

आयकर अपीलीय अधिकरण, ए / एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.2760 & 2761/Chny/2017

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

M/s Soundari Family Trust,
No.31, Kasturi Ranga Road,
Alwarpet, Chennai - 600 018.

v. The Income Tax Officer,
Non Corporate Ward - 3(2),
Chennai - 600 034.

PAN : AAAAS 7287 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Kaushik, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sagadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 16.10.2018

घोषणा की तारीख/Date of Pronouncement : 12.11.2018

आदेश /ORDER

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 29.09.2017 and pertain to assessment years 2010-11 and 2011-12. Since common issue arises for consideration in these appeals, I heard both the appeals together and disposing of the same by this common order.

2. The first issue arises for consideration is reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act').

3. Shri M. Kaushik, the Ld.counsel for the assessee, submitted that this is the second round of litigation. In the first round of litigation, according to the Ld. counsel, the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Act on 03.10.2013. The first reassessment, after reopening of assessment on the basis of the notice issued on 03.10.2013, was completed by an order dated 31.03.2015. On the very same day, i.e. on 31.03.2015, the Assessing Officer reopened the assessment for the second time. According to the Ld. counsel, when the assessment was reopened by issuing notice under Section 148 of the Act on 03.10.2013 and it was pertaining to the income which escaped assessment, the Assessing Officer cannot reopen the assessment once again. According to the Ld. counsel, no fresh material was available on record for the purpose of reopening the assessment for second time. According to the Ld. counsel, the Assessing Officer cannot exercise his authority without any fresh material on record, therefore, reopening of assessment is invalid.

4. On the contrary, Shri B. Sagadevan, the Ld. Departmental Representative, submitted that no doubt, the Assessing Officer reopened the assessment for the second time by issuing notice on 31.03.2015 on the same day the first reassessment was completed. According to the Ld. D.R., there was no bar under the Income-tax Act to reopen the assessment for second time when the Assessing Officer found that there was income otherwise chargeable to tax escaped assessment. The Ld. D.R. pointed out that on 31.03.2015, the first reassessment was completed and on the very same day the Assessing Officer issued notice under Section 148 of the Act and served on the assessee. The Ld. D.R. further pointed out that for the second reassessment, notice dated 31.03.2015 was issued after getting approval of the Joint Commissioner of Income Tax. On a query from the Bench, when the proposal for reopening of assessment for second time was sent to the JCIT? The Ld. D.R. after verifying the file, submitted that such a proposal is not available on record. The Ld. D.R. after verifying the records, submitted that notice under Section 148 of the Act for the second time was issued on 31.03.2015 on which date the reassessment order on the basis of notice issued under Section 148 of the Act on 03.10.2013 was completed.

5. I have considered the rival submissions on either side and perused the relevant material available on record. The question arises for consideration is when the first reassessment proceeding on the basis of notice issued under Section 148 of the Act on 03.10.2013 was pending, can the Assessing Officer reopen assessment by issuing another notice? On the basis of notice issued on 03.10.2013, the Assessing Officer completed the reassessment on 31.03.2015. On the very same day, i.e. on 31.03.2015, the Assessing Officer issued another notice under Section 148 of the Act and served the same on the same day. When the Assessing Officer reopened the assessment by issuing notice on 03.10.2013 and the reassessment proceeding was pending till 31.03.2015, it is not known what prompted the Assessing Officer to issue another notice under Section 148 of the Act on 31.03.2015? This Tribunal is of the considered opinion that when the assessment was reopened by issuing notice under Section 148 of the Act 03.10.2013, the Assessing Officer could have brought to taxation all the income which escaped assessment. Therefore, there is no justification for the Assessing Officer to issue a notice once again when the first reassessment proceeding was pending.

6. In this case, the Assessing Officer passed reassessment order on 31.03.2013 and again issued notice on the very same day. No fresh material came to the possession of the Assessing Officer on the day on which the first reassessment order was passed. Moreover, as held by the Madras High Court in TANMAC India v. DCIT (2016) 97 CCH 189, Section 147 of the Act is not for extending time limit for completing assessment. This Tribunal is of the considered opinion that reopening of assessment for second time on the day on which the first reassessment was completed on 31.03.2015 is bad in law. Even if there was escapement of income, this Tribunal is of the considered opinion that the Assessing Officer ought to have brought to taxation on the basis of notice issued on 03.10.2013 under Section 148 of the Act. Therefore, reopening of assessment by issuing another notice on 31.03.2015 is not justified. Hence, this Tribunal is unable to uphold the orders of the authorities below. Accordingly, the orders of the authorities below are set aside and the consequential order passed by the Assessing Officer is quashed.

7. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the court on 12th November, 2018 at
Chennai.

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 12th November, 2018
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT, Chennai-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.