

आयकर अपीलीय अधिकरण, B/“SMC” न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
B/“SMC” BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.2120/Mds./2016

(Assessment Year : 2011-12)

Shri P.Divagar,
No.3,First cross,
Saranarayanan Nagar,
Peddiyarpalayam,
Pondicherry-10.
PAN ASGPD 8572 Q

(अपीलार्थी /Appellant)

Vs. The Income Tax officer,
Ward I(3),
Puduchery.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Mr.T.Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing : 30.11.2017
घोषणा की तारीख /Date of Pronouncement : 08.12.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A), Puducherry dated 18.05.2016 pertaining to assessment year 2011-12.

2. The assessee has raised the following grounds for adjudication.

1. The order of the Commissioner of Income-tax(Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.

Notice u/s.148 and Assessment bad in law:

2. The CIT(A) ought to have seen that the issue of notice u/s.148 for reopening is bad in law and hence the assessment framed under sec.147 r.w.s.143(3) is liable to annulled.
3. The CIT(A) failed to appreciate that the assessee having filed the return of income on 25.3.13, the notice for reopening issued on 17.6.13 is not in accordance with law, as the time for issuance of notice u/s. 143(2) was available.
4. The CIT(A) further failed to appreciate that there can be no escapement of income for issuing 148 notice when the valid return filed is pending for assessment and hence there was apparent lack of jurisdiction to issue the notice u/s.148 and complete the assessment under sec.147 of the Act.
5. The CIT(A), even otherwise, failed to appreciate that the assessment completed on 15.12.14 was barred by limitation, as the assessment ought to have been completed by 31.3.14 and hence is void in law.
6. The CIT(A) ought to have considered that the reasons recorded for reopening was never furnished to the assessee and hence the proceedings were vitiated in law, in the light of the judicial precedents and thus held that the notice issued u/s.148 and the consequential order of assessment are not accordance with law.

II Claim of exemption u/s.54F:

7. The CIT(A) erred in confirming the denial of exemption under sec.54F of the Act.
8. The CIT(A) failed to appreciate that the assessee had sold the property in August 2010 and reinvested the entire sale consideration on the new

property, a residential house by July 2011 and hence the assessee was entitled to the exemption u/s.54F of the Act.

The CIT(A) further failed to appreciate that the reinvestment of the sale consideration in a new property within the statutory period was the sole criterion for exemption and not the completion of construction and hence the denial of exemption was arbitrary and unsustainable on the facts of the case.

10. The CIT(A) having observed that the assessee had invested more than the sale consideration within the statutory period of three years from date of sale, ought to have allowed the claim u/s.54F regardless of the date of completion of construction.

11. The C)T(A) ought to have also seen that the reinvestment of sale consideration made in residential property in the name of assessee's wife was valid and thus the assessee was fully justified in the claim for exemption.

3. The brief facts of the case are that the assessee is a salaried employee and filed its return of income on 25.03.2013 for assessment year 2011-12 admitting his total income of 2,17,740/- under the head salary. The assessee along with his brother sold a property to an extent of 3347.6 sq. ft. at 287, Mahatma Gandhi Road, Pondicherry. The assessee's share of consideration was ₹39,05,530/- In the Return, the assessee has shown Nil capital gains after claiming exemption u/s.54 of ₹12,39,280/- The Id. Assessing Officer issued

notice u/s.148 of the Act on 17.06.2013, thereafter issued a notice u/s.143(2) of the Act on 15.08.2013 and completed the assessment order u/s.143(3) of the Act on 15.12.2014. In scrutiny assessment completed, the AO reworked out the cost of acquisition and indexed cost of acquisition and denied the exemption claimed u/s.54F of the Act. Hence, the Id. Assessing Officer brought to tax long term capital gains of ₹39,05,530/-. Against the said addition of capital gains of ₹39,05,530/-, the assessee carried the appeal before the Ld.CIT(A). On appeal, Ld.CIT(A) confirmed the action of Id. Assessing Officer. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. Before me, the main contention of the Id.A.R is that there is a time limit to issue a notice u/s.143(2) of the Act. As such reopening is bad in law and he relied on the decisions of jurisdictional High Court in the case of CIT Vs. Qatalys Software Technologies Ltd. in [2009] 308 ITR 249 (Mad) wherein held that the Tribunal was right in coming to the conclusion that the Assessing Officer was barred from initiating reassessment proceedings under section 147 when the time for

issuance of notice under section 143(2) had not expired and also in the case of CIT Vs. K. M. PACHAYAPPAN [2008] in 304 ITR 264 (Mad) wherein held that the Assessing Officer had issued notice under section 148 when a valid return was filed and was pending. In such a situation the Revenue could not have issued notice for the purpose of reopening under section 147 of the Act.

5. On the other hand, Id.D.R relied on the order of Ld.CIT(A).

6. I have heard both the parties and perused the material on record. In this case, the assessee filed a return for assessment year 2011-12 on 25.03.2013 and notice u/s.148 was issued on 17.06.2013. The regular assessment could have completed on or before 31.03.2014. In my opinion, when there is a time limit to issue a notice u/s.143(2) of the Act so as to complete the original assessment u/s.143(3) of the Act, the Id. Assessing Officer precluded from issue of notice u/s.148 of the Act. Being so, I find merit in the argument of the Id.A.R. Accordingly, I quash re-opening of assessment order.

As I have quashed the re-assessment order itself, the other grounds raised by the assessee in his appeal is only academic.

7. In the result, the appeal of assessee is allowed.

Order pronounced on 08th December, 2017

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 08th December, 2017

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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