

आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.94/CTK/2019

(निर्धारण वर्ष / Assessment Year :2011-2012)

Sri Antaryami Kar, S/o-Bhagirathi Kar, At-Podapatna, Oupada, Dist: Balasore-759049	Vs.	ITO, Ward-1, Balasore, District : Balasore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASVPK 7004 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.K.Mishra, Advocate

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing : **05/04/2019**

घोषणा की तारीख/Date of Pronouncement **05/04/2019**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A), Cuttack, dated 23.01.2019 passed in First Appeal No.0328/2015-16 for the assessment year 2011-2012.

2. The grounds raised by the assessee read as follows:-

1. *For that, the impugned order of Reassessment so passed by the learned A.O. is premature, without jurisdiction and without the authority of law, as such, the same needs to be quashed in the interest of justice.*
2. *For that, the learned C.I.T.(A) should have quashed the impugned order of Reassessment, particularly when, the same is without jurisdiction, as such the impugned order of Reassessment, being not sustainable in the eye of law is liable to be quashed in the interest of justice.*
3. *For that, the learned C.I.T.(A) should not have ignored the explanation as well as the cash flow statement and capital account furnished by the Appellant and should not have confirmed the addition made by the learned A.O., treating the same as undisclosed investment.*

4. *For that, the learned C.I.T.(A) should have deleted the addition of Rs.6,71,130.00 made by the learned A.O., particularly when, the impugned addition is not sustainable, as such, the same needs to be deleted in the interest of justice.*
 5. *For that, the learned C.I.T.(A) should not have ignored the judicial pronouncement and explanation of the Appellant and should not have sustained the Reassessment proceeding, particularly when, the same is without the authority of law, as such, the same needs to be quashed in the interest of justice.*
 6. *For that, your Appellant craves leave of this Hon'ble Tribunal to urge any other grounds, if any, at the time of hearing in the interest of justice.*
3. I have heard arguments of both the sides and carefully perused the relevant material placed on the record of Tribunal.
4. Ld. AR, first of all, drew my attention towards para 3 of the assessment order dated 06.11.2015, passed u/s.143(3) read with Section 147 of the Income Tax Act, 1961 (for short "the Act") and submitted that on receipt of reply to notice u/s.148 of the Act filed by the assessee, the AO himself noted that "*The assessee proved that no capital gain arose from sale of landed property*". Ld. AR vehemently pointed out that in view of the proposition rendered by the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd., [2011] 331 ITR 236 (Bom), if after issuing notice u/s.148 of the Act, the AO accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, then it is not open to him independently to assess some other income. Ld. AR strenuously contended that in this case the AO, after holding that no capital gain arose from sale of landed property,

should have dropped the proceedings without making any addition or disallowance but the AO proceeded to make enquiry regarding source of funds used for purchase of property which was out of ambit of his powers available to him u/s.147 of the Act and as per the proposition rendered by the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd.(supra).

5. Replying to the above, Id. DR strongly supported the action of the AO initiating the reassessment proceedings u/s.147 of the Act and submitted that since the assessee has participated in the reassessment proceedings, the assessee is precluded from challenging the validity of initiation of proceedings u/s.147 of the Act and issuance of notice u/s.148 of the Act.

6. On careful consideration of above rival submissions, at the very outset, I may point out that the provisions of Section 292BB of the Act is related to the deemed validity of notice in circumstances and this provisions provides that where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was— (a) not served upon him; or (b) not served upon him in time; or (c) upon him in an improper manner. In the present case, the contention of the assessee that in the event of no

addition on the issue agitated on the satisfaction note and notice u/s.148 of the Act, then the AO has no power to pick up any other issue for making any addition or disallowance. This proposition has been rendered by Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd.(supra).

