

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**I.T.A. No. 2418/Kol/2019  
Assessment Year: 2009-10**

**ACIT, Circle-3(2), Kolkata.....Appellant**

**Vs.**

**M/s. Sattva Developers Pvt. Ltd.....Respondent  
[PAN: AAICS 2869 J]**

**Appearances by:**

*Sh. Supriyo Pal, Addl. CIT, appeared on behalf of the Revenue.*

*Sh. A.K. Tibrewal, FCA, appeared on behalf of the Assessee.*

Date of concluding the hearing : March 25<sup>th</sup>, 2021  
Date of pronouncing the order : April 16<sup>th</sup>, 2021

**ORDER**

**Per J. Sudhakar Reddy, AM:**

This is an appeal filed by the Revenue directed against the order of the Learned Commissioner of Income Tax (Appeals)-2, Kolkata, [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 30.08.2019 for the Assessment Year 2009-10.

2. The ld. CIT(A) has held that the re-opening of the assessment in this case is bad in law. This finding of the ld. CIT(A) is challenged before us by the Revenue.

3. We have heard Sh. Supriyo Pal, ld. D/R on behalf of the Revenue and Sh. A.K. Tibrewal, the ld. Counsel for the assessee on behalf of the assessee. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and the case law cited, we hold as follows.

4. The facts of the case are extracted for ready reference:

*"The facts of the case are that the original Return was filed, within time, u/s. 139(1) of the Act, showing total Income of Rs. 1,47,81,030/-, which inter alia included House Property income of Rs.2,46,23,873/-. The Return was selected for scrutiny and in response to notices u/s. 143(2) and 142(1), the assessee filed all details as desired by the Assessing Officer. In the computation of income filed before the Assessing Officer, it was inter alia shown that during the relevant Previous Year the assessee had received compensation of Rs. 2,01,10,040/- for premature*

*termination of the two Lease Agreements, which was claimed as capital receipt not exigible to tax. After hearing the assessee at length and appreciating all facts, brought on record in writing, as supported by evidences, the Assessing Officer accepted the assessee's claim of treating the aforesaid compensation of Rs. 2,01,10,040/- as capital receipt not exigible to tax. The original assessment order was thus passed on 08-12-2011, u/s. 143(3) & 115-WE(3) and the total income was computed at Rs.1,50,88,600/- (copy given in the Paper Book). The said Total Income inter alia included income from House Property of Rs. 2,46,23,873/-."*

4.1. The reasons for re-opening are given in page-1 & 2 of the assessment order which is extracted for ready reference:

*"On verification of records it was found that the assessee let out the house property "Salarpuria Supreme" at Varthur Hobli, Bangalore, on lease to two parties v.iz. Force Computers (India) Pvt. Ltd. and Winphoria Network (India) Ltd. The lease deed was executed in February 2005 with the concerned parties respectively. The lease was initially for a term of 5 years in both the cases commencing from 23.03.2005 and 20.04.2005 respectively with right to renewal for similar two successive terms. Clause 4 of the said Deed of Lease inter alia provided that if the lessee opted for early termination of the lease during the lock-in-period of the first term of 5 years, then the lessee should be liable to pay rent for the remaining period the said lock-in-period of 5 years. In September 2008, both the lessee company called for termination of the agreement to and agreed to pay the lessor an amount of Rs. 1,08,37,583/- and Rs. 92,72,457/- respectively as one time compensation to the lessor towards termination of the Lease Agreement. Meanwhile, both the lessee companies had been amalgamated with Motorola India Pvt. Ltd. on 10.10.2008 and Motorola India Pvt. Ltd. paid a sum of Rs. 1,08,37,583/- and Rs. 92,72,457/- to the lessor as compensation amount in October 2008 being equivalent to six months' rent in respect of said premises by a Memorandum of Understanding dated 10.10.2008.*

*The assessee credited the sum received as compensation of rent amounting to Rs. 2,01,10,040/- (Rs. 1,08,37,583/- and Rs. 92,72,457/-) to the profit and loss account. However, in computation the assessee claimed deduction and the same were allowed in the assessment order treating the compensation as Capital Receipt. As the amount received for compensation against early termination of Lease Agreement for property is nothing but rental income from the said leased out property, this need to be considered as income from house property in the hands of the assessee. This resulted in under assessment of income amounting to Rs. 2,01,10,040/-. Hence, Rs. 2,01,10,040/- has escaped assessment which may be brought under taxation by invoking the provisions of section 147 of the Income Tax Act."*

4.2. The ld. CIT(A) at page-12 of his order observed as follows:

*"Before passing the Assessment Order u/s 143(3) of the Act the AO had examined the appellant's claim of compensation receipt as capital receipt by asking explanation on 06/09/2011 as per certified copy of order sheet which is enclosed herewith. The appellant in response to the Ld. AO's query submitted the reply on 06/09/2011 (copies at pages no. 8 to 12 of the paper book). Thus, while passing his order u/s 143(3) of the Act on 08/12/2011 the Assessing Officer applied his mind to all the material submitted before him by the assessee and accepted the view canvassed by the appellant with regard to the appellant's claim of compensation receipt as capital receipt."*

4.3. Thereafter, the finding of the ld. CIT(A) held as follows:

*"I find that the appellate disclosed all the material facts in original assessment and after completion of the original assessment any fresh material was not brought on record by the AO. On the contrary, it is apparent from a reading of the reasons recorded u/s. 148(2) that after completion of the original assessment, the Assessing Officer changed opinion on the same set of materials and/or evidences which had already been considered and appreciated in original assessment. I find that the Assessing Officer, after due application of mind to all the facts*

*involved and forming opinion for allowing the assessee's claim in original assessment. I find from the above facts the in the aforesaid entries are read with the reasons recorded by the Assessing Officer u/s. 148(2) as reproduced on the second page of the impugned reassessment order, it is appreciated that on the basis of the very same materials which had been brought on record in original assessment, the reassessment proceeding was initiated without bringing on record any fresh fact/material whatsoever. I further find that the order-sheet (certified copy given in the Paper Book I in the file of the Assessing Officer for demonstrating its contention that the Assessing Officer assumed jurisdiction u/s. 147 on the basis of the same set of materials brought on record in original assessment, without finding any fresh fact after completion of the original assessment proceeding. From the entry made on 06-09-2011, it would be found that the Authorised Representative filed all the details excepting the explanation regarding treatment of compensation, and for this purpose the hearing was adjourned to 13-09-2011. The next entry on 19-09-2011 inter alia reads that the Authorised Representative appeared and submitted the details asked for. In view of above, I am of the view that it is a case of change of opinion only and nothing else and I further held that a case cannot be re-open on the basis of change of opinion."*

5. The Id. D/R could not controvert to this factual finding of the Id. CIT(A). Thus this is a clear case of change of opinion and hence the re-opening of assessment based on mistake of opinion is bad in law.

5.1. Even otherwise the re-opening is beyond the period of four years and the original assessment was completed u/s 143(3) of the Act on 08.12.2011. In the reasons recorded, there is no whisper that the assessee has failed to disclose truly and fully all material facts required for assessment. In the absence of such an allegation the re-opening is bad in law as the proviso to Section 147 comes into play.

6. In view of the above discussion, we uphold the order of the first appellate authority and dismiss this appeal of the Revenue.

7. In the result, the appeal filed by the Revenue is dismissed.

***Kolkata, the 16<sup>th</sup> April, 2021.***

Sd/-  
[Aby T. Varkey]  
Judicial Member

Dated: 16.04.2021

*Bidhan (P.S.)*

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

*Copy of the order forwarded to:*

1. **ACIT, Circle-3(2), Kolkata**
2. **M/s. Sattva Developers Pvt. Ltd., Anand Jyoti, Room No. 404, 41, Netaji Subhas Road, Kolkata-700 001.**
3. CIT(A)-2, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches