

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.608/Viz/2018
(निर्धारण वर्ष/Assessment Year:2011-12)**

Kilari Venkata Rosaiah
D.No.25-16-180
G.T.Road, AMC Yard
Guntur
[PAN : ADSPK7598L]

Vs Asst. Commissioner of
Income Tax
Circle-1(1)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

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

: Shri G.V.N.Hari, AR
: Shri S.Ravi Shankar Narayan,
DR

सुनवाई की तारीख / Date of Hearing

: 16.03.2020

घोषणा की तारीख/Date of Pronouncement

: 05.06.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-1, Guntur in Appeal No.106/2014-15 dated 21.03.2014 for the Assessment Year (A.Y.) 2011-12.

2. Ground No.1 and 4 are general in nature which does not require specific adjudication.

3. Ground No.2 is the addition made by the Assessing Officer (AO) stated to be outside the scope of reassessment provisions, since no addition was resulted on the reasons recorded.

4. Brief facts of the case are that, the assessee filed the return of income declaring total income of Rs.30,37,440/- on 06.02.2012. The assessment was completed u/s 143(1), subsequently, the AO reopened the assessment in respect of rents received from M/s NRI Academy and M/s Reliance Infra Ltd., totaling to Rs.19,37,640/- and issued the notice u/s 148 after duly recording the reasons. In response to notice issued u/s 148, the assessee filed a letter stating that the return of income already filed on 06.02.2012 may be treated as return in response to the notice issued u/s 148. Subsequently, the case was taken up for scrutiny and the notices u/s 143(2) and 142(1) were issued to the assessee and the assessment was completed on total income of Rs.45,87,650/-. In the assessment made u/s 143(3) r.w.s. 147, the AO made the addition representing the short admission of capital gains. No addition was resulted relating to the rental income which was believed to be escaped from the assessment as per the

reasons recorded. Therefore, the assessee went on appeal before the CIT(A) and agitated the issue. In the written submissions filed before the Ld.CIT(A), the assessee stated that the reason for issue of notice u/s 148 was on account of non disclosure of rental income from NRI academy which pertained to HUF but not related to the assessee. The assessee further stated that the rental income was declared in HUF and assessed in the hands of HUF. Since no addition was made u/s 148 in the assessee's case, with regard to rental income, the assessee argued that there is no case for making another addition. During the course of appeal proceedings, the assessee also challenged the validity of reassessment made u/s 143(3) without making the additions relating to the issues raised in the reasons recorded for reopening the assessment. The Ld.CIT(A) considered the additional ground raised by the assessee during the appeal hearing and called for the remand report. After considering the remand report, the Ld.CIT(A) dismissed the appeal of the assessee following the decision of Hon'ble Karnataka High Court in the case of M/s Mookambika Developers, Bangalore (ITA No.374/2014 dated 27.07.2015).

5. Against which the assessee filed the appeal before the Tribunal. During the appeal hearing, the Ld.AR submitted that the AO reopened the assessment for non admission of rental receipts from M/s NRI Academy

and M/s Reliance Infra Limited of Rs.19,37,640/-. The said rental receipts were related to the HUF and assessed separately in HUF status. The rents received from both the tenants were duly admitted in the return of income filed in HUF status, therefore, issuing notice u/s 148 in the hands of the assessee is bad in law. The Ld.AR further submitted that the above facts were brought to the notice of the AO in reply to the notice issued u/s 148 and also before the AO vide assessee's letter 04.11.2013 placed in paper book in page No.37 and 38. Therefore, submitted that reason to believe that income chargeable to tax had escaped assessment is under mistaken impression and the said receipts does not belong to the assessee. Therefore, argued that the AO ought to have dropped the reassessment proceedings in the hands of the assessee. The Ld.AR further submitted that on receipt of reply from the assessee, the AO dropped the proposed addition, but made the addition relating to short admission of capital gains. The assessee submitted that since the AO did not make any addition for which the reasons were recorded, the AO is not permitted to make any other addition as decided by the decision of Hon'ble Jurisdictional High Court in the case of Swarna Andhra IJMI Integrated Township Development Pvt. Ltd. in ITTA No.165/2014 dated 12.03.2014 and argued that the assessment required to be set aside and allow the appeal of the

assessee. The Ld.Counsel further submitted that the issue with regard to reasons recorded for reopening the assessment was relating to Kilari Venkata Rosaiah (HUF), but not Kilari Venkata Rosaiah (individual), therefore, argued that since the very belief for forming the reason to believe the income chargeable to tax had escaped assessment is not related to the assessee, the notice issued u/s 148 is bad in law and requested to quash the notice issued u/s 148 and allow the appeal of the assessee.

