

**आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 2610/Mum/2016

(निर्धारण वर्ष / Assessment Year 2006-07)

The Asst. Commissioner of Income Tax-Circle 32(3), Room No. 108, 1 <sup>st</sup> Floor, Bldg. No.C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Mumbai-400 051	Vs.	RG Manudhane, Flat No. 2202, Anmol, A Wing, Opp. Patel Petrol Pump, S.V. Road, Goregaon (W), Mumbai-400 062
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAEHR3765D</b>		

अपीलार्थी की ओर से / **Appellant by** : Shri Ram Tiwari, DR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Arati Vissanji, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	31-05-2018
घोषणा की तारीख / <b>Date of pronouncement :</b>	15-06-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-44, Mumbai [in short CIT(A)], in appeal No. CIT(A)-44/ACIT32(3)/ITA 84/14-15 dated 27.01.2016. The Assessment was framed by the Pr. Commissioner of Income Tax, Circle-



32(3), Mumbai (in short 'PCIT'/ AO) for the A.Y. 2006-07 vide order dated 21.03.2014 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) quashing the reassessment order passed under section 143(3) read with section 147 of the Act dated 21.03.2014. For this Revenue has raised the following three grounds: -

*"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in annulling the reassessment order dated 21.3.2014 passed U/s 143(3) r.ws. 147 of the Act.'*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the reason recorded for initiating the reassessment proceedings were not provided to the assessee within the reasonable time and were not disposed of in terms of the judgement of Hon'ble Supreme Court in the case of GKN Drivesafts vs ITO 259 ITR 19 (SC) whereas the reasons recorded were provided to the assessee on 15.10.2013 and these were disposed of vide order sheet entry dated 21.03.2014.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in observing that the reasons recorded for initiating reassessment proceedings does not contain any averment that income has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment."*



3. Briefly stated facts are that the assessee HUF filed its return of income on 20-07-2016 declaring total income of Rs. 29,95,060/- for the AY 2006-07. The assessee is earning income from house property, income from business or profession, capital gains and income from other sources. The assessee's case was selected for scrutiny by issuing notice under section 143(2) of the Act and original assessment was completed under section 143(3) of the Act on 20-11-2008 determining the total income at Rs. 30,39,360/-. Subsequently, the AO issued notice under section 148 of the Act dated 22.03.2013 for reopening the assessment for AY 2006-07. The AO reopened the assessment after recording the following reasons: -

*"The assessee has filed his return of income for A. Y. 2006-07 on 20.07.2006, declaring total income of Rs.2995,060/-. The assessment was completed u/s 143(3) on 20/11/2008 determining total income at Rs. 30,39,360/-. During the year, the assessee has entered into an agreement on 10th March, 2006 with M/s Manvi Holding Pvt. Ltd. for sale of land and Bldg known as "Naya Bungalow". The total sale consideration is for Rs. 15 crores. Out of this sale consideration the assessee has offered an amount of Rs. 13.01 crores in his own hands and a sum of Rs. 1.987 crores in this hands of his son Shri Avinash Manudhane. The basis of making this bifurcation is an agreement date 2nd May, 1984, wherein it is proposed to sell the yet to be constructed 3 d floor for a consideration of Rs. 14,00,000/-.*

*However, it is seen from the other details on record, that his agreement is not supported by facts. The following discrepancies are noticed:*



1. *The agreement dated 2 May, 1984 is neither stamped nor registered.*
2. *The agreement clearly stated that the 3<sup>rd</sup> floor of the building to be constructed and payment as mentioned in the agreement is to be received at a later date.*
3. *The signatories to the agreement i.e. the seller and the buyer are the same person. (the seller appears to be the Power of Attorney Holder for the buyer).*
4. *As per the agreement, the possession of the property proposed to be sold (3<sup>rd</sup> floor) would have been handed over only after obtaining the Occupation & Completion Certificate.*
5. *No details have been submitted in respect of the receipt of 14 lacs, the consideration for the purported sale.*
6. *As per the Valuation Report dated 15th April, 1994 of M/s Chogle & Associates submitted by the assessee himself, the building is described as "This ground plus one upper floor structure with party build second floor....."*
7. *The sale agreement in Para (ix) clearly talks about the various persons, other than the vendor who are in possession of parts of the said property. No mention is made of the 3<sup>rd</sup> floor being owned by any other person.*

*All these above factors go on to prove that the agreement dated 2nd May, 1984 has no legal*



*standing and the entire property was the sole ownership of the assessee. Therefore, the entire sale proceeds of Rs.1,59,43,223/-(Total Sale Value - Indexed Cost - Investment in REC Bonds & House Property) should be assessed in the hands of the assessee.*

*Therefore, I have reasons to believe that income to the tune of Rs. 1,59,43,223/- has escaped assessment for A. Y. 2007-08 in view of the provisions of section 147 of the Income Tax Act, 1961.*

*-Issue u/s 148 of the IT Act, 1961."*

4. The reopening of assessment was quashed by the CIT(A) by considering the facts in Para 5.7 & 5.8 of his order as under:-

*"5.7 In the present case it is an indisputable fact that original assessment was completed under section 143 (3) of the Income Tax Act vide order dated 4.11.2008. It is seen from a perusal of the assessment order that the assessing officer had assessed long-term capital gain arising out of sale of property. In this situation it needs to be examined whether during the course of original assessment specific submission of details related with the issue raised in the reason recorded was made by the appellant. It is seen from record that at the time of original assessment proceedings the appellant had filed as many as five forwarding letters through which specific details regarding sale of property leading to long-term capital gain were furnished before the assessing officer. For example, in the letter dated 10" October the Appellant had described*



*as to how a portion of the property belonging to the HUF was assigned to Mr Avinash Manudhane vide agreement dated 2nd May 1984. It was also described in the said letter that this property has been reflected in the income tax records of Mr. Avinash Manudhane. In the said letter bifurcation of long-term capital gain between the HUF and Mr. Avinash Manudhane was described. Similarly, the same details were filed before the AO vide the forwarding letter of the Appellant dated 14<sup>th</sup> August 2008. Similarly, in a letter dated 22nd October 2008 the appellant had again discussed the facts of long-term capital gain and the valuation report for the valuation of property as on 1.4. 1981.*

*5.8 It is also seen from the facts of the case that reason to believe for issue of notice was based on audit objection. In fact the language of the reason recorded is exactly the same as that of the audit objection. If we compare the audit objection and the reason recorded it can be seen that the facts mentioned in the audit objection has been reproduced in the reason recorded. From a perusal of the reason recorded it can be seen that the main grounds which had led to formation of reason to believe are based on two documents namely, an agreement dated 2nd May 1984 and secondly, a valuation report dated 15th April 1994. From a perusal of record it is evident that both these documents were filed by the appellant during the course of original assessment. It is also obvious that the AO making the original assessment had accepted the validity of the agreement because he has not controverted the facts of bifurcation of long-*



*term capital gain between the HUF and Mr Avinash Manudhane. The bifurcation of long-term capital gain between the appellant and Mr Avinash Manudhane was because of the agreement dated 2 May 1984. This fact has been mentioned by the assessing officer making reassessment in the very first para of the reason recorded. Thus, it is abundantly clear that escapement of income cannot be attributed to failure on part of the assessee to disclose fully and truly all material facts. In this situation the very basis of reopening of assessment fails as the law contained in section 147 itself prohibits any action under the section. It is also worthwhile to mention here that the reason recorded by the assessing officer does not at all mention that income has escaped assessment because of failure of the assessee to disclose fully and truly all material facts. The substantive and procedural requirement for reopening of assessment has been clarified in many judgements of various high Courts and Tribunals. It has been repeatedly laid down by the courts, that original assessment has been completed u/s 143(3) and where a notice is issued after four years, there should be an averment in the reasons, recorded, that there was failure on the part of the assessee to disclose fully and truly material facts. In absence of such averment, jurisdiction will fail as was decided in Agilsys. IT Services India P. Ltd. V. ITO (2013) 27 ITR (Trib) 244 / (Mumbai) following Asst. CIT v. ICICI Securities Primary Dealership Ltd. (2012)348 / ITR 299(SC), ICICI Bank Ltd. V. K.J Rao(2004) 268 ITR 203 (Bom), CIT v. Viniyas Finance and Investment P. Ltd. (2013)357*



