

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.287/Chny/2019**  
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

<b>M/s. Standard Builders</b> Y153, Block-29, Neyveli-607807. Tamil Nadu.	<b>बनाम/</b> Vs.	<b>ACIT,</b> Cuddalore Circle Chennai.
स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAVFS-8468-D</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri S. Sridhar (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	22-02-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04-03-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals), Puducherry [CIT(A)] dated 18.12.2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the Act on 28.12.2017. The grounds raised by the assessee read as under:

1. The learned CIT (appeals) has erred in concluding that the reopening of assessment beyond four years is as per law.
2. The learned CIT(appeals) has erred in confirming the order when the reopening was based on the same set of facts as in the earlier assessment and thus amounted to change of opinion which is not a valid ground for reopening of assessment
3. The learned CIT (appeals) erred in concluding that the appellant had not been converted into a company and that the provisions of section 47(XIII) was not applicable to the appellant.

As evident, the assessee assails validity of assessment proceedings as well as contest the issue on merits.

2. The Ld. AR submitted that legal grounds, as raised by the assessee, were not properly adjudicated since the case was reopened beyond 4 years. The Ld. DR, on the other hand, justified the reopening and supported the issue on merits.

3. Having considered rival submissions and after going through the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

4. The assessee was assessed for the year u/s 143(3) on 20.02.2014 wherein returned income of Rs.7.41 Lacs was determined as Rs.8.99 Lacs. Subsequently, it was observed from the records that the assessee-firm functioned up-to 30.06.2010 and thereafter taken over by a corporate entity. It was noted that a sum of Rs.152.94 Lacs was credited in partners' capital account which would require examination. Accordingly, the case was reopened and notice u/s 148 was issued on 27.03.2017 which is beyond 4 years from the end of relevant AY. The reasons for reopening were as under: -

From the records, it is observed that the Firm was functioning from 01.04.2010 to 30.06.2010 under the name "Standard Builders". Subsequently, i.e., from 01.07.2010, it was taken over by a Private Limited Company viz. M/s. Standard Rehabilitators (P) Ltd.

There were two partners in the firm Viz. Shri K.Selvamani and Smt. Sumathi. In K. Selvamani's capital account, it is shown that a sum of Rs.1,52,94,132/- has been credited with a narration. "Adjustment as per SB Book". It is not known as to how

this sum has been credited from "Standard Builders". Account to the partner's capital account.

In view of the above, I have reason to believe that income as discussed above has escaped assessment as per the explanation 2(c) of the provision of section 147 of the Act because of the failure of the assessee to disclose true and correct income during the course of original assessment and the same required to be brought to tax by reopening the assessment.

Before Ld. AO, the assessee claimed that it was a case of conversion of firm into a company. However, after going through documents on record and rejecting the same, Ld. AO assessed additional capital gain of Rs.350 Lacs.

5. During appellate proceedings, the assessee assailed the validity of reassessment proceedings, inter-alia, on the ground that the reopening was based on mere change of opinion since all the material was available before Ld. AO during the course of original assessment proceedings. However, Ld. CIT(A) rejected the legal grounds merely by observing that the notice u/s 148 was issued as per law and AO had followed the due procedure while completing the reassessment proceedings. On merits also, the additions were confirmed and the appeal was dismissed. Aggrieved, the assessee is in further appeal before us.

6. Before us, Ld. AR has submitted that reopening has been done beyond 4 years from the end of relevant AY and there is no allegation of any failure on the part of the assessee. The Ld. AR also reiterated that reopening was merely based on change of opinion since all the material was available before Ld. AO during the course of original assessment proceedings. To address the same, Ld. AR pleaded to restore the appeal back to the file of Ld. CIT(A).

7. We are of the considered opinion that reopening could not be done in a mechanical manner and on a mere change of opinion. Further, in case of reopening beyond 4 years, the revenue must allege that there was failure on the part of the assessee to disclose material facts. We find that the impugned order is very cryptic on the issue of reopening and reassessment proceedings have been justified merely by observing that the notice u/s 148 was issued as per law and AO had followed the due procedure while completing the reassessment proceedings. The impugned order does not address the issues flagged by the assessee. Therefore, we deem it fit to restore the appeal back to the file of Ld. CIT(A) for fresh adjudication of legal grounds as well as fresh adjudication on merits considering the submissions of the Ld. AR. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

8. The appeal stand allowed for statistical purposes.

Order pronounced on 04<sup>th</sup> March, 2022 in Chennai.

Sd/-  
(MAHAVIR SINGH)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 04-03-2022  
EDN/-

**आदेश की प्रतिलिपि ँ प्रेषित/Copy of the Order forwarded 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