

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri D.S.Sunder Singh, Accountant Member

ITA No.384/Hyd/2018		
Assessment Year:2009-10		
Nava Bharat Ventures Ltd Hyderabad PAN:AAACN7327C (Appellant)	Vs.	Asstt. Commissioner of Income Tax, Circle 16(1) Hyderabad (Respondent)
Assessee by:	Sri V. Shiva Kumar	
Revenue by:	Smt. N. Swapna, DR	
Date of hearing:	01/09/2020	
Date of pronouncement:	04/09/2020	

ORDER

Per D.S. Sunder Singh, A.M.

This is assessee's appeal for the A.Y 2009-10 against the order of the CIT (A)-4, Hyderabad, dated 29.01.2018. The assessee has raised the following grounds:

"1. The order of the Commissioner of Income Tax (Appeals)-4, Hyderabad, dated 29.01.2018 is contrary to law and facts of the case.

2. Commissioner of Income Tax (Appeals) ought to have seen that re-opening of assessment u/s.147 is bad in law since no new information came into the possession of the Assessing Officer after the assessment for this year was completed u/s.143(3) and during the said proceedings copy of sale deed for land registered on 23-7-2008 was submitted wherein details of market value of land was mentioned in an Annexure to the sale deed. Hence re-opening of assessment on the ground that information regarding market value of land was gathered after the original assessment was completed is not borne out by record and far from truth. Hence re-opening of assessment based on the information already available on record is not proper and correct.

3. The Commissioner of Income Tax (Appeals) is not justified in confirming the action of Assessing Officer in subjecting to assessment the capital gains of Rs.2,71,89,574/- in Asst. year 2009-10 stating that there is no dispute with regard to application of provisions of Sec.50C when the Appellant had in detail submitted its objections to applicability of provisions of Sec.50C in Asst. year 2009-10. The Commissioner of Income tax (Appeals) ought to have seen that the land was transferred by the Appellant in the financial year 1995-96 as per provisions of Sec.2(47) of the Act. Therefore, the Assessing Officer ought to have seen that the transfer of the land by the Appellant had already taken place in the financial year 1995-96 relevant to the assessment year 1996-97 and in assessment year 2009-10 only Sale Deed was executed in compliance with understanding that took place in the assessment year 1996-97.

4. For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the appeal and direct the respondent herein to delete Long term capital gains of Rs.2,71,89,574/- determined in Asst. year 2009-10 in the interest of justice”.

2. Brief facts of the case are that the assessee has filed its return of income for the A.Y 2009-10 admitting total income of Rs.99,58,77,640/- on 30.09.2009 after claiming deduction under Chapter VIA amounting to Rs.374,22,35,801/- and declared the book profit, u/s 115JB of the Act at Rs.550,85,90,513/-. Later on the assessee company filed revised return of income revising the total income to Rs.92,53,77,848/- and the assessment was completed u/s 143 r.w.s. 92CA(3) and section 144C of the Act determining the total income of Rs.94,10,66,297/-. In the reassessment proceedings, the AO made the addition of Rs.2,71,89,574/- relating to long term capital gains invoking the provisions of section 50C of Income Tax Act. Against which the assessee went on appeal before the CIT (A) and the Ld.CIT (A) dismissed the appeal of the assessee. Hence the assessee filed this appeal before the ITAT.

3. When the appeal was taken up for hearing, assailing ground No.2 regarding the validity of reopening of the assessment the learned AR submitted that in the instant case the assessment was originally completed u/s 143(3) on 30.03.2013 and the notice u/s 148 was issued on 4.11.2015 i.e beyond four years from the end of the relevant A.Y. The issue involved for reopening of the assessment was assessment of capital gains invoking the provisions of section 50C of the I.T. Act. Taking reference to page No.9 of the Paper Book, the AR submitted that the assessee sought for reasons for reopening the assessment and in page No.10 of the paper book the AR enclosed the reasons supplied by the AO vide letter dated 28.01.2016. One of the reasons for reopening the assessment is with regard to sale of property situated at Malkajagiri SRO for which the SRO value was determined at Rs.2,71,97,000/- against the actual consideration received at Rs.8.00 lakhs. According to the AO, the difference resulted in short computation of capital gains income which prompted the AO to reopen the assessment. In this regard, the learned AR submitted that the assessee has furnished the entire information before the AO during the original assessment proceedings and no new information was received by the AO. Referring to Page No.24 to 28 of the Paper Book, the AR submitted that the original sale deed was placed before the AO, wherein the complete details were furnished with regard to the actual sale consideration and the market value of the property. In Page No.28, the market value of the property was made available to the AO in Annexure-1(A) and as per the sale deed the actual sale consideration received was stated to be Rs.8.00 lakhs, against the market value of Rs.2,71,97,000/-. Thus, argued that since, the entire information was placed before the AO and four years have been lapsed from the end of the relevant A.Y and no fresh

information was received by the AO, the reopening of the assessment is bad in law and accordingly requested to quash the notice issued u/s 148 of the act. The learned AR further submitted that though the assessee has not specifically raised the ground with regard to validity of issue of notice u/s 148, in ground No.1 the assessee challenged the validity of assessment made under section 143(3) r.w.s 147 before the CIT (A) and made written submission challenging the validity of issue of notice u/s 148 beyond 4 years without having any fresh information and the learned CIT (A) has not decided the issue and summarily rejected the assessee's contention. Therefore, the learned AR argued that the order of the Ld.CIT(A) be set aside and notice issued u/s 148 is required to be quashed.

4. On the other hand, the ld DR submitted that the Ld.CIT (A) has dismissed the appeal of the assessee on the ground of reopening of the assessment and upheld the reopening of assessment. Since there is no specific ground raised by the assessee, before the CIT (A), the Ld.CIT (A) rightly decided the appeal and hence there is no error in the order of the Learned CIT (A), thus, requested to uphold the order of the Ld.CIT(A) and no interference is called for.

5. We have heard both the parties and gone through the orders of the authorities below. Before the CIT (A) though there was no specific ground raised by the assessee with regard to validity of reopening of assessment, the assessee has made submissions on reopening of the assessment vide letter dated 18.07.2016 which was discussed by the learned CIT (A) in Para 4.2.of her order which reads as under:

“4.2 During the course of appeal proceedings, with regard to above ground, the appellant company submitted as under:

The appellant company submitted objections against reopening of the assessment by its letter dt. 18-07-2016.

As per proviso to sec.147, where an assessment was already completed u/ s 143(3) such assessment cannot be reopened after the expiry of four years from the end of the relevant assessment year in which the assessment was completed. Therefore, in our case, since our assessment was completed u/ s 143(3). the same cannot be reopened after four years of the relevant assessment year i.e., the assessment cannot be reopened beyond 31-03-2014 unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on our part in disclosing fully and truly all material facts necessary for completion of assessment for that assessment year.

We submit that since the notice u/s 148 was issued on 6-11-2015 which is after four years of A. Y. 2009-10, the reopening of assessment is bad in law.

In this connection we rely on the decision of Hon 'ble Supreme Court in the case of CIT vs. Foramer France(264 ITR 566) and decision of Andhra Pradesh High Court in the case of Mahalakshmi Motors Ltd. vs. DCIT(265 ITR 53) etc.,

Therefore, we submit that since all the information relating to various issues noted in reasons recorded for reopening the assessment were there before the then Assessing Officer at the stage of original at and there was no failure on our part to disclose fully and truly all material facts necessary for completion of the assessment.

Therefore, we submit that no new material which was not furnished by us at the time of original assessment with regard to the said issues has come on record after the assessment is completed and therefore reopening of assessment is only due to mere change of opinion and that too beyond the time limit as specified in the proviso to sec. 147 of the Act which is bad in law. We rely on the following cases.

*CIT vs. Bhaviji Lavji (79 ITR 582(SC))
CIT vs. Kelvinator of India Ltd. (256 ITR 1 (Delhi)(FB))
JCIT vs. George Williamson(Assam) Ltd. (258 ITR 126(Gauhati)), etc.*

We therefore submit that since all details are available on record to the then Assessing Officer, there is no occasion for reopening our assessment for the A. Y. 2009-10 beyond four years from end of such assessment year and request your goodselves to close the reassessment proceedings initiated u/ s 148 and oblige for which act of kindness we shall be thankful to you.

4.3 I have carefully considered the assessment order and submissions of the appellant. It is observed that the Assessing Officer during the course of reassessment proceedings, as per the 50C data collected by the department, communicated the detailed reasons for reopening of the assessment. As per 50C data, the market value of the property sold was much higher than the sale consideration admitted by the appellant company. Therefore, the Assessing Officer is correct in reopening of the assessment and hence, the ground raised by the appellant company in this regard dismissed.”

6. The Learned CIT (A) has summarily rejected the contentions of the assessee without considering the detailed written submission and the facts placed before her. It is the obligation of the Learned CIT(A) to consider all the facts and decide the issue in speaking order. In the instant order the Ld.CIT(A) has not discussed the facts placed before her and the reasoning for rejection of assessee's contention regarding the validity of reopening the assessment. Therefore, we, are of the considered view that the issue with regard to the validity of the reopening of the assessment needs to be addressed by the learned CIT (A) in the light of the facts placed by the assessee in it's written submissions. Hence, we set aside the matter to the file of the CIT (A) with a direction to consider all the facts and submissions made by the assessee and the evidence placed before the CIT (A) and decide the issue afresh on merits after giving opportunity to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 4th September, 2020.

Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER	Sd/- (D.S.SUNDAR SINGH) ACCOUNTANT MEMBER
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Hyderabad, dated 4th September, 2020.

Vinodan/sps

Copy to:

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- 2 ACIT, Circle 16(1) Hyderabad
- 3 CIT (A)-4 Hyderabad
- 4 Pr. CIT – 4 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order