

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2992/Chny/2017
निर्धारण वर्ष /Assessment Year: 2012-13

Smt.Immaculate Judith,
C/o. Shri J.Prabhakar,
Chartered Accountant,
Residency Apartments,
245, T.T.K.Road, Alwarpet,
Chennai-600 018.

Vs. The Asst. Commissioner-
of Income Tax,
Cuddalore Circle,
Cuddalore.

[PAN: AAJPI 9414 P]
(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.J.Prabhakar, FCA
: Mr. R.Clement Ramesh-
Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 25.07.2019

घोषणा की तारीख /Date of Pronouncement

: 25.07.2019

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals), Puducherry, in ITA No.73/CIT(A)-PDY/2016-17 dated 24.10.2017 for the AY 2012-13.

2. Mr. R.Clement Ramesh Kumar, Addl.CIT, represented on behalf of the Revenue and Mr.J.Prabhakar, FCA, represented on behalf of the assessee.

3. In the assessee's appeal, the assessee has raised the following concise grounds of appeal:

1. The Hon'ble C.I.T.(A) is not justified in upholding the reopening of assessment when no speaking order was passed on objections thereto violating the decision of apex court in [2003] 259 ITR 19 (SC) and the jurisdictional High Court in [2018] 401 ITR 215 (Mad).

2. The Hon'ble C.I.T.(A) is not justified in sustaining the reopened assessment based on flimsy grounds without establishing the live link between the basis for reopening and the materials available on record for formation of credible belief of income escaping assessment.

3.. The Hon'ble C.I.T.(A) is not justified in sustaining the disallowance of cost of construction for compound walls at Rs.17.30 lakhs , borewell for 3.5 lakhs, car shed for Rs.1,71,882/- and cost of improvements for Rs.20.50 lakhs without due regard the maintenance of accounts only for a 6 years window in terms of Rule 6P of the Income Tax Rules.

4. The Hon'ble C.I.T.(A) is not justified in approving an inchoate and illegal valuation report for determining cost of construction and disregarding the valuation report furnished by the appellant, on frivolous grounds.

5. The Hon'ble C.I.T.(A) is not justified in sustaining the value adopted under section 50 C in utter disregard to the valid objections raised on priors reference to S.R.O. as well as illegal valuation threat on the apudant on the penultimate data of time bar.

6. The Hon'ble C.I.T.(A) has no basis to approve the valuation report under section 50 C working out guideline value post 1/4/2012 when guideline value as on date of transfer is staring ex-facie in the said report itself at Rs.42.15 per sq feet whose value translates to Rs.91,80,270/- only as against the exaggerated version of Rs.2,99,10,923/-.

7. In any event, the order of the C.I.T (Appeal) is illegal, arbitrary and made without due regard to provisions on reopening of assessments and rendered at exaggerated values without legal standing.

8. Your appellant craves the indulgence of the Hon'ble I.T.A.T to furnish additional evidence as well as supplemental and additional grounds of appeal on account of the rendition of assessment close to time bar without proper opportunity and unilateral decisions on evidences collected/ furnished during the course of re-assessment proceedings.

9. For these grounds and for such other grounds that may be adduced at the time of hearing, it is prayed that the order of the assessing officer and that of the C.I.T (Appeal) be cancelled.

4. The Ld.AR drew our attention to Page No.15 of the Paper Book, which was a copy of the reasons recorded for the purpose of re-opening. The same is extracted herein below:

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CUDDALORE CIRCLE
S.N CHAVADY. CUDDALORE-607 002

AAJPI 9414 P/148/Reason/2014-15

Date: 03.02.2015

To
Smt. Immaculate Judith,
D-12, Block-13,
Rabindranath Tagore Road,
Neyveli-607 803.

Sir,

Sub: Income Tax Assessment- your own - AY 2012-2013 - Reasons for reopening of assessment - furnishing of - regarding.

Ref: i) Notice u/s. 148 dated 26-11-2014.
ii) Your letter dt. 30-12-2014 received on 29-01-2015.

Kindly refer to the above.

The reasons for reopening your case for the Assessment Year 2012-13 is furnished hereunder as requested.

On perusal of records, it is seen that you had claimed Long Term Capital Gains of Rs.47,69,249/- on the sale of immovable property worth Rs.2.01 crores. But it is noted that there are some discrepancies in declaring the Long Term Capital Gain.

In view of the above, income is considered to have escaped assessment within the meaning of Section 147 and Notice u/s.148 was issued.

Yours faithfully,
Sd/-
(G. SHOBA. I.R.S.)
Assistant Commissioner of Income Tax
Cuddalore Circle, Cuddalore

5. It was a submission that the reasons recorded were bald and flimsy and the re-opening as done by the AO was invalid. It was a submission that the re-opening of the assessment is liable to be quashed.

6. In reply, the Ld.DR submitted that the assessee had filed her return of income for the relevant AY on 14.11.2012. It was a submission that the same was processed u/s.143(1). It was a submission that as there was an error in computation of the capital gains as disclosed by the assessee, the AO had recorded reasons for the relevant AY and had issued the notice u/s.148 on 26.11.2014. It was a submission that the assessee had replied to the reasons recorded and had objected vide a letter dated 23.02.2015 and the same had also been rejected by the AO. It was a submission that the fact is that the additions in the Assessment Order clearly shows that the re-assessment notice and the reasons recorded were valid. It was a submission that the re-opening of the assessment was liable to be upheld.

7. We have considered the rival submissions.

8. A perusal of the reasons recorded clearly shows that there is nothing coming out of the reasons to show why the re-opening has been proposed. The AO uses the word 'some discrepancies'. This is very vague. There has to be live link between the reasons recorded and the issue on which re-opening is actually done. This is also absolutely

missing. The re-opening cannot be done for the purpose of making fishing and roving enquiries. A perusal of the reasons recorded clearly shows that the re-opening has been done merely on suspicion and there is no reference to any specific issue, on account of which, the AO is of the opinion that there is a discrepancy in the declaration of the long term capital gains. This being so, we are of the view that the re-opening of the assessment by recording the reasons extracted above by the AO is unsustainable and consequently, the re-opening of the assessment stands quashed. No other grounds have been argued. Consequently, we are not adjudicating the other issues as raised in the grounds of appeal.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 25th day of July, 2019 in Chennai.

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 25th July, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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