

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.927/CHNY/2018.
निर्धारण वर्ष /Assessment year : 2012-2013.

R. Jayaselvi,
No.27, Mariamman Koil Street,
Edayarapalayam,
Pondicherry 605 007.

Vs. The Income Tax Officer,
Ward-1,
Pondicherry.

[PAN AWAPJ 1581D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. T. Vasudevan, Adv
प्रत्यर्थी की ओर से /Respondent by : Shri. A. Sundararajan, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 23-01-2020
घोषणा की तारीख /Date of Pronouncement : 12-02-2020

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-Puducherry, ('CIT(A)' for short) dated 10.01.2018 for the assessment Year (AY) 2012-2013.

2. The Assessee raised the following grounds of appeal:

'1. The order of the Commissioner of Income – tax (Appeals) dismissed the appeal is contrary to law, erroneous and unsustainable on the facts of the case.

2. The CIT(A) erred in upholding the reopening of assessment under sec.147 of the Act.

3. The CIT(A) failed to appreciate that the reopening was based only on change of opinion by the officer since the identical issue of long term capital gains computation was considered by the officer in the assessment u/s.143(3) dated 4.9.14, wherein the claim for exemption was considered and hence the reopening for the same reason is untenable in law.

4. The CIT(A) further failed to appreciate that there was no reason to believe that income had escaped assessment, since the return of income filed by assessee was the basis for issuing notice u/s.148 on 7.11.15 and the reopening is not in accordance with law and needs to be annulled.

5. The CIT(A), in any event, ought to have seen that after the order u/s.143(3), the onus rests heavily on the officer to bring on record fresh material that had not been considered earlier, which remains unsubstantiated and hence the reopening of assessment is untenable in law.

6. The CIT(A) erred in confirming the denial of exemption u/s.54B of Rs.14,00,000 to the assessee.

7. The CIT(A) failed to appreciate that the assessee had reinvested the sale proceeds in agricultural lands and rightly claimed exemption under sec.54B and the denial of the same was incorrect and based only on surmises and conjectures.

8. The CIT(A) further failed to appreciate that the lands disposed off are ancestral in character and hence the reinvestment of the sale proceeds in the hands of the family members is entitled to exemption u/s.54.

9. The CIT(A) further failed to appreciate that the denial of exemption was merely on surmises and the lands being part of a larger extent of lands held by assessee received through family settlement, and hence ought to have directed grant of exemption u/s.54B of the Act.

10. The CIT(A) in any event, ought to have seen that the assessee had made the re-investment and duly complied with the statutory requirements for re-investment in accordance with the provisions of the Act and hence on a due consideration of the same, ought to have allowed exemption u/s.54B and thus allowed the appeal''.

3. The brief facts of the case are as under:

The appellant is an individual. The assessee has not filed original return of income voluntarily u/s.139 of the Income Tax Act, 1961 (in short 'the Act'). Subsequently, on receipt of information that assessee sold property for ₹1,64,48,000/-, notice u/s.148 of the Act was issued. In response to which assessee filed return of income disclosing income of ₹21,12,020/-. Against the said return of income the assessment was completed vide order dated 04.09.2014 at total income of ₹41,47,210/-. While doing so, the Assessing Officer made an addition on account of long term capital gains of ₹41,47,210/- and assessed capital gains arising on sale of property measuring 32894 sq.ft. in Pondy Cuddalore ECR Road, Edaiyarpalayam Village Thavalakuppam Revenue Village. The difference is on account of adoption of lower value of fair market value as on 01.04.1981. Accordingly, the assessment was completed by the Income Tax Officer, Ward I(1), Pondicherry (herein after referred as 'the Assessing Officer') vide order dated 07.09.2014. The Assessing Officer allowed exemption under the provisions of Section 54B of the

Act of ₹14,00,000/- as claimed by the assessee. Subsequently, based on the information on record, the Assessing Officer formed an opinion that assessee is not entitled for exemption u/s.54B of the Act. Accordingly, notice u/s.148 of the Act was issued on 07.11.2015. In response to which the assessee submitted that the return of income filed on 07.05.2014 be treated as return in response to notice issued u/s.148 of the Act. Subsequently, the assessment came to be completed vide order dated 15.07.2016 withdrawing the exemption granted u/s.54B of the Act on the ground that the property was brought not in the name of the assessee but in the name of different persons.

4. Being aggrieved, an appeal was preferred before the Id. CIT(A) contending that there was no reason to believe that income escaped assessment and there was no failure on the part of the assessee to disclose all material facts which are necessary for the purpose of the assessment. Id. CIT(A) confirmed the validity of the reassessment vide impugned order as well as dismissed the appeal on merits.

5. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. It is contended that there are no reasons to believe that income escaped assessment. In the absence of fresh tangible material, the Assessing Officer reopened the

assessment on the same set of facts which are available with him at the time of passing the original order. He further contended that there is no averments in the reasons recorded that there is failure on the part of the assessee to disclose all material facts necessary for the purpose of making assessment. In support of this, he placed reliance on the judgment of Hon'ble Delhi High Court in the case of *Shri. Sanjeev Ghei vs. ITO, 2018 (8) TMI-1785*, the Special Leave Petition against the said decision was dismissed by the Hon'ble Supreme Court reported in *(2019) 3 TMI 741*.

6. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to validity of the reopening. From the perusal of the assessment, it is clear that the Assessing Officer recorded a finding that second assessment was based on the same fact of materials available on record. There is no reference to any fresh tangible material brought on record. It is amply clear from the assessment order that the Assessing Officer had made observation "subsequently on perusal of the records showed that the assessee had claimed an exemption of ₹14,00,000/- u/s.54B towards purchase of agricultural land under different names". This goes to show that reopening is based on the same set of facts which are

available with the Assessing Officer at the time of making original assessment. In the original assessment order, the Assessing Officer allowed exemption u/s.54B of the Act after considering the material available on record and took plausible view. Therefore we can safely conclude that reopening of assessment is only based on change of opinion on the same set of facts which are available with the Assessing Officer at the time of framing the original assessment order. Keeping in view the ratio decision of Hon'ble Supreme Court in the case of *Kelvinator of India Ltd (2010) 320 ITR 561*, we hold that reopening the assessment is bad in law. Accordingly, we squash the re-assessment proceedings and allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee in ITA No.927/CHNY/2018 for assessment year 2012-2013 stands allowed.

Order pronounced on 12th day of February, 2020, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:12th February, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER