

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.676/Bang/2019
Assessment Year :2009-10

Shri K. Nagarajan alias Rajesh Krishan, Parvi Golden Nest, 132, 1 <sup>st</sup> H Cross, 7 <sup>th</sup> Main Road, Subbanna Garden, Vijaynagar, Bangalore – 560 040. <b>PAN: AAHPN0969N</b>	Vs.	The Income Tax Officer, Ward – 2 (3) (5), Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Shri Tshering Ongda, JCIT (DR) & Shri Dilip, Junior Standing Counsel
Date of hearing	:	14.05.2019
Date of Pronouncement	:	16.05.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-2, Bangalore dated 25.02.2019 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

*“1. The learned Assessing Officer had erred in passing the order in the manner passed by him and the learned CIT (A) has erred in confirming the same. The orders passed being bad in law are liable to be quashed.*

*2. In any case, the conditions precedent for reopening of assessment being not there, the very reopening of assessment is bad in law and consequently the impugned order also becomes bad in law and liable to be quashed.*

*3. In any case, the objections raised by the appellant for reasons recorded were not disposed of by speaking order makes the entire re assessment bad in law and such order is liable to be quashed.*

*4. In any case and without prejudice the authorities below have erred in not accepting the income as returned in response to notice Vis. 148 of LT. Act, 1961 and erred in making/confirming various additions.*

*The action of the authorities below being contrary to facts and law is to be negated and the income as returned by the appellant is to be accepted.*

*5.1 The Assessing Officer had erred in restricting the allowable expenses from profession to 50% of Gross Receipt and making an addition of Rs. 7,76,954/- on this count and the learned CIT(A) has erred in confirming the same. The expenses as claimed by the appellant being correct has to be accepted and the addition made on this count is to be deleted.*

*5.2 The disallowance as made/confirmed has no basis and purely adhoc and hence is to be disregarded.*

*5.3 In any case without prejudice the disallowance is excessive.*

*6.1 The Assessing Officer had also erred in recomputing the income / loss under the head capital gains and the learned CIT(A) has erred in confirming the same without properly appreciating the facts that*

*i) the appellant had demolished the old building and put up a new structure.*

*ii) the cost of demolition and the cost of new structure is to be allowed as deduction from gross consideration*

*On proper appreciation of facts and the evidence available, the appellant has rightly computed the Short term capital gain on sale of property and same is to be accepted without any variation.*

*6.2 In any case, the cost of construction adopted at Rs. 800/- per Square Feet is too low and is to be appropriately enhanced to Rs. 1,000/- per sq foot as claimed by the appellant.*

*6.3 The other item of expenditure incurred like (a) cost of demolition of old structure and expenses incurred for disposal of debris (b) cost of bore-well and pump (c) cost of compound wall (d) Architects Fees (e) cost of permissions for BWEEB and other statutory deposits may be treated as part of cost of construction and allowed as claimed by the appellant.*

*7. In any case, the learned CIT(A) has erred in making various observations/findings while passing the appellate order, which are not related to the facts of the appellant. Such observations/findings are wholly erroneous and made without application of mind are to be rejected.*

*8. The appellant also denies liability to pay Interest. This interest having been levied erroneously is to be deleted.*

*9. In view of the above and on other grounds to be adduced at the time*

*of hearing it is requested that the impugned order be quashed or at least the addition made under the head income from profession be deleted, the computation of short term capital loss as made by the appellant be accepted and interest levied be deleted.”*

3. It was submitted by Id. AR of assessee that on pages 38 to 50 of paper book is the copy of written submissions filed by the assessee before CIT (A). In particular, our attention was drawn to page no. 39 of paper book and it was submitted that in para 10 of written submissions, the assessee has reproduced the reasons recorded by the AO for reopening. He also submitted that this is also pointed out before CIT(A) that against reasons recorded by the AO for reopening, the assessee has filed objections before the AO vide letter dated 09.03.2016 filed on 10.03.2016. He further pointed out that in the objections filed by assessee before the AO, it was submitted that as per the perusal of sale deed dated 25.04.2008, it is clear that sale consideration is not only Rs. 5 Lakhs but Rs. 5 Lakhs plus built house at No. 848 (New No. 1391), 2<sup>nd</sup> phase, Girinagar, Bangalore and hence, the basis adopted by the AO is incorrect that as per the sale deed, the property was sold for consideration of Rs. 5 Lakhs only and as per the guidance value, the value of property is Rs. 78 Lakhs. He also pointed out that against various objections raised by assessee before AO, no speaking order was passed by the AO by disposing of the objections to the issue of notice u/s. 148. This objection was also raised before CIT(A) that there was no material available before the AO to initiate reassessment proceedings. He submitted before me that in the impugned order, the Id. CIT(A) has reproduced the written submissions filed by the assessee before him but he decided the issue regarding the validity of reopening of the assessment as per Para 5 of his order without discussing any of the submissions raised by assessee before CIT(A). Hence the order of CIT(A) is very cryptic. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. First of all, I reproduce Para 5 from the order of CIT(A) because in this para only, the Id. CIT(A) has decided the issue regarding the validity of reassessment. This Para reads as under.

*“5. I have considered the above grounds of appeal, statement of facts and written submissions filed by the appellant and also perused the assessment order. The appellant has raised as many as seven grounds.*

*The first and last grounds are since general in nature no separate adjudication is needed. Thesecond and third grounds are challenging the reopening of the assessment: The condition for re-openingthe assessment can be stated that the Assessing Officer has reason to believe that income chargeable totax has escaped assessment u/s.147. Where assessment u/s.143(3) or u/s.147 made earlier andreopening is done after expiry of four years from the end of the relevant assessment year reopening ispossible only if income chargeable to tax has escaped assessment for such assessment year by reason ofthe failure on the part of the assessee to make a return u/s.139 or in response to notice issuedu/s.142(1) or u/s.148 or to disclose fully and truly all material facts necessary for his assessment. Theexpression "has reason to believe" is wider than "is satisfied" as reasons must have a live link with theformation of belief. "Information" for reopening may come from external sources or even frommaterials already on record or may be derived from the discovery of new and important matter or freshfacts. Word "information" would also include true and correct state of law derived from relevant judicialdecisions either of the I.T. authorities or Courts of law. Whether the ground on which the originalassessment is based, is held to be erroneous by Supreme Court in some other case, that will alsoamount to a fresh information which comes into existence subsequent to the original assessment.Taxpayer would not be allowed to take advantage of an oversight or mistake committed by the taxingauthority as held in the case of Kalyanji Mavji & Co. Vs CIT(S) 102 ITR 287. The basis for re-opening ofthe assessment would certainly be the source of information. When an income liable to tax has escapedassessment in the original assessment proceedings due to oversight and inadvertence or a mistakecommitted by the ITO, he has jurisdiction to re-open the assessment. Reassessment is permissible evenif the information is obtained after proper investigation from the material on record or from any enquiryor research into facts or law. The AO has duly recorded the reasons and provided the same to theassessee during the reopening proceedings and addressed the objections raised. In view. of the abovediscussion, I am of the considered opinion that the Assessing Officer has got jurisdiction in reopening theassessment by issuing notice u/s.148 of the Act and therefore the grounds of appeal is herebydismissed."*

5. From the above Para reproduced from the order of CIT(A), it is seen that there is no discussion or decision on this objection of the assessee before CIT(A) that there is no rational connection between the reasons for the belief and formation of belief that the income has escaped assessment. There is no discussion or decision on this aspect also that there is no material available to initiate the reassessment. There is no discussion or decision on this aspect also that no speaking order was passed by the AO

for disposing of the objections raised by the assessee against the reassessment. In view of this, I feel it proper to restore the matter back to the file of CIT(A) for fresh decision by way of a speaking and reasoned order on all aspects after providing adequate opportunity of being heard to both sides. I order accordingly and set aside the order of CIT(A) and restore the matter back to his file for fresh decision by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 16<sup>th</sup> May, 2019.  
/MS/

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.