6. On the other hand, the Ld.DR submitted that as per Form 26AS, the assessee was paid the rental income of Rs.19,05,900/- from M/s NRI Academy and Rs.31,740/- from M/s Reliance Infra Ltd. which was not admitted in the return of income filed by the assessee. Therefore, the notice u/s 148 was issued since the assessee did not admit the rental income in his hands. Therefore, argued that reopening of assessment is perfectly in order. The Ld.DR further submitted that enquiry was caused with M/s NRI Academy on 19.11.2013 by issue of letter u/s 133(6), wherein NRI Academy clarified that the land and ACC sheds were leased for the purpose of running intermediate classes from the assessee on a rent of Rs.30,000/- per month and the NRI academy deducted TDS @30% and paid to the Government account. While filing e-TDS return, rent was shown at Rs.19,05,900/- and TDS of Rs.1,90,596/- in the account of Sri Kilari Venkata

Rosaiah, it was further submitted by the NRI Academy that rent of Rs.19,05,900/- was paid to various persons including the assessee. The mistake was rectified subsequently by filing e-revised returns. After considering the reply of the assessee, the AO dropped the issue and no addition was made relating to the rents. Since the PAN of the assessee was mentioned in the 26AS, the AO believed that income was related to the assessee and hence argued that there is no error in reopening the assessment and the reopening of assessment is valid. The Ld.DR further submitted that though the assessment was reopened for non admission of rental income and the addition was not made on rental income and no addition was made during the course of assessment proceedings, it has come to the notice of the AO regarding escapement of income on sale of capital asset and the same was brought to tax. Since the reopening of assessment is valid, after insertion of Explanation 3 to section 147, the AO is permitted to make the addition on any other issue which comes to the notice of the AO during the course of assessment proceedings. Therefore, argued that the AO rightly made the addition with regard to long term capital gains, hence, requested to uphold the order of the AO. The Ld.DR relied on the decision of Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income Tax Vs. Mehak Finvest (P.) Ltd. [2014] 52

taxmann.com 51 (Punjab & Haryana) and also the decision of Hon'ble High Court of Delhi in the case of Principal Commissioner of Income Tax (Central)-3 Vs. Jakhotia Plastics (P.) Ltd. [2018] 94 taxmann.com 89 (Delhi) and requested to uphold the order of the AO and dismiss the appeal of the assessee.

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee filed the return of income on 06.02.2012 and subsequently reopened the assessment for escapement of income with regard to rental receipts stated to be received from M/s NRI Academy and M/s Reliance Infra Ltd. amounting to Rs.19,37,640/-. The AO found that the assessee has not disclosed the rents received from NRI Academy and Reliance Infra Ltd, hence believed that the income chargeable to tax had escaped the assessment. From the computation of income filed by the assessee, the assessee has claimed the TDS to the extent of Rs.30,752/- as against the TDS stated to be deducted to the extent of Rs.1,90,900/-. Subsequently, during the assessment proceedings, the assessee clarified that the rental income received was not related to the assessee, but related to the HUF which was assessed to tax separately. The rental income was admitted in the HUF return. On an enquiry from NRI Academy, it was clarified that by mistake the rent was shown in the name

