

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.2396/Chny/2017
निर्धारण वर्ष /Assessment Year: 2009-10

Shri A.R.Dilli Babu,
111/30, Alapakkam Main Road,
Alapakkam,
Chennai-600 116.

Vs. The Income Tax Officer,
Non-Corporate Ward-8(4),
Chennai-600 034.

[PAN: AIEPD 0578 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Philip George, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mrs.S.Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 27.02.2018

घोषणा की तारीख /Date of Pronouncement

: 27.02.2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

ITA No.2396/Chny/2017 is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals)-9, Chennai, in ITA No.79/CIT(A)-9/2016-17 dated 28.07.2017 for the AY 2009-10.

2. Mrs.S.Vijayaprabha, JCIT, represented on behalf of the Revenue and Mr.Philip George, Adv., represented on behalf of the assessee.

3. In the assessee's appeal, the assessee has raised the following grounds:

1. *The order of the Commissioner of Income Tax (Appeals) in as much as it is against the Appellant is erroneous, against the provisions of law and contrary to the facts and circumstances of the case.*

2. **Reopening of Assessment:**

2.1. *The Commissioner of Income Tax (Appeals) grossly erred in holding that the Assessing Officer has validly assumed jurisdiction to reopen the assessment and the reassessment is not barred by limitation.*

2.2. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the decisions relied on by him are misquoted and are not applicable to the facts of the present case.*

2.3. *The Commissioner of Income Tax (Appeals) ought to have appreciated that there is no failure on the part of the Appellant to disclose any material facts leading to escapement of income and the assessment was reopened only on the basis of the particulars filed in the course of scrutiny assessment proceedings.*

2.4. *The Commissioner of Income Tax (Appeals) ought to have therefore appreciated that the Proviso to Section 147 squarely applies to the facts of the Appellant and the impugned notice issued after expiry of four years from the end of the assessment year is illegal and void.*

2.5. *The Commissioner of Income Tax (Appeals) ought to have appreciated that mere omission in the scrutiny assessment proceedings cannot be a ground for reopening the assessment and the same would amount to review of order, which is not permissible under the provisions of Section 147 of the Income Tax Act, 1961.*

2.6. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the predecessor Assessing Officer has applied his mind and formed an opinion before passing the order u/s.143(3).*

2.7. *The Commissioner of Income Tax (Appeals) ought to have appreciated that there is no reason to believe that income had escaped assessment as the entire facts regarding the sale and purchase of property has been perused and analysed by the predecessor Assessing Officer in the Assessment Order u/s.143(3) and therefore, reassessment fails in toto.*

2.8. *The Commissioner of Income Tax (Appeals) ought to have therefore appreciated that there are no fresh materials available with the Assessing Officer to exercise jurisdiction u/s.147 and reopening merely on a change of opinion is against the mandate of the provisions of the Income Tax Act, 1961.*

2.9. *The Commissioner of Income Tax (Appeals) therefore ought to have held that the reopening is merely on the basis of change of opinion and invalid in law.*

3. **Merits:**

3.1. *The Commissioner of Income Tax (Appeals) grossly erred in upholding the levy of interest u/s.234B of the Income Tax Act, 1961 and the same is erroneous and misconceived.*

3.2. *The Commissioner of Income Tax (Appeals) ought to have appreciated that the Appellant had not defaulted in payment of Advance Tax and the same was also accepted by*

the Assessing Officer in the scrutiny assessment order u/s.143(3) as evident from the fact that no interest was levied u/s.234B in the 143(3) order.

3.3. The Commissioner of Income Tax (Appeals) grossly erred in holding that the reassessment u/s.147 should be considered as regular assessment having been made for the first time without appreciating the fact that the regular assessment was already completed u/s.143(3) without charging of interest u/s.234B.

3.4. The Commissioner of Income Tax (Appeals) ought to have appreciated that the Appellant had not defaulted and is not liable to pay interest u/s.234B in the original regular assessment u/s.143(3) and therefore levy of interest u/s.234B in reassessment proceedings for the first time is not valid.

3.5. The order of the Commissioner of Income Tax (Appeals) insofar as it affirms the order of the Assessing Officer is therefore biased, misconceived and without any application of mind to the facts and circumstances of the case and against the provisions of law.

4. The Appellant contests all the findings of fact and law made by the Commissioner of Income Tax (Appeals) against the Appellant.

5. The Appellant craves leave to file additional grounds of appeal at or before the time of hearing.

4. It was submitted by the Ld.AR that the assessee is having income from house property and Capital Gains as source of income. It was a submission that the assessee had inherited land from the assessee's mother which had been sold during the relevant Assessment Year. The return filed by the assessee came to be processed and the assessment came to be completed u/s.143(3) on 23.12.2011 accepting the returned income. It was a submission that in the course of the assessment, the AO had verified the sale of the part of the inherited land. It was a submission that the assessee had received cash of Rs.1,97,10,000/- which was deposited in the Savings Bank A/c. It was a submission that the cash deposited of Rs.1,97,10,000/- represented the sale proceeds and the rental advance. It was a submission that the assessee had also filed a letter dated 20.12.2011 before the AO, wherein, the details of the transactions were clearly brought out. It was a submission that 27436

sq.ft. of the land had been sold for Rs.1,00,32,600/- which was deposited in the bank and additional amount of Rs.22,00,000/- which was not deposited in the bank. It was a submission that the assessee had purchased the land for an amount of Rs.1,20,00,000/- during the year. It was a further submission that the assessee had received rental advance of Rs.50,15,000/- from TATA Company who was now his tenant. It was a submission that in the letter, it was specifically mentioned that the land was purely agricultural in nature and the amount was received only by way of cash on various dates from various parties. It was a submission that a notice u/s.148 came to be issued on the assessee on 31.03.2016. The reasons recorded for re-opening was shown at Page No.5 of the Paper Book, wherein, it has recorded as follows:

As requested by you, the reasons for reopening is reproduced as under:

On perusal of records, it is observed that the assessee was in receipt of properties by partition measuring 54,737/- Sq.ft on 30.11.2006. The market value of the plots as specified by the deed being 1,64,21,100/- The assessee sold a portion of the plot measuring 20,583 sq.ft for a value of Rs.600/- per sq.ft during the F.Y 2008-09. The applicable capital gain on this transaction is not admitted in the return of income filed for the A.Y 2009-10".