7. In the present case, the assessee is neither challenging the assessment on the ground of non-service of notice or non-service of notice within the prescribed time or improper service of notice but the assessee is challenging that if the AO has initiated reassessment proceedings u/s.147 of the Act on the allegation of escapement of income of capital gain, then it is not open to the AO to make any disallowance or addition by picking up any other issue. Therefore, the legal contention of Id. DR that the provision of Section 292BB of the Act is applicable in the present case in favour of the revenue, has no legs to stand in view of the basis and arguments of the assessee challenging the initiation of proceedings u/s.147 of the Act and show cause notice u/s.148 of the Act, therefore, I decline to accept the legal contention of Id. DR that the provision of Section 292BB of the Act is applicable to the present case in favour of the revenue.

8. So far as the contention of Id. AR based on the proposition rendered by the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd.(supra) is concerned, I find it appropriate to reproduce the reasons recorded by the AO for initiation of the reassessment proceedings on 20.05.2015, which reads as follows :-

20-05-15 *Sri Antariyami Kar*
S/o Sri Bhagirathi Kar
At-Podapatna
PO/PS : Oupada
Dist : Balasore-756049

“As per the information received from the JCIT, Central Range, Bhubaneswar, the above noted person has sold land through Saishree Realcom Pvt. Ltd., Telengasahi, Balasore, C/o Director Sri Biswa Ranjan Devgoswami, S/o Bhagabat Pd. Devgoswami, Telengasahi, Balasore to Arthatatwa Multi Purpose Co-op Society Ltd, Sector-29, Unit-3, BBSR, C/o Director Sri Jagabandhu Panda, S/o Shyam Sundar Panda, Sector-29, Unit-3, Bhubaneswar for a sale consideration of Rs.2,21,00,000/- on 23.03.2011. Sri Nirmal Ch. Ojha received his share of money but failed to show by filing a return of income for A.Y.2011-12 a capital gain from such transfer of landed property. Thus, I have reason to believe that income/gain from such property has escaped assessment u/s. 147 of the I.T. Act, 1961. Issued notice u/s.148 of the I.T.Act calling for the person to file a return of income within 30 days of receipt of the notice.”

In view of the above, it is vivid that the AO initiated the assessment proceedings on the allegation of escapement of income of capital gain from purchase and sale of property by the assessee along with two other co-owners. There is no other allegation or issue in the satisfaction recorded by the AO while initiating reassessment proceedings and issuing notice u/s.148 of the Act. From para 3 of the assessment order, I have observed that the AO after considering the reply of assessee and documentary evidence placed before him recorded a clear cut finding that the assessee has proved that no capital gain arose from sale of landed property as the property was sold on the same price which was paid by

the assessee while purchasing the said land. However, the AO has not made any addition on the issue of capital gain but he proceeded to examine the issue of source of income/funds of Rs.8,38,350/- to purchase the said property with other two persons and after considering the reply and factual position explained by the assessee made addition of Rs.7,55,867/- and also added Rs.237/- on account of bank interest accrued to the assessee under the head income from other sources.

9. In view of the above noted facts, I am inclined to accept the legal contention of the Id. AR that in view of the proposition rendered by the Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd.(supra), the AO is not legally empowered and entitled to make addition or disallowance on other issues which were not mentioned in the reasons recorded for initiation of reassessment proceedings and in the notice u/s.148 of the Act, in case where the AO has not made any addition on the sole issue of capital gain, which was picked up by the AO for initiation of reassessment proceedings and issuance of notice u/s.148 of the Act. Therefore, in the totality of facts and circumstances of the present case and in view of the foregoing discussions, I have no hesitation to hold that the AO has crossed the limit while framing the assessment order and while making addition on account of source of funds used for purchase of property instead of fact that he did not make any addition on account of capital gain and the sole issue which was agitated and mentioned in the reasons recorded for initiation of reassessment proceedings. Therefore,

the additions made by the AO and confirmed by the Id. CIT(A) are not sustainable and accordingly, I dismiss the same.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 05/04/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 05/04/2019

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
Sri Antaryami Kar,
S/o-Bhagirathi Kar,
At-Podapatna, Oupada,
Dist: Balasore-759049
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1, Balasore,
District : Balasore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack