created, the entire expenditure should be treated as **revenue in nature**.

Judgement:

- The High Court dismissed the appeal, upholding the decision of ITAT that the expenditure was revenue in nature. It explained that if the expenditure was incurred for the same business already carried on by the Assessee, even if it involved expanding or starting a new unit, and there was unity of control and a common fund, such an expense should be treated as business expenditure. In such cases, the creation of a new business or asset becomes a relevant factor. If no new asset is created, the expenditure is of a revenue nature; if it results in a new asset with an enduring benefit, it is capital expenditure.
- In this case, the court found that the expenditure was made to facilitate business operations without resulting in the creation of a new asset. Thus, it correctly classified the expenditure as revenue in nature.

Cases relied upon:

Empire Jute Co. Ltd. v. CIT [1980] 3 Taxman 69/124 ITR 1 (SC); Indo Rama Synthetic (I) Ltd. v. CIT [2009] 185 Taxman 277/[2011] 333 ITR 18 (Delhi); CIT v. Tata Robins Fraser Ltd. [2012] 26 taxmann.com 15/211 Taxman 257 (Jharkhand)

Analysis

The ruling provides important clarification on the classification of expenses related to abandoned projects, especially in industries like software development. The Income Tax Act does not explicitly define or distinguish between capital and revenue expenditure, which provides flexibility in its interpretation. This flexibility is crucial, as the economic landscape and nature of such expenditures can evolve over time.
A key takeaway from this judgment is that if the expenditure is incurred within an existing business, even for expansion or starting a new unit, and there is unity of control and a common fund, it can be treated as revenue expenditure, provided it does not result in the creation of a new asset or enduring benefit. This principle is especially relevant in sectors like software development, where many projects may not lead to tangible capital assets.

Had the software been successfully developed and brought into use, the expenditure would have been classified as capital expenditure, as it would have created a new asset of enduring benefit. However, since the project was abandoned and no asset materialized, the expenditure is treated as revenue in nature, as it related to the company's mainline business and day-to-day operations. This aligns with the decision in **Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income-tax [1971] 82 ITR 363 (SC)**, where the Supreme Court clarified that an Assessee's failure to make an entry in the books of accounts due to a misunderstanding does not negate their legal right to claim a deduction. The right to a deduction is determined by tax law provisions, not by the mere fact of how the expenses were classified in the accounts.

The court emphasized that the classification in the books of accounts is not conclusive; the nature of the expenditure must be determined based on whether it creates a new asset or confers an enduring benefit. If it leads to the creation of a new business or asset with such a benefit, it is capital in nature. However, if it merely facilitates business operations without creating a capital asset, it should be classified as revenue expenditure. In this case, since the software development was abandoned, no enduring benefit or new asset was created, and the expenditure facilitated ongoing operations, thus rightly being treated as revenue.

-Ayush Agarwal

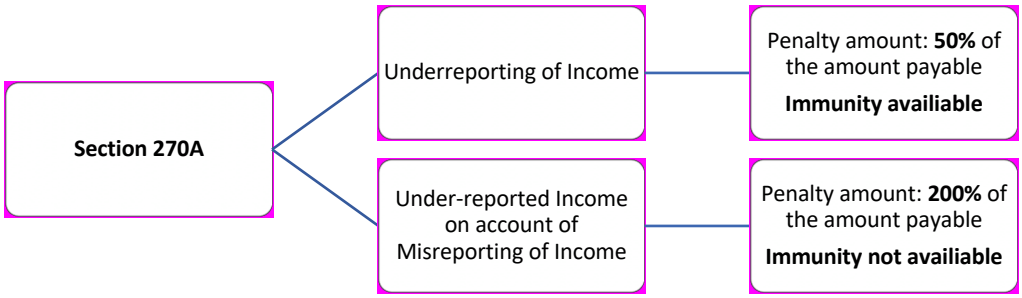
4. **Whether the Application of immunity under section 270AA could be validly rejected, given that the show cause notices issued by the AO did not clearly specify whether the penalty proceedings were based on underreporting or misreporting of income**

GE Capital US Holdings Inc.
v.
Deputy Commissioner of Income-tax
(International Taxation)
May 31, 2024
[2024] 163 taxmann.com 146 (Delhi)

Law Involved:

This case involves following section of the Income-tax Act, 1961:

- **Section 270A of the Income Tax Act, 1961:**
  This section deals with the imposition of penalties for **underreporting** or **misreporting of income**.



