

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

श्री वी दुर्गा रत्न, न्यायिक सदस्य एवं श्री जी मंजूनथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1649/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2011-12

**Shri R. Jayaraman,**  
No.20A, Duraisamy Pillai St.,  
West Tambaram,  
Chennai – 600 045.  
**[PAN: AAKPJ 2471J]**  
(अपीलार्थी/**Appellant**)

**The Asst. Commissioner of**  
**Income Tax,**  
**Vs.** Non Corporate Circle-22,  
Chennai.  
(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr. K. Balasubramanian,  
Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms. R. Helen Ruby Jesindha,  
JCIT

सुनवाई की तारीख/Date of Hearing

: 23.11.2021

घोषणा की तारीख /Date of Pronouncement

: 26.11.2021

**आदेश / ORDER**

**Per V. Durga Rao, Judicial Member:**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-10, Chennai in I.T.A No.89/17-18/CIT(A)-10 dated 09.04.2019 relevant to the Assessment Year 2011-12.

2. The first ground of appeal raised by the assessee is relating to reopening of the assessment beyond four years, which is invalid according to the assessee.

3. The brief facts of the case are that the assessee is an individual engaged in the business of real estate. The assessee filed his return of income for the year under consideration by declaring total income of Rs. 1,95,77,220/-. The case of the assessee was selected for scrutiny and assessment was completed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter "the Act") on 28.03.2014 assessing the total income of Rs. 1,95,77,220/-. Subsequently, the Assessing Officer (A.O) has issued a notice u/s. 148 of the Act on 02.03.2017 on the ground that the assessee has not fully disclosed the income. In response to the notice issued by the AO, the Authorized Representative of the assessee has appeared on 10.08.2017 and submitted that the return filed u/s. 139 of the Act on 31.03.2012 may be treated as a return filed u/s. 148 of the Act. Thereafter, the A.O has completed the assessment u/s. 143 r/w. section 147 of the Act vide order dated 27.12.2017.

4. On being aggrieved, the assessee carried the matter in appeal before the CIT(A). Before the Ld. CIT(A), it was submitted that the A.O has issued a notice on 02.03.2017 which is beyond four years and the A.O in reasons nowhere stated that there is a failure on the part of the

assessee to disclose fully and truly all the material facts to complete the assessment and therefore, the notice issued u/s. 148 of the Act is not valid and the same has to be quashed. The Ld. CIT(A) has considered the issue raised by the assessee and he has observed that the A.O has not examined sale of lands at Karasangal and Medavakkam therefore, the assessee has not disclosed all material facts fully and upheld the reopening of the assessment u/s. 147 of the Act on 27.12.2017.

5. On appeal before us, the Ld. counsel for the assessee has submitted that the notice issued by the A.O u/s. 148 of the Act on 02.03.2017 beyond 4 years and in the reasons recorded by the A.O, nowhere the A.O has stated that there is a failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. He further submitted that the reopening of the assessment by the AO only on presumptive basis and no material is available on record therefore, the reopening is invalid. He further submitted that during the scrutiny assessment passed by the AO u/s. 143(3) of the Act dated 28.03.2014, the A.O has examined net profit of the assessee and profit on sale of lands and capital gains separately and completed the assessment. The assessee also disclosed all material facts before the A.O. He also pointed out from the paper book at page No.45, stated that the A.O has separately calculated the capital gains of Rs.

1,33,46,125/- and therefore, there is no failure on the part of the assessee to disclose fully and truly all the material facts to complete the assessment.

6. On the other hand, the Ld. D.R has strongly supported the orders passed by the authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In this case, the assessee filed his return of income by admitting total income of Rs. 1,95,77,220/-. The case of the assessee is selected for scrutiny. The A.O after examining the net profit as per the profit and loss account and also capital gains examined separately and assessment was completed u/s. 143(3) of the Act on 28.03.2014. Subsequently, the A.O has issued a notice u/s. 148 of the Act on 02.03.2017 and reopened the assessment u/s. 147 of the Act and assessment was completed u/s. 143 r/w section 147 of the Act. The case of the assessee is that the notice issued by the A.O u/s. 148 of the Act on 02.03.2017 is beyond 4 years therefore, proviso to s. 147 of the Act applies in the case of the assessee. As per the proviso, unless there is a failure on the part of the assessee to disclose fully and truly all facts necessary for completing the assessment, the A.O cannot issue a notice u/s. 148 of the Act. It is necessary to examine that there is a failure on the part of

the assessee to disclose all the facts before the A.O. The reasons recorded by the A.O, which is in paper book page No.1, are reproduced as under:

*"The assessee's nature of business is real estate and building construction. Admitted capital gain & tax rates are 20% only. On view of the above business normally admits 30% tax slab rate. Hence the difference of tax slab of 10.25% may be added as tax for the Assessment Year 2011-12."*

8. From the above, it is clear that the A.O has not stated anything that there is a failure on the part of the assessee to disclose fully and truly all the facts to complete the assessment which is one of the condition to reopen the assessment, which is beyond four years and is not disputed in this case. That apart the AO is of the opinion that profit on sale of land is assessable under the head 'business', but the assessee has admitted under the head 'capital gains'. But, in this case, the A.O has examined profit and loss account and also computed the capital gain separately after examining all the details at the time of assessment was completed. We find that on presumptive basis, the A.O cannot reopen the assessment which is already completed u/s. 143(3) of the Act and notice issued u/s. 148 of the Act beyond 4 years. In view of the above, notice issued u/s. 148 of the Act has to be quashed. Accordingly, consequential order passed by the A.O u/s. 143 r/w section 147 of the Act dated 27.12.2017 is quashed.

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

*Order pronounced on 26<sup>th</sup> November, 2021 in Chennai.*

Sd/-  
(श्री जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 26<sup>th</sup> November, 2021.

EDN/-

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