

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.519/Mds/2015

निर्धारण वर्ष / Assessment Year : 2004-05

Smt. S. Sivagamasundari,
6/69, EB Main Road, Bykara,
Madurai – 625 004.

v. The Income Tax Officer,
Ward – II(3),
Madurai.

PAN : AEGPS 0374 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. B. Nischal, JCIT

सुनवाई की तारीख/Date of Hearing : 29.12.2015

घोषणा की तारीख/Date of Pronouncement : 12.02.2016

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Madurai, dated 09.02.2015 and pertains to assessment year 2004-05.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is with regard to

reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, a search was conducted by the Revenue authorities under Section 132 of the Act on 23.08.2006 in the residential premises of Velmurugan Group. On the basis of the material found during the course of search operation, the assessment was completed under Section 153C of the Act on 31.12.2008. The Ld.counsel further submitted that there was search for second time in the premises of Shri K. Paneerselvam on 18.03.2010. On the basis of the material found during the course of search operation, a notice was issued under Section 148 of the Act on 28.03.2011. The Ld.counsel further submitted that when some material was found during the course of search operation, the Assessing Officer is bound to make assessment under Section 153C of the Act. Therefore, reopening of assessment under Section 147 of the Act by issuing a notice under Section 148 of the Act is not called for. Placing reliance on the decision of Amritsar Bench of this Tribunal in ITO v. Arun Kumar Kapoor (2011) 58 DTR 201, the Ld.counsel submitted that when the material was found during the course of search operation, the provisions of Section 153 of the Act are applicable which exclude the application of Sections 147 and 148 of the Act. Therefore, issue

of notice under Section 148 of the Act for reopening of assessment under Section 147 of the Act is illegal. Hence, the very reopening itself is not correct. On a query from the Bench, the Ld.counsel clarified that the earlier assessment consequent to the search conducted on 23.08.2006, was made under Section 153C of the Act on 31.12.2008 and the Assessing Officer by a notice dated 28.03.2011 reopened the assessment earlier made under Section 153C of the Act on 31.12.2008. The Ld.counsel further clarified that even though there was no prohibition in the Income-tax Act for issuing notice under Section 148, consequent to second search conducted by the Revenue, provisions of Section 153C of the Act exclude the application of Sections 147 and 148 of the Act. Therefore, the reopening is not justified.

3. Coming to the merit of the addition made by the Assessing Officer, the Ld.counsel for the assessee submitted that during the course of search operation in the case of Shri K. Paneerselvam, an agreement dated 11.12.2003 relating to the assessee was found. Referring to the agreement dated 11.12.2003, a copy of which is available at page 11 of the paper-book, the Ld.counsel submitted that even though it was agreed to transfer the bus along with route

permit for a sale consideration of ₹70,75,000/-, subsequently it was found that the route permit was expired on 23.04.2004 and the Regional Transport Authority refused to renew the route permit beyond 23.04.2004. Therefore, the assessee could not proceed further pursuant to the agreement found at page 11 of the paper-book. In fact, the agreement was cancelled and the advance received consequent to the agreement dated 11.12.2003 was refunded to the respective person. Subsequently, the very same bus was sold to the wife of Shri Manoharan for a sale consideration of ₹3,50,000/-.

4. The Ld.counsel for the assessee further submitted that the bus was in fact sold to Smt. M. Krishnaveni, wife of Shri M. Manohara, for a sum of ₹3,50,000/-. Since the route permit expired on 23.04.2004 and renewal of route permit was also rejected by the Regional Transport Authority, the bus alone was sold for ₹3,50,000/- However, the Assessing Officer without any material, observed that in the ledger of Shri M. Manoharan, the account of Shri K. Paneerselvam shows only accommodation nature. This observation of the Assessing Officer is not supported by any material. Since the route permit expired, according to the Ld.

counsel, the bus was sold only for ₹3,50,000/-. Therefore, the addition of ₹67,25,000/- is not justified.

5. On the contrary, Dr. B. Nischal, the Ld. Departmental Representative, submitted that a search was conducted in the premises of the assessee on 23.08.2006. The assessee was admittedly owner of a bus having Regn. No.TN 58 C 7980 plying from Madurai to Dindigul via Sholavandan. The assessment was in fact completed under Section 153C of the Act on 31.12.2008. Subsequently, a search was conducted on 18.03.2010 in the case of Shri K. Paneerselavem, Kulithalai. The Revenue authorities found loose sheet of paper dated 11.12.2003, which acknowledges the receipt of ₹50,00,000/- out of the total consideration of ₹70,75,000/- for sale of bus bearing Regn. No.TN 58 C 7980 along with route permit between Madurai and Dindigul, by the assessee to Shri K. Manoharan. According to the Ld. D.R., the said Shri K. Manoharan is a brother-in-law of Shri K. Paneerselvam. During examination, Shri Paneerselvam admitted that the purchase was made by his brother-in-law Shri K. Manoharan and also clarified that the transaction was not disclosed to the Department. Therefore, according to the Ld. D.R., the Assessing Officer issued a notice

under Section 147 of the Act to reopen the assessment completed under Section 153C of the Act. According to the Ld. D.R., after reopening what was assessed is only an undisclosed income for the block period. It is not a regular assessment. Since a block assessment was already made under Section 153C of the Act on the basis of material found during the search operation in the case of Velmurugan group companies, according to the Ld. D.R., it cannot be said that the issue of notice under Section 148 of the Act is not justified. Since the Assessing Officer has made block assessment under Section 153 of the Act on 31.12.2008, according to the Ld. D.R., the said assessment was sought to be reopened by issue of notice under Section 148 of the Act. The Ld. D.R. further clarified that under the new scheme of block assessment, the assessment has to be made year-wise and the rate of tax is also similar as that of regular assessment under Section 143(3) of the Act. Therefore, according to the Ld. D.R., it may not be necessary to frame another assessment under Section 143(3) of the Act or under Section 153C of the Act. Hence, according to the Ld. D.R., the Assessing Officer rightly reopened assessment under Section 147 of the Act.

6. Coming to the merit of the addition made by the Assessing Officer, the Ld. Departmental Representative submitted that admittedly, there was an agreement for sale of bus along with route permit to Shri K. Manoharan, who is none other than brother-in-law of Shri K. Paneerselvam, for a total consideration of ₹70,75,000/-. The assessee has received a sum of ₹50,00,000/-. Now the assessee claims that the route permit expired on 23.04.2004 and the renewal of the route permit was also rejected by the Regional Transport Authority. The fact remains that the assessee filed an appeal before State Transport Appellate Tribunal and the latter allowed the appeal of the assessee and directed the Regional Transport Authority to renew the route permit. Accordingly, the route permit was renewed. Therefore, it is not correct to say that the bus alone was sold. According to the Ld. D.R., the bus was transferred along with route permit, therefore, it is not correct to say that the assessee has received only ₹3,50,000/-. The Ld. D.R. further submitted that even though originally the assessee proposed to sell the bus along with route permit to Shri K. Manoharan, subsequently the bus was sold to Smt. M. Krishnaveni, who is none other than the wife of above said Shri K. Manoharan and the transaction was not disclosed to the Department. Even though the

assessee claims that the advance received was refunded to Shri K. Manoharan, according to the Ld. D.R., no material is available on record to suggest that the assessee has refunded the advance of ₹50,00,000/-. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the actual receipt of ₹50,00,000/- is admitted by the assessee herself during the year under consideration. The right to receive the consideration of ₹70,75,000/- was based on the agreement entered into by the assessee with Shri K. Manoharan. Therefore, under mercantile system of accounting, even though part of sale consideration was received, subsequently, the Assessing Officer rightly found that the entire amount of ₹70,75,000/- has to be assessed in the year under consideration. Accordingly, by reducing the receipt of ₹3,50,000/- disclosed by the assessee, a sum of ₹67,25,000/- was taken as capital gain for the year under consideration.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The main contention of the assessee is that after the search operation in the case of Shri K. Paneerselvam, the Assessing Officer ought not to have reopened the assessment by issuing notice under Section 148

of the Act. According to the Ld. A.R., on the basis of search operation, the proceeding should have been initiated under Section 153C of the Act. The fact remains that this is the second round of search conducted by the Revenue authorities subsequent to the material found in the case relatable to the assessee. In the first round of litigation, the search was conducted in the premises of Velmurugan group of companies where the material relating to the assessee was found. Therefore, assessment under Section 153C of the Act was completed on 31.12.2008. Since the block assessment was already completed, the Assessing Officer, on the basis of material found during the search operation on 18.03.2010 in the case of Shri K. Paneerselvam, reopened the block assessment completed on 31.12.2008 by issuing notice under Section 148 of the Act. Therefore, by issuing notice under Section 148 of the Act, the Assessing Officer, in fact, reopened the block assessment which was completed on 31.12.2008 under Section 153C of the Act. In fact, after reopening, the block assessment was made only under Section 153C of the Act. In view of the above factual situation, this Tribunal do not find any reason to interfere with the order of the lower authority.

8. Now coming to the merit of the addition, admittedly, an acknowledgement, which disclosed the receipt of ₹50,00,000/- out of sale consideration of ₹70,75,000/- by sale of the bus bearing Regn.No.TN 58 C 7980 along with route permit between Madurai and Dindigul, was found. The bus was proposed to be sold along with route permit to Shri K. Manoharan, brother-in-law of Shri K. Paneerselvam. Subsequently, the assessee sold the bus to Smt. M. Krishnaveni, wife of Shri K. Manoharan, for a sum of ₹3,50,000/- The assessee explained before the Assessing Officer that the route permit was expired on 23.04.2004 and the Regional Transport Authority refused to renew the route permit. The fact remains that the State Transport Appellate Tribunal allowed the appeal of the assessee and thereby the route permit was renewed. Therefore, the agreement for sale of bus is a composite one, including the route permit. Merely because there was a time gap for renewal of the route permit, this Tribunal is of the considered opinion that it cannot be construed as what was sold by the assessee is only the bus and not route permit. Though renewal was initially rejected by the Regional Transport Authority, the same was subsequently renewed by the Appellate authority. Therefore, the legal presumption is that the route permit continues without any

interruption. In those factual situation, this Tribunal is of the considered opinion that the assessee sold the bus along with route permit for a sale consideration of ₹70,75,000/-. It may be a case of the assessee that the entire sum of ₹70,75,000/- was not received and what was received was only ₹50,00,000/- as per the receipt found during the search operation. As rightly observed by the CIT(Appeals), the assessee followed mercantile system of accounting, therefore, the right to receive the balance amount out of ₹70,75,000/- is accrued to the assessee, therefore, the same has to be taken as income for computation. Accordingly, after deducting ₹3,50,000/- declared by the assessee, the Assessing Officer has rightly added ₹67,25,000/- which was confirmed by the CIT(Appeals). This Tribunal do not find any reason to interfere with the order of the lower authority and the same is confirmed.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced on 12th February, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 12th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Madurai
4. आयकर आयुक्त/CIT-2, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.