- **Section 270AA of the Income Tax Act, 1961:**
  This section provides an avenue for immunity from penalties under Section 270A if certain conditions are fulfilled by the assessee, one being that penalty proceedings cannot be initiated for **misreporting** as envisaged u/s 270A(9).

Factual Background:

- GE Capital US Holdings Inc. provided IT support services to customers in India for the AY: 2018-19 and A.Y. 2019-20.
- It received payments from its Indian customers for providing access to various software services and IT infrastructure.
- The Assessing Officer determined that these payments were royalty under Section 9(1)(vi) and Article 12 of the India-USA DTAA. Thus, AO passed Assessment Order further stating to commence separate Penalty proceedings for misreporting the Act under Section 270A.
- It is to underline the fact that the **assessment order had nowhere recorded any findings which may have established a case of misreporting as envisaged under Section 270A(9).**
- Various show cause notices under Section 270A, alleging that the company had **either** underreported or misreported its income were issued by AO.
- GE Capital filed application of immunity under Section 270AA against penalty imposed, claiming that all the conditions to approve the application have been fulfilled.
- Despite meeting these conditions, the AO rejected GE Capital's application for immunity.

Issue Involved:

whether the application for immunity under Section 270AA could be validly rejected, given that the show cause notices issued by the AO did not clearly specify whether the penalty proceedings were based on underreporting or misreporting of income.

Assessing Officer:

- Based on the classification of the payments as royalty, the AO initiated penalty proceedings under Section 270A, citing either underreporting or misreporting of income. **The AO did not specifically differentiate whether the penalty was imposed due to underreporting of income or underreporting as a consequence of misreporting of Income.**
- AO rejected GE Capital's application for immunity under Section 270AA, arguing that penalty proceedings were still ongoing and that GE Capital could still be found guilty of misreporting, which would disqualify it from immunity. AO further contended that payment of tax and interest did not automatically guarantee immunity, especially in cases where misreporting was suspected.

High Court:

GE Capital approached the Delhi High Court by filing a writ petition, challenging the rejection of its immunity application under Section 270AA.

Revenue's Contention:

- The Revenue defended the rejection of the immunity application on the grounds that penalty proceedings were still ongoing, and GE Capital could still be found guilty of misreporting, which disqualified it from immunity under Section 270AA.
- The Revenue argued that the ambiguity in the show cause notices (which referenced both underreporting and misreporting) did not prejudice the taxpayer and that the vagueness was not a sufficient ground to quash the penalty proceedings.

Assessee's Contention:

- Assessee maintained that the AO had not made any specific finding of misreporting in the assessment order.
- Assessee argued that the show cause notices issued by the AO were vague and failed to specify whether the penalty proceedings were based on underreporting or misreporting, which are considered as separate offensees under the law.

- GE Capital further contended that it had complied with all the statutory conditions for immunity under Section 270AA, including the payment of tax and interest and the decision not to file an appeal against the assessment order.

Judgement:

- The Delhi High Court ruled in favour of GE Capital. They examined the show cause notices issued by AO and found them to be vague and ambiguous.
- The Court noted that the notices failed to clearly specify whether the penalty was being imposed for underreporting or misreporting of income.
- They emphasized the importance of the **"specific limbs"** under Section 270A—i.e., underreporting and misreporting are **distinct offenses** and must be clearly identified. The failure to specify the exact offense rendered the penalty proceedings unsustainable.
- The Court also held that since the assessment orders did not contain any clear finding of misreporting, the rejection of the immunity application under Section 270AA was invalid.
- As a result, the Court quashed the show cause notices and the orders rejecting the immunity application, granting consequential relief to GE Capital.

Analysis:

- The Income Tax Law with respect to Section 270A mandates that the AO must clearly specify whether the penalty is being imposed for underreporting or misreporting of income, as these are **separate** and **distinct** offenses under the Income-tax Act.
- In the aforesaid context, parallel to be drawn between Section 271(1)(c) and Section 270A because of the decision rendered by **Karnataka High Court Bench** in the **Emerald Meadows case** (**CIT v. SSA's Emerald Meadows, I.T.A. No. 380/2015**). The show cause notice issued by AO in the afore mentioned case also did not specify in which limb of Section 271(1)(c), the penalty was sought to be levied. It is pertinent to note that Section 271(1)(c) speaks of various eventualities which may expose an assessee to face

imposition of penalties including concealment of particulars of income and furnishing of inaccurate particulars of income.

- Due to the absence of **specificity** in the show cause notices, the Karnataka High Court ruled that the notice must clearly specify the grounds on which the penalty is being imposed—whether for concealment of income or furnishing inaccurate particulars.
- Further, even in situation where an assessee did not seek immunity under Section 270AA, the penalty proceedings could still be challenged on the grounds that the specific reason for misreporting, as required under Section 270A(9), was not provided in the Assessment Order. The argument could be raised by the assessee asserting that while the term **"misreporting"** was used in the notices, no **specific transgression** as outlined in **Section 270A(9)** was identified.
- Without a clear finding that the assessee's actions fell within the scope of **misreporting** under Section 270A(9), the rejection of immunity under section 270AA was thus liable to be quashed.

-Muskan Agarwal

5. Donation to other charitable trust out of accumulated income does not violate the provisions of Section 11(2)

Commissioner of Income Tax (Exemptions)
v.
Jamnalal Bajaj Foundation
[2024] 163 ITR 77 (HC)

Law Involved

- **Section 11(1) of the Income Tax Act, 1961**
  This section establishes the computation of income which shall not be included in the total income of the previous year of the person in receipt of the income.

- **Section 11(2) of the Income Tax Act, 1961**
  Where eighty-five per cent of the income is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, provided the following conditions are complied with:
  (a) such person furnishes a statement in the prescribed form, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;
  (b) the money so accumulated or set apart is invested or deposited in the forms or modes;

(c) the statement referred to in clause (a) is furnished [at least two months prior to] the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.

- **Section 11(3) of the Income Tax Act, 1961**

  Any income referred to in sub-section (2) which—

  (a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

  (b) ceases to remain invested or deposited in any of the forms or modes, or

  (c) is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section,

  (d) is credited or paid to any trust or institution registered under section 12AA [or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution,

  shall be deemed to be the income of such person of the previous year.

Factual Background

The Assessee, Jamnalal Bajaj Foundation, is a Charitable Trust registered under section 12A of the Income Tax Act, had accumulated income under Section 11(2), which allows charitable trusts to set aside income for charitable purposes. The foundation made donations from this accumulated income to other charitable trusts. However, these donations were reversed within a short period of two months. The Assessing Officer (AO) disallowed the exemption claimed by the foundation.

Issue Involved

Whether the donations made to other charitable institutions by the foundation out of accumulated income violated section 11(3)(c) and Section 11(3)(d) and such donations should be considered as application of income for charitable purposes under section 11(1)(a) of the Income Tax Act?

Assessing Officer ("AO")

The Assessing Officer (AO) disallowed the exemption claimed by the foundation, arguing that donations to other trusts amounted to utilization of funds for purposes other than for which the income had been accumulated, thus attracting the provisions of section 11(3)(c) and section 11(3)(d).

CIT (A) & Tribunal

The CIT(A) ruled in favor of the Assessee, and this decision was upheld by the Income Tax Appellate Tribunal (ITAT).

High Court

Revenue's Contention:

When donations are made to other charitable institutions, it results in the diversion of funds for purposes not intended by the original accumulation under Section 11(2). Hence, the exemptions claimed should be disallowed, and the income should be treated as taxable.

Assessee's Contention:

Donations to other charitable institutions would still be considered an application of income for charitable purposes as long as the funds are applied to activities that promote charitable purposes, even if the donations were temporary.

Judgement:

- The reversal of the donation within two months played a crucial role in the Court's decision. The temporary nature of the donation meant that the funds were not permanently diverted from the charitable purpose for which they were accumulated.
- The Court noted that the Explanations to Section 11(1) and 11(2), would not apply retroactively to the facts of the present case (AY 2009-10).

However, it provided guidance on how these provisions would interact with future cases involving corpus donations.

- ❖ It held that such donations are to be treated as an application of income for charitable purposes under Section 11(1)(a), and therefore, the foundation is entitled to the exemption.
- ❖ The Court ruled in favor of the Assessee, holding that the donations made by the foundation to other charitable institutions did not violate the provisions of Section 11(3).

Analysis

- ❖ To summarize, The Court made a distinction between cases where income is diverted for non-charitable purposes and cases where donations are made to other charitable organizations for similar purposes. It ruled that donations to other charitable institutions with similar objects would still satisfy the requirement for the application of income for charitable purposes under Section 11 of the Income Tax Act. Although Section 11 subsection (3) clause (c) and clause (d) are contrary to the aforementioned judicial pronouncement, they would not apply in this case.
- ❖ This case reinforces the principle that donations made by one charitable trust to another for a similar purpose do not disqualify the donor trust from availing the tax exemption under Section 11, as long as the purpose remains charitable. The decision protects charitable trusts from harsh interpretations of the law when they engage in legitimate transfers of funds to other charitable organizations.

-Gunjan Gupta

6. Stay of Tax Demand: Rejection Order, being Quasi Judicial, has to be well reasoned and speaking

Principal Commissioner
of Income Tax
v.
Kunj Bihari Lal Agarwal
[2023] 464 ITR 738 (Rajasthan)
May 1, 2023

Law Involved

- **Section 220(6) of the Income Tax Act, 1961 ("IT Act")**
  "Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of."

Factual Background

- A survey was conducted at the premises of the Assessee. Based on the survey report, assessments for the Assessment Years 2014-15 and 2016-17 were reopened, and Assessment Year 2020-21 was selected for scrutiny. As a result, significant demands were raised against the Assessee by the Assessing Officer ("AO"), amounting to over ₹25 crore cumulatively.
- The Principal Commissioner of Income Tax (PCIT) granted a stay of the demand till the disposal of the appeal, contingent upon the payment of 20% of the total demand.

- ❖ The Assessee filed a writ petition, believing that his fundamental rights have been violated and there is no adequate alternative legal remedy available. In such cases, appeals cannot be made before the CIT or ITAT, as these tribunals lack the jurisdiction to address constitutional matters or issues related to fundamental rights.
- ❖ Assessee contending that the order was non-speaking, violated the Principles of Natural Justice, and did not consider financial hardships, prima facie case, balance of convenience, and irreparable loss.

Issue Involved

Whether the PCIT order requiring a 20% payment of the total demand to stay the demand was valid when the PCIT failed to consider financial hardship and other relevant factors.

Principal Commissioner of Income Tax

The PCIT decision to stay the demand was based on administrative circulars issued by the CBDT, **particularly Instruction No. 1914** and subsequent office memorandum. The PCIT failed to address the financial hardship and the other specific contentions raised by the Assessee, such as the downfall in the export industry and other relevant hardships.