*ITR 646 (Del) and Hindustan Lever Ltd. V.R.B.  
Walkar, Asst. CIT (2004) 268 ITR 332 (Bom)."*

Aggrieved, Revenue is in appeal against the quashing of the re-assessment.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee vide letter dated 25.07.2008, 07.05.2008 and 14.08.2008 filed complete working of long term capital gain vide Para 3 of the letter, during the course of original assessment proceedings, which reads as under: -

*"3. working of Long Term Capital Gain along with copy of sale agreement of 'Naya Bunglow; Borivali; copy of purchase agreement of flat at Goregaon and proof of investment in REC Bond is attached herewith."*

6. Further, assessee vide letter dated 14.08.2008, during the course of original assessment proceedings has explained the entire facts which reads as under: -

*"1) As desired, we give hereunder the details of the immovable property which was sold in the year under consideration:*

*In the year 1957, the property at Naya Bunglow, S.V. road, Borivali (West) Mumbai 400 092 admeasuring 2368.40 sq. mtr. was purchases by Siri Ramnarayan Gangadhar Manudhane from Vissonji Ruttonsey and was resisted under Regn. No. 2543/57 in Book No.1.*

*In the year 1957, the said property was thrown into Joint Family hotchpot namely Ramnarayan Gangadhar Manudhane HUF and since then the*



*said property has at all times ben belonging to the Ramnarayan Gangadhar Manudhane HUF.*

*Out of the total property 2368.40 sq. mtr, around 403.60 sq. mtrs. Were given to Municipal Corporation for road widening and the balance of 1964.80 sq. mtrs. Remained with HUF.*

*Thereafter by an agreement dated 2nd May, 1984 the HUF agreed to sell 2800 sq. ft. (approx. 260.30 sq. mtr) on 3rd floor of the structure to be constructed in the said property at a total consideration of ₹ 14,00,000/- this property has been reflected in the I.T. records of Shri Avinash Manudhane.*

*On 10th March, 2006 the whole property admeasuring 1964.80 sq. mtr. including the portion of property sold of Shri Avinash Manudhane was sold to M/s Manvi holding Pvt. Ltd. Jalgaon for a consideration of Rs. 15 crores. Capital working of the said property is as per annexure attached.*

*The proportions sale proceeds received on behalf of Shri Avinash Manudhane works out to ₹ 1,98,75,000/- and after deduction of proportionate legal fees and brokerage amounting to ₹ 3,97,500/-, the net sale consideration was ₹ 1,94,77,500/-. The net long term capital gain on sale of Shri Avinash Manudhane's share, as may be seen from the statement attached, worked out to ₹ 1,59,81,018/- i.e. after deduction of the indexed cost of the house from the net sale consideration and an amount of ₹ 1,60,00,000/- was invested in REC bonds (copy of certificate once again enclosed). Thus, whole of the*



*Long Term capital Gain of Shri Avinash Manudhane  
was invested in REC Bonds.”*

7. In view of the above facts, we find that entire facts were available before AO during the course of assessment proceedings regarding claim of long term capital gain on account of sale of assessee's property i.e. the sale of land and building known as 'Naya Bunglow'. Admittedly, in the reasons recorded, there is no allegation by the AO that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the relevant assessment year. Admittedly, four years have elapsed from the end of the assessment year to the reopening of assessment by issuing notice under section 148 of the Act. The original assessment was completed under section 143(3) of the Act and all the details were filed before the AO during the course of original assessment proceedings. The assessee's case clearly falls under the proviso to section 147 of the Act and in such circumstances, we are of the view that the reopening is bad in law and hence, the CIT(A) has rightly quashed the same. Accordingly, we confirm the order of CIT(A) quashing the assessment. Once the assessment quashed by CIT(A) is confirmed, we need not to deliberate on the issue on merits. The appeal of Revenue is dismissed.

**8. In the result, the appeal Revenue is dismissed.**

Order pronounced in the open court on 15-06-2018.

आदेश की घोषणा खुले मे दिनांक 15-06-2018को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 15-06-2018

*Sudip Sarkar /Sr.PS*



**ITA No. 2610/Mum/2016**

**Copy of the Order forwarded to:**

1. The Appellant
  2. The Respondent.
  3. The CIT (A), Mumbai.
  4. CIT
  5. DR, ITAT, Mumbai
  6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**