

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C+SMC', NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.594/Del/2018
Assessment Year 2007-2008

Shri Sabbal Ahmad, Meerut. PAN ATXPS9543E M/s. N.K. Chandna & Co. Advocates, 120, Ram Nagar, Opp. State Bank of India, Gola Kuan, Branch, Meerut, U.P. PIN – 250 002.	vs.	The Income Tax Officer, Ward-2(3), Meerut.
Appellant		Respondent

Assessee by :	Shri Navin Kumar Garg, FCA
Revenue by :	Shri Vijay Kumar Jiwani, Sr DR

Date of Hearing :	09.08.2018
Date of Pronouncement :	04.09.2018

ORDER

PER BHAVNESH SAINI, JM

This appeal by Assessee has been directed against
the Order of the Ld. CIT(A), Aligarh, Dated 30.10.2017, for the

A.Y. 2007-2008, challenging the re-assessment proceedings under section 148 of the I.T.Act because no notice under section 148 has been received by assessee and that while calculating the amount of capital gain, no benefit of cost of improvement etc., was considered and challenged the levy of interest under section 234B and 234C of the I.T. Act, 1961.

2. Briefly the facts of the case are that as per CIB information received by the A.O, the assessee has sold immovable property as per sale consideration of Rs.10 lakhs in assessment year under appeal and stamp duty was paid at Rs.12,18,000/-. Hence, there was a difference of Rs.2,18,000/- appeared in both the valuations. Hence, to assess the capital gain arising on sale of immovable property as per provisions of Section 50C of the I.T. Act, proceedings under section 147 of the I.T. Act have been initiated by issuing notice under section 148 of the I.T. Act vide notice dated 27.03.2014, after obtaining necessary approval of Addl. CIT, Range, Meerut. In compliance to the notice under section 148

of the Act, neither any compliance has been made nor return was filed by the assessee. Thereafter, notice under section 142(1) of the I.T. Act were issued on various dates, but, no compliance was made. Since the assessment was going to be time barred, therefore, A.O. passed the ex-parte assessment order under section 144/147 of the I.T. Act on merits. The A.O. noted that during the year under consideration assessee has sold the residential plot situated at Z.H. Colony, Meerut for a consideration of Rs.10 lakhs and stamp duty was paid on the value at Rs.12,18,000/-, as per registered sale deed dated 26.12.2006. The A.O. taken the sale value as per 50C as adopted by the Registration Authority in a sum of Rs.12,18,000/- and reduced the indexed cost of acquisition for Rs.2,99,987/- and computed the total long term capital gains at Rs.9,18,013/-. The A.O. charged interest under section 234B and 234C of the I.T. Act.

3. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) called for the remand

report from the A.O. on the written submissions filed by the assessee. The assessee also filed rejoinder which is reproduced in the appellate order.

3.1. The Ld. CIT(A) as regards initiation of proceedings under section 148 of the I.T. Act, noted that assessee has alleged that no notice under section 148 was received and hence, assessee did not get adequate opportunity to explain the facts. The Ld. CIT(A), however, noted that in the appellate proceedings and remand proceedings adequate opportunity have been provided, therefore, assessee should not have any grievance and the same was accordingly dismissed.

4. The assessee further submitted before Ld. CIT(A) that A.O. has not allowed the assessee cost of acquisition and cost of improvement expenses totaling to Rs.10,74,842/-. The Ld. CIT(A) noted that in the written submissions assessee has furnished calculation for long term capital gains from which it is apparent that assessee has no objection with regard to full value of consideration determined in accordance with the

provisions of Section 50C on the basis of circle rate. The only dispute is with regard to determination of cost of acquisition and cost of improvement. The assessee has claimed cost of plot as per circle rate as on 01.01.1981 at Rs.57,801/- which is the same as taken by the A.O. in the assessment order. Therefore, there is no dispute with regard to this cost also. Apart from the basic cost, assessee had claimed benefit of cost of agricultural land wasted in development of roads etc. The Ld. CIT(A), however, noted that the rights in the road etc., have not been transferred and hence, the cost of such roads cannot be allowed towards the plots sold. The assessee claimed development expenses of Rs.1,30,852/- for which no evidence has been filed. The Ld. CIT(A) accordingly dismissed this ground of appeal of assessee.

5. The assessee further claimed general exemption of Rs.1 lakh while computing tax on assessed long term capital gains. The Ld. CIT(A) allowed the same. As regards charging of

the interest under section 234B and 234C of the I.T. Act, the Ld. CIT(A) dismissed this ground of appeal of assessee.

6. We have heard the Learned Representatives of both the parties and perused the material available on record and the Orders of the authorities below. The appeal was fixed on 14.06.2018. On this date, Learned Counsel for the Assessee made a request for adjournment to any date after atleast 15 days. On the request of Counsel for Assessee, appeal was adjourned to 09.08.2018, meaning thereby, more than sufficient time was given to assessee to argue the appeal. However, on the date of hearing on 09.08.2018 Shri Navin Kumar Garg, F.C.A. appeared for the assessee and made further request for adjournment because the earlier Counsel Shri N.K. Chandna, Advocate withdrew his Power of Attorney. Considering the facts of the case and that sufficient opportunity was already granted to assessee to argue the appeal, the appeal was adjourned to 10.08.2018. Thereafter, Learned Counsel for the Assessee, withdrew the request for

adjournment and seek permission to argue the appeal. Learned Counsel for the Assessee was, therefore, permitted to argue the appeal on 09.08.2018, date of hearing already fixed.

6.1. Learned Counsel for the Assessee submitted that the difference in the sale consideration as per Sale Deed and circle rate was Rs.2,18,000/- only and that reopening have been done on the basis of information received from CIB. Therefore, reopening of the assessment is bad in law.

7. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that assessee has not filed return of income in response to notice under section 148, therefore, cannot raise such an objection. A.O. as per material on record rightly formed his opinion that income escaped assessment, therefore, initiation of re-assessment proceedings are as per law.

8. After considering the rival submissions, we are of the view that there is no merit in the contention of Learned Counsel for the Assessee. It is well settled law that validity of

re-assessment proceedings shall have to be determined on the basis of reasons recorded for reopening of the assessment. The assessment year under appeal is 2007-2008 and more than 10 years have lapsed. The assessee did not care to file any return of income in response to notice under section 148 of the I.T. Act. The A.O. passed the ex-parte re-assessment order under section 144/147 of the I.T. Act, dated 30.03.2015. The Ld. CIT(A) noted in the impugned order that appeal was instituted by assessee before him on 29.04.2015 i.e., within 30 days. There is no question that notice under section 148 was not served upon assessee at same address. The assessee did not challenge the ex-parte re-assessment order before Ld. CIT(A). The assessee did not challenge the findings of the A.O. that assessee did not cooperate in re-assessment proceedings. The assessee challenged the determination of the capital gains without giving general exemption of Rs.1 lakh which is already allowed by the Ld. CIT(A). The assessee in another ground of appeal, challenged the assessment order because assessee was not given opportunity before issue of notice under section

148 of the I.T. Act. There is no law to give opportunity to hear the assessee before issuing notice under section 148 of the I.T. Act. The assessee has not filed even copy of the reasons recorded for reopening of the assessment in the matter. Therefore, the validity of re-assessment proceedings could not be determined in the absence of the reasons provided by the assessee. The assessee has a right to ask for copy of the reasons on filing the return of income under section 148 of the I.T. Act. However, assessee has not exercised such an option because no return under section 148 have been filed. The facts of the case noted in the assessment order shows that A.O. was having credible information that assessee sold the property for Rs.10 lakhs and for stamp duty purpose it is valued at Rs.12,18,000/-. Therefore, the capital gain shall have to be calculated on sale of immovable property as per provisions of Section 50C of the I.T. Act. Thus, there were sufficient tangible material available with the A.O. on record to initiate re-assessment proceedings against the assessee because assessee has not declared capital gains for the purpose of

taxation on sale of the property. It may also be noted here that before Ld. CIT(A) assessee has raised a different ground of appeal but in the ground of appeal before Tribunal, assessee challenged the order of the A.O. on the ground that no notice under section 148 was received by the assessee. However, no evidence have been produced in respect of such ground of appeal and even Learned Counsel for the Assessee did not argue on the same. Considering the totality of the facts and circumstances of the case, it is clear that reopening of the assessment is justified in the facts and circumstances of the case. This ground of appeal of Assessee is dismissed.

9. On the remaining grounds of calculation of capital gains and charging of interest under section 234B and 234C of the I.T. Act, Learned Counsel for the Assessee did not argue these grounds. Since these grounds have not been argued by the Learned Counsel for the Assessee, therefore, there is no need to give detailed findings on the same. However, we may briefly note that there were no dispute with regard to indexed

cost of acquisition because whatever figure A.O. has taken, was accepted by the assessee before Ld. CIT(A) as well. The assessee further made a claim of benefit of cost of agricultural land wasted in development of roads etc. The Ld. CIT(A) rightly noted that since the rights in the roads etc., have not been transferred, therefore, the cost of such roads cannot be allowed towards the plot sold. No evidence of development expenses are filed. Learned Counsel for the Assessee did not argue against the finding of Ld. CIT(A). It appears assessee does not want to pay tax on capital gain. Therefore, in the absence of any challenge to the findings of the Ld. CIT(A), both the grounds of appeals of the assessee are dismissed. No other point is argued or pressed.

10. In the result, appeal of Assessee is dismissed.

Order pronounced in the open court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Delhi, Dated 04th September, 2018
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT C+SMC Bench, Delhi
6. Guard File

//By Order//

Asst. Registrar : ITAT : New Delhi.