High Court

Assessee's Contention:

- ❖ Assessee argued that the assessment orders were mechanically passed without considering the facts of the case, leading to undue hardship.
- ❖ Assessee highlighted **Section 119** of IT Act in which CBDT has the power to issue orders, instructions and directions to other income tax authorities. However, while discharging Quasi-judicial Judgments such circulars, instructions are not binding on the authorities.
- ❖ Section 254(2A) of IT Act mandates that the ITAT is empowered to grant a stay on the recovery of the disputed amount for a period not exceeding 180 days, provided the Assessee deposits **at least 20%** (which means

tribunal bound to grant stay subject to minimum deposit of 20% amount) of the tax, interest, fee, penalty, or any other sum payable.

- Reliance was placed on various judicial precedents, including the Supreme Court's ruling in **Principal Commissioner of Income Tax vs. LG Electronics India (P) Ltd.,** which emphasized that authorities could deviate from administrative instructions when exercising quasi-judicial functions.

Revenue's Contention:

- The Revenue argued that the stay order and conditions were consistent with the guidelines issued by the Central Board of Direct Taxes (CBDT), which require a 20% deposit of the demand amount.
- Impugned order was defended as being lawful and aligned with the department's procedural norms, asserting no irregularities or procedural lapses occurred.

The Rajasthan High Court found that the **PCIT's order was non-speaking and lacked proper reasoning**. It noted that the PCIT had failed to **address crucial factors** such as

- **Non-Speaking Order:** The court highlighted the importance of issuing a reasoned and speaking order, particularly when considering stay applications involving large demands. The PCIT's failure to consider the specific circumstances and hardships of the Assessee violated the Principles of Natural Justice.
- **Quasi-Judicial Role of PCIT:** The ruling reaffirmed that a quasi-judicial authority like the PCIT must independently assess the facts and not merely follow administrative circulars mechanically. The PCIT has the discretion to reduce the deposit amount below 20%, based on the individual circumstances of the case.
- **High-Pitch Demand:** The demand raised against the Assessee was considered high-pitched (i.e., excessive in relation to the returned income). In such cases, administrative circulars themselves provide for flexibility in determining the amount to be paid for granting a stay.
- **Key Considerations**: The case emphasized that while deciding on stay applications, the authority must consider several factors, including:

a. Financial hardship
b. Prima facie case
c. Balance of convenience
d. Irreparable loss

The court ruled that administrative circulars cannot override the PCIT's role as a quasi-judicial authority, which must provide a reasoned decision, especially when there is scope to reduce the deposit amount below 20%.
The court quashed the PCIT's order and remanded the matter for a fresh decision, directing the PCIT to consider all relevant factors, including the hardships pointed out by the Assessee.

Judgement:

- The High Court of Rajasthan found the impugned order to be unsustainable due to a lack of reasoning and failure to address the petitioner's financial hardship. The Court noted that the PCIT merely relied on administrative circulars without exercising discretion or addressing the balance of convenience, irreparable injury, or prima facie case.
- The Court quashed the PCIT's order and remanded the matter back for reconsideration, directing that the PCIT could order a deposit of a lesser amount than 20% while taking into account the hardships detailed by the petitioner.

Analysis

This judgment sets an important precedent by reaffirming that tax authorities, when exercising quasi-judicial powers, must independently evaluate the facts of each case. They should not blindly follow administrative instructions, but instead ensure that the taxpayer's rights are safeguarded, and that decisions are made with appropriate consideration of the circumstances. This case also highlights the importance of issuing reasoned orders, especially in matters involving substantial financial consequences.