of Sri Kilari Venkata Rosaiah and letter filed the revised TDS return. The AO also did not make any addition in respect of rental income. The above facts shows that there was a mistake in Form 26AS, which was issued by the deductor and the said income was not pertaining to the assessee. TDS also was not claimed by the assessee in it's hands. The basis for believing the reason for reopening the assessment is without any material or application of mind. The AO ought to have made the verification of all these aspects before concluding the assessment proceedings. Since the reason to believe the income chargeable to tax had escaped assessment does not pertain to the assessee, reopening of assessment is not in accordance with law. Further after considering the explanation of the assessee, the AO did not make any addition representing the rental income, but proceeded to make the addition in respect of other issues i.e. capital gains. The Ld.AR relied on the decision of Hon'ble Jurisdictional High Court in the case of Swarna Andhra IJMII Integrated Township Development Pvt. Ltd., wherein, the Hon'ble Jurisdictional High Court held that Explanation 3 will be applicable to section 147 in case where live issue, which was subsisting at the time of original assessment and if such issue has escaped the assessment of AO, can be a ground for reopening. Any new issue that has cropped up subsequently on new set of facts has no application. For the

sake of clarity and convenience we extract the relevant part of the order of the Hon'ble Jurisdictional High Court as under :

"We are of the view that the Explanation-3 to Section 147 of the Income Tax Act on the given facts and circumstances of the case does not apply. Moreover, in which case and when Explanation-3 would be applicable has been decided by various High Courts namely, Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd., (331 ITR 236); Delhi High Court in the case of Ranbaxy Laboratories Ltd. Vs. CIT (336 ITR 136), Chhattisgarh High Court in the case of ACIT Vs. Majo Deepak Mehta (344 ITR 641) and Gujarat High Court in case of CIT Vs. Mohamed Juned Dadani. In view of the consistent decision of these High Courts, we are not in a position to take a different view and the learned Tribunal has followed the consistent View of those High Courts. Even, we find that independent of the decision of those High Courts that the Explanation-3 will be applicable in case Where live issue, which was subsisting at the time of original assessment and if such issue has escaped the determination of the Assessing Officer, can be a ground for reopening, Any new issue that has cropped up subsequently on new set of facts, the aforesaid Explanation has no application. We think that the Explanation-3 has not really diluted cardinal object of Section 147 of the Income Tax Act for reopening. The Explanation-3, has been given a retrospective effect with an idea there are so many assessment orders, which were passed earlier without deciding The issue subsisting at the time of original assessment. This Explanation has held to be reopened in those cases."

7.1. In the instant case, the reopening of assessment was made on the belief that rental income had escaped assessment. Whereas the rental income does not belong to the assessee and belonged to the HUF of the assessee. Though the PAN number of the assessee is mentioned in the 26AS, the assessee has not claimed the TDS in the return. These issues clearly show that the AO reopened the assessment without proper appreciation of facts. Therefore, we hold that the reopening of assessment is bad in law, accordingly we quash the notice issued u/s 148. The

assessee's case is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of Swarna Andhra IJMII Integrated Township Development Pvt. Ltd., Respectfully following the view taken by the Hon'ble High Court of Andhra Pradesh, we hold that once the additions are not made on the issue for which the notice was issued, the AO is not permitted to make any other addition, accordingly we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. The appeal of the assessee is allowed.

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

Order pronounced on 5th June , 2020.

Sd/-
(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 05.06.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Kilari Venkata Rosaiah, D.No.25-16-180, G.T.Road, AMC Yard, Guntur
2. राजस्व/The Revenue - Asst. Commissioner of Income Tax, Circle-1(1), Guntur
3. The Pr.Commissioner of Income Tax , Guntur
4. The Commissioner of Income Tax (Appeals)-1, Guntur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam

Sl. No.	Description	Date	Initials
1.	Date of dictation by the Author		Sr.PS
2.	Draft placed before the Dictating Member		Sr.PS
3.	Draft placed before the Second Member		Sr. PS
4.	Draft approved by the Second Member		Sr. PS
5.	Date of approved order comes to the Sr. PS		Sr. PS
6.	Date of pronouncement of order		Sr. PS
7.	Date of file sent to the Bench Clerk		Sr. PS
8.	Date on which file goes to the OS		B.Clk
9.	Date on which file goes to the Sr.PS		OS
10	Date of despatch of order		Sr. PS