Accordingly, you have failed to admit the income earned under capital gain on the sale of lands for the A.Y 2009-10 to the extent of Rs.1,23,49,800/-. The value of sale consideration as attributable to needs to be examined and assessed as per the capital gain provision of IT Act."

5. It was a submission that the re-opening was bad in law in so far as all the details had been verified by the AO in the course of the original assessment and re-opening was only on the basis of a change of opinion. The Ld.AR drew our attention to the reply filed by the assessee in respect of the re-opening, which is extracted as follows:

I am in receipt of your letter in C.No.Scrutiny AY 2009-10/2016-17 dated 28-11-2016 in the above matter wherein you have stated that on a perusal of my assessment records, you have found that I have not admitted in the return of income filed for the a.y. 2009-2010, the applicable capital gains on the transactions involving sale of 20,583 sq.ft of plot of land for a value of Rs.600/- per square foot.

In the light of the observation of the Assessing Officer in the assessment reopened u/s.143(3) of the 'Act' for the impugned a.y. 2009-2010 passed by the then Income Tax Officer, Ward I(1), Tambaram, Chennai - 45 dated 23-12-2001, wherein the Assessing Officer has clearly mentioned that I have sold the land inherited from my mother and out of the sale proceeds, two properties of land amounting to Rs.1,20,00,000/- had been purchased by me and she has further stated that all these have been accounted through bank and that copies of bank statements of ICICI Bank and all sale deeds have also been filed by me and they have been verified. It is also seen from the records that my Authorized Representative has, in the course of assessment proceedings, filed all the details including name of the Purchaser, date of sale, survey number and area sold as also the sale consideration and the details of the above said land which was sold to 10 persons as also the details of land purchased by me.

In the light of these details and information and observation regarding sale and purchase of land by me which has been stated by the Assessing Officer in the assessment order itself (supra), I am unable to understand as to how I can be said to have failed to disclose and admit the income in respect of these sales in the return of income for the ay. 2009-2010 under consideration.

It is clear from the above details and the observation of the Assessing Officer in the assessment order that these have been made available to the Assessing Officer at the time of making original assessment u/s.143(3) of the 'Act', evidenced by the impugned assessment order dated 23-12-2011. Consequently, there being no failure on my part, the assessment could not be reopened after the expiry of permitted four years from the end of impugned assessment year 2009-10 after 31-03-2014.

In the circumstances, I submit that your observation that I have not admitted the transactions and consequently, you can reopen the assessment beyond 31st March, 2014 is obviously a statement made without application of mind and to justify the action of the Revenue to reopen the assessment u/s.147 of the 'Act'. Further, it is seen that you have called for various details u/s.142(1) of the 'Act' vide your letter dated 10-08-2016 from which it is clear that even now you are not clear as to what income which has escaped assessment and to bring which income, the present assessment is sought to have been reopened u/s.147 of the 'Act'.

6. It was a submission that the re-opening was not permissible on the basis of a change of opinion.

7. In reply, the Ld.DR submitted that the AO had come into possession of the proceedings of the Commissioner, Kundrathur Panchayat Union dated 27.03.2007. As per the said proceedings, the land had been converted for non-agricultural purposes and permits had also been granted and development charges paid by the assessee. It was a

submission that consequently, it was noticed that the claim of the assessee that the properties sold is agricultural land was not correct in so far as, as early as on 27.03.2007, the property had been converted. The Ld.DR placed before us a copy of the proceedings. It was a submission that this was not a case of change of opinion. It was a submission that as the fresh evidence had come to the possession of the AO that the land sold was not agricultural land, the re-opening was valid. It was a further submission that the Explanation-1 to Sec.147 directly applied. It was a submission that the re-opening was valid.

8. We have considered the rival submissions.

9. A perusal of the letter of the assessee filed during the course of the original assessment dated 23.12.2011 shows that the assessee has claimed the land is purely agricultural in nature. However, the proceedings of the Commissioner, Kundrathur, dated 27.03.2007 shows otherwise. In fact, this is an order issued by the Commissioner, to the assessee himself. The assessee has also paid the development charges in respect of the said development. This being so, we are of the view that this is a fresh evidence available to the AO which clearly shows that the re-opening is not on the basis of a change of opinion. This being so, we are of the view that re-opening is valid and uphold the same. Here it would also be worthwhile to mention that the assessee has not challenged the additions on merits neither before the Ld.CIT(A) nor before us. The

assessee has only challenged the issue of re-opening as also the levy of interest u/s.234B of the Act. In respect of the issue of the levy of interest u/s.234B, it is found that the levy is compensatory in nature, the same is mandatory and we find no error in the levy.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on February 27, 2018, at Chennai.

Sd/-
(अब्राहम पी. जॉर्ज)

(ABRAHAM P.GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: February 27, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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