There are 3 types of Decisions; -

Judgments	Explanation
Judicial Decision	These are given by courts, such as the High Court or Supreme Court, which have the authority to interpret laws and handle disputes related to constitutional or legal rights. These judgments are binding and set legal precedents.
Administrative Decision	These are decisions made by tax authorities like the Commissioner of Income Tax (CIT) or the Assessing Officer. They deal with the implementation and enforcement of tax laws, such as issuing notices, conducting assessments, and ensuring compliance with tax regulations.
Quasi-Judicial Decision	These are decisions made by bodies like the Income Tax Appellate Tribunal (ITAT) or the Settlement Commission. They have the authority to hear appeals and disputes between taxpayers and the tax department. Although they are not courts, their decisions have a legal impact similar to judicial decisions and are based on evidence and legal principles.

- Harsh Jain

7. Digital Evidence: whether conclusive or corroboration needed?

Atul Tantia
v.
Deputy Commissioner
of Income Tax

I.T.A. No. 492/Kol/2021
March 28, 2023

Law Involved

- **Section 69A of Income Tax Act, 1961**

  "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

Factual Background

Atul Tantia filed his Income Tax Return for the Assessment Year 2018-19, declaring an income of Rs. 58,45,250. During a search operation under section 132 on September 12, 2017, SMS and WhatsApp messages were found

suggesting unaccounted cash transactions between GPT Group Companies and others. Atul Tantia's mobile data was retrieved, but he did not admit the ownership of the money or the transactions. The Assessing Officer (AO) added Rs. 20,00,000 as unexplained income under section 69A of the Income Tax Act.

Issue Involved

Whether the unexplained Rs. 20,00,000 found in mobile messages should be added to Atul Tantia's income under Section 69A of the Income Tax Act as unexplained money.

Assessing Officer ("AO")

The AO, relying on the messages found on Atul Tantia's mobile phone, concluded that the unaccounted cash transactions were directed by Atul Tantia, even though the Assessee denied ownership of the transactions. Since no satisfactory explanation was provided, the AO made an addition of ₹20,00,000 as unexplained income.

CIT(A)

On appeal to CIT(A), the CIT(A). upheld the AO's addition of ₹20,00,000, reasoning that the mobile phone was found at Atul Tantia's premises, which created a presumption that it belonged to him. The CIT(A) rejected the explanation provided by the Assessee and upheld the addition.

ITAT

Revenue's Contentions:

The Revenue argued that the mobile phone, found on the Assessee's premises, contained SMS and WhatsApp messages indicating unaccounted cash transactions involving GPT Group concerns. They presumed the phone and the transactions belonged to the Assessee, adding Rs. 20,00,000 to his income under

section 68 due to his failure to provide a satisfactory explanation. The CIT(A) upheld this addition, citing a lack of evidence from the Assessee to counter the claims.

Assessee's Contentions:

The Assessee contended that the mobile belonged to his employee, not him, and that the messages did not prove he owned the alleged cash. He argued that messages alone are not conclusive evidence for income addition, relying on case law that requires corroborative evidence for such actions. He also denied admitting to any involvement in the transactions during the search.

Judgement:

The addition was based on WhatsApp and SMS messages found during a search at the GPT Group's premises, which allegedly indicated unaccounted cash transactions. The Assessing Officer claimed the mobile phone belonged to Atul Tantia, despite his denial, and made the addition due to the absence of a plausible explanation. The CIT(A) upheld the AO's decision, reasoning that the messages suggested involvement in cash transactions. However, the Income Tax Appellate Tribunal (ITAT) ruled in favor of Atul Tantia, stating that digital evidence such as WhatsApp and SMS messages are more reliable than loose papers but they are not conclusive without any corroborative evidence and insufficient to make such additions. The Tribunal set aside the CIT(A)'s order and directed the deletion of the Rs. 20 lakh addition, allowing Atul Tantia's appeal.

Cases relied upon

ACIT vs. Machukonda Shyam in ITA No. 87/Viz/2020; order dt. 23/09/2020; A. Johnkumar vs. DCIT in ITA No. 3028/Chny/2019, order dt. 13/05/2022 (Chennai ITAT).

