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## Tax Digest

- Recent case laws

March 10, 2025



### Due date extended for Form 56F

*CBDT Circular No. 2/2025 dated Feb. 18th, 2025.*

Due date of filing of report of the accountant in Form 56F as required to be filed under sub-section (8) of section 10AA read with sub-section (5) of section 10A of the Act, for Assessment year 2024-25 has been extended from the specified date under section 44AB of the Act to **31.03.2025** vide **CBDT Circular No. 2/2025 dated Feb. 18th, 2025.**

## 1. HC Dismissed Writ Petition Seeking Direction to Conduct Inquiry Into Alleged Illegal Cash Transactions in Marriage

In the instant case<sup>1</sup>, the petitioner and respondent no. 3 got married in 2022. However, the marriage failed, and respondent no. 3 deserted the petitioner on 01.06.2024, taking all her belongings and valuables. Subsequently, FIR No. 238/2024 came to be registered by the police.

Thereafter, a complaint was filed alleging that respondent nos. 3 to 6 gave Rs. 2 crores as dowry and simultaneously spent crores of rupees at the wedding. Accordingly, the petitioner submitted a formal complaint to the Income Tax Department on 20.11.2024 seeking an investigation/audit of the sources of income of respondent nos. 3 to 6 and their undisclosed cash transactions.

However, the Income Tax Department failed to act on the complaint. Aggrieved by the inaction, the petitioner filed a writ petition to the Delhi High Court.

The High Court held that the petitioner was seeking a roving and fishing inquiry through the court process. This was clearly impermissible and cannot be countenanced. The petition was based on a matrimonial feud between the petitioner and respondent no. 3.

The disputes were hotly contested and involved highly complex and disputed questions of facts which will not be within the purview of the Income Tax department to adjudicate. Similarly, such disputed questions of facts also cannot be adjudicated under Article 226 of the Constitution of India. The writ petition was dismissed.

## 2. Cross-Objection Not Maintainable in Appeal Filed Under Section 260A

In the instant case<sup>2</sup>, the assessee was a company and was part of the ND Group. A search and seizure operation was undertaken in terms of section 132(1) in the case of the ND Group. During that search, several documents and material relating to the assessee were seized from the premises of APPL. The proceedings under section 153C were initiated against the assessee.

The Assessing Officer (AO) passed the assessment order by making certain additions. On appeal, CIT(A) granted partial relief to the assessee. Both the assessee and the revenue preferred an appeal to the Tribunal. The Tribunal partly allowed the appeal filed by the assessee and granted partial relief. Aggrieved-assessee filed a cross-objection to the High Court against the order of the Tribunal. The revenue objected that the cross-objection would not be maintainable in light of section 260A neither envisaging nor creating such a remedy.

The High Court held that section 260A refrains from incorporating a specific provision permitting the filing of a cross-objection. This starkly contrasts what is provisioned for at the second appeal stage before the Tribunal. Thus, while at the stage of an appeal reaching the board of the Tribunal, both the revenue as well as the assessee are statutorily enabled to prefer a cross-objection on receipt of notice of an appeal, the Legislature has not made any

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<sup>1</sup> Ateesh Agarwal vs. Union of India - [2025] (High Court of Delhi)

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<sup>2</sup> Principal Commissioner of Income-tax vs. Nagar Dairy (P.) Ltd. - [2025] (High Court of Delhi)

corresponding or parallel provision in section 260A.

It is also pertinent to note that while that cross-objection could be to "any part of such order" and which forms the subject matter of the appeal filed before the Tribunal, the right of the respondent stands confined to urging for consideration that the appeal does not give rise to any substantial question of law.

The above aspect is of critical significance and representative of the legislative intent of narrowing down the scope of the appeal that may come to be instituted under section 260A. If one were to countenance a right of preferring a cross-objection despite the aforementioned statutory prescription, it would result in not only widening the scope of the intended appeal proceedings but also amount to the Court by way of legal interpretation reading into section 260A the existence of a substantive right which the statute otherwise forbears.

### **3. No Reassessment if Trust Had No Taxable Income; Excess of Expenses Over Income is Not Escaped Income**

In the instant case<sup>3</sup>, the Assessee was a public charitable trust registered under the provisions of the Bombay Public Trust Act, 1950. For the relevant assessment year, the assessee did not file the return of income as there was no taxable income. The Assessing Officer (AO) issued a reopening notice under section 148A(a) against the assessee based on

information that the assessee had deposited a certain amount in its bank account.

In response to the notice, the assessee submitted that it was running a resident school/ashram shala and had received a maintenance grant from the State Government Department. The same was deposited in the bank account and withdrawn during the year. It was utilized towards the expenses of the ashram shala.

However, AO issued an order under section 148A(d) along with the notice under section 148. The matter then reached the Gujarat High Court.

The High Court held that it was clear that from the reasons recorded in both the notices that there was no cash deposit made by the assessee in any of the bank accounts. There was no information of any escaped income with the AO to initiate the reopening proceedings.

Moreover, the explanation given by the assessee in reply to the notice and the documents annexed therewith, prima facie, showed that there was no income earned by the assessee. There was an excess of expenditure over income for the year under consideration. As such, the assessee was not liable to file the return of income if there was no taxable income or exemption claimed by the assessee.

Thus, the AO could not have assumed the jurisdiction to reopen the assessment.

### **4. AO Can't Treat Turnover of Firm Running Nursing Home as Professional Income if Doctors Declared Fees in Their ITRs**

In the instant case<sup>4</sup>, the assessee is a partnership firm operating a nursing home. A survey was conducted under Section 133A during which it was

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<sup>3</sup> Mahatma Gobarji Seva Sansthan ILOL vs. Income-tax Officer Ward - 1 - [2025] (High Court of Gujarat)

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<sup>4</sup> Kety Medicare Centre vs. ACIT CC-2, Thane - [2025] (Mumbai-Trib.)

discovered that the assessee had suppressed its receipts. The statement of one of the partners was recorded, wherein he admitted to an additional income of Rs. 86,25,000 due to the suppression of receipts for the relevant financial year.

Subsequently, the assessee filed its income tax return (ITR), declaring a total turnover of Rs. 1,40,15,090. The profit was reported under Section 44AD of the Act at a rate of 8.9% of the turnover. The assessee also disclosed interest income, and the total income declared in the return was Rs. 15,98,720. Subsequently, the assessee filed its income tax return (ITR), declaring a total turnover of Rs. 1,40,15,090. The profit was reported under Section 44AD of the Act at a rate of 8.9% of the turnover. The assessee also disclosed interest income, and the total income declared in the return was Rs. 15,98,720.

During the assessment proceedings, the AO considered the recorded statement of the partner, particularly paragraph 18, in which the additional income of Rs. 86,25,000 was acknowledged. The AO rejected the assessee's declared income in the return and added back the undisclosed income of Rs. 86,25,000.

The matter reached the Mumbai Tribunal.

The Tribunal held that the assessee was a partnership firm and was providing services such as patient room rentals, X-ray facilities, and other ancillary inpatient department (IPD) services. The income generated from doctors' fees was separately declared by the respective doctors in their individual tax returns. Therefore, the assessee cannot be classified as a 'person' engaged in the 'medical profession'.

A combined reading of Sections 44AD(6) and 44AA(1) clearly establishes that the provisions of Section 44AD do not apply to individuals engaged in

the medical profession. However, the assessee was a partnership firm providing such services. Therefore, the turnover of the assessee firm should not be considered as professional income.

In this regard, the Tribunal placed reliance on the decision in *S. Khader Khan Son* [2008] 300 ITR 157 (Madras), wherein it was held that a statement recorded under section 133A has no evidentiary value, and any admission made during such statement cannot be made the basis of addition. The assessee has consistently maintained a net profit ratio ranging between 6% and 11% on its turnover in preceding and succeeding years, which the revenue authorities have accepted. Accordingly, the addition of Rs. 86,25,000 was quashed.