Analysis

In today's era with the evolution and emergence of technology, digital evidence is a new kind of evidence that has come into foreplay. This judgment analyzes

the importance of digital evidence and states that digital evidence can be taken as evidence but it cannot be looked at in isolation. To prove digital evidence, support of other corroborative evidence is necessary. Digital evidence alone is not sufficient and conclusive. This is an important ruling as with the widespread use of technology such as whatsapp and SMS, people can be implicated of charges they may actually have not committed solely on the basis of a messages sent on such platforms. Just how in Income Tax loose papers are not considered books and are in fact called dumb documents. To prove any thing written on loose papers as evidence corroborative evidence is necessary. Similarly, mere messages sent on digital platforms cannot be a way to implicate any person of any charge.

- Avinash Babani

LIST OF LATIN TERMS:

S. No.	Terms	Meaning
1	Ab initio	From the beginning
2	Ad hoc	For this specific purpose
3	Ad hominem	Directed against a person rather than the position they maintain
4	Ad valorem	According to value; in proportion to the value
5	Amicus curiae	Friend of the court; a person or organization that is not a party to a case but offers expertise or insight
6	Apropos	Relevant to the current topic or situation
7	Bona fide	In good faith
8	Caveat	A warning about a potential problem
9	Caveat Emptor	Let the buyer beware, the principle that the buyer is responsible for checking the quality and suitability of goods before purchase
10	Consensus ad idem	Mutual agreement on terms of a contract
11	De facto	In fact, actual
12	De jure	Legally valid or entitled
13	De novo	Anew; from the beginning
14	Dicta	Judge's comments in a previous case, not essential to decision
15	Ejusdem Generis	Interpreting a list to include similar items
16	Error in facto	Claiming the court made a factual error
17	Error in judicio	Claiming the court misinterpreted the law
18	Ex parte	On one side only (often referring to court proceedings)
19	Ex post facto	Applying a law retroactively
20	Habeas corpus	That you have the body; a writ requiring a person under arrest to be brought before a judge or into court
21	Infra	In a later section of a document or argument
22	Inter alia	Not an exhaustive list
23	Interlocutory	Provisional, temporary
24	Ipse dixit	Appeal to authority without justification
25	Ipso facto	By the fact itself
26	Jurisdiction	Legal authority, power
27	Laches	Failure to act promptly, affecting legal rights
28	Locus standi	The right to bring an action or to be heard in court
29	Mandamus	Order from a higher court to a lower court to

		perform a specific duty
30	Mens rea	Guilty mind, criminal intent
31	Modus operandi	Method of operation
32	Mutatis Mutandis	Applying precedents with adjustments
33	Obiter dictum	Incidental remark, opinion not essential to the decision
34	Pari passu	Arguing for equal treatment with other taxpayers
35	Per curiam	By the court (often refers to a decision issued collectively by a court)
36	Per se	Emphasizing a single fact or provision holds independent legal weight
37	Prima facie	At first sight, based on first impression
38	Pro bono	For the public good, done without charge
39	Quid pro quo	Something for something
40	Quoram	Minimum number of members required for a meeting
41	Ratio decidendi	The reason for the decision
42	Res juducata	Matter already judged
43	Sine die	Without a day; without assigning a day for a further meeting or hearing
44	Sine qua non	Without which it could not be
45	Stare decisis	To stand by things decided
46	Supra	Above, earlier in the document or discussion
47	Ultra vires	Beyond one's legal power or authority
48	Vis-a-vis	In relation to, compared with

HOW TO READ A CITATION:

(2024) 454 ITR 61 (SC)

- (2024) – Year of order reported
- 454 – Volume
- ITR – Journal where order is reported
- 61 – Page
- (SC) – Court (Supreme Court)

R SOGANI & ASSOCIATES

0140-2222734

rsa@soganiprofessionals.com

R-20, Yudhister Marg, C- scheme, Jaipur

R Sogani & Associates