

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.787/Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13

Dr.C.S.Krishnamurthy,
D-110, TVS Greenhills Apartment,
Alapakkam, NGO Nagar,
New Perungalathur,
Chennai-600 063.
[PAN: AEKPC 1744 B]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Cuddalore Circle,
Cuddalore.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Ms.N.Hemalatha, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 12.05.2022
घोषणा की तारीख /Date of Pronouncement : 15.06.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 25.02.2019 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax (Appeals), Puducherry dated 25.02.2019 in I.T.A.No.96/CIT(A)-PDY/2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the re-assessment u/s.143(3) read with section 147 of the Act without assigning proper reasons and justification and ought to have appreciated that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

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3. The CIT (Appeals) erred in sustaining the addition of Rs.54,25,330/- being the cash deposits after rejecting the explanation offered for the source in the computation of taxable total income without assigning proper reasons and justification.

4. The CIT (Appeals) failed to appreciate that the rejection of explanation for the source of cash deposits was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the provisions of section 68 of the Act had no application to the factual matrix of the case.

5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

6. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that the assessee had filed its return of income for the AY 2012-13 on 13.03.2013 declaring total income of Rs.20,09,210/-. The assessment has been re-opened u/s.147 of the Act, for the reasons recorded, as per which, income chargeable to tax, had been escaped assessment on account of cash deposits to the Savings Bank A/c of Rs.10 lakhs and also TDS mismatch as per sec.192 of the Act. The assessment has been completed u/s.143(3) r.w.s.147 of the Act on 16.02.2015. The case has been, once again, re-opened u/s.147 of the Act, by issuance of notice u/s.148 of the Act, dated 27.03.2017, for the reasons recorded, as per which, income chargeable to tax had been escaped assessment on account of under assessment of income towards amount received by the assessee from sale of property under the head 'income from other sources'. The assessment has been completed u/s.143(3) r.w.s.147 of the Act, dated 28.12.2017 and determined total income at Rs.74,34,540/- by making addition of Rs.54,25,330/- towards excess amount deposited into bank account under the head 'income from other sources'.

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4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged re-opening of assessment and also contested additions made by the AO towards cash deposits to bank account under the head 'income from other sources'. The Ld.CIT(A) for the reasons stated in his appellate order dated 25.02.2019 rejected the contentions of the assessee and sustained additions made by the AO towards source of cash deposits of Rs.54,25,330/- under the head 'income from other sources'.

5. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The Ld.AR for the assessee submitted that re-opening of assessment u/s.147 of the Act, is bad in law and liable to be quashed, because, it is a case of change of opinion, which is evident from the fact that assessment was first re-opened for verification of cash deposits into bank a/c. The assessment has been, once again, re-opened to tax very same cash deposits under the head 'income from other sources' on the basis of sale agreement copy furnished by the assessee to the AO at the time of first re-assessment, which is evident from the reasons recorded by the AO, where the AO very categorically refers to copy of the sale agreement between the assessee dated 16.09.2011 furnished at the time of scrutiny proceedings. Therefore, the second re-opening of assessment is on the basis of change of opinion, which is not permissible under the law.

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7. The Ld.DR, on the other hand, submitted that there is no merit in the contentions of the assessee that re-opening of assessment is bad in law, because, the AO has formed a reasonable belief of escapement of income on the basis of fresh tangible material, which came to his possession subsequent to completion of first re-assessment which suggest escapement of income. Therefore, the AO has validly re-opened the assessment and thus, the arguments of the assessee needs to be rejected.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the record clearly indicate that the present assessment proceedings have been re-opened second time. The assessee has furnished copies of reasons recorded for first re-opening of assessment and second re-opening of assessment. We have perused reasons recorded by the AO for re-opening of assessment on both occasions and we find that the assessment has been re-opened for the first time to verify cash deposits found in bank account. The assessee had offered an explanation and explained source for cash deposits into bank a/c, as per which, the assessee had received cash consideration for sale of property and said consideration received is source for cash deposits into bank a/c. The assessee had also filed copy of agreement between the parties dated 16.09.2011. The AO after considering necessary details has completed re-assessment proceedings and accepted returned income. The assessment had been once again re-opened u/s.147 of the Act, for the reasons recorded and as

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per the said reasons, the present assessment has been re-opened to bring into tax, consideration received by the assessee as per the sale agreement dated 16.09.2011 under the head 'income from other sources'. On perusal of reasons recorded by the AO, we find that the basis for reasonable belief of escapement of income formed by the AO, is copy of sale agreement furnished by the assessee at the time of scrutiny assessment proceedings, which is clear from Para No.3 of reasons recorded by the AO dated 23.03.2017. From the above, it is very clear that the AO has formed reasonable belief of escapement of income on the basis of very same materials which was available at the time of first re-assessment proceedings. Therefore, we are of the considered view that re-opening of assessment in the present case is on the basis of change of opinion, but not on the basis of fresh tangible material come to the possession of the AO subsequent to completion of first re-assessment proceedings. It is a well settled principle of law by the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd., [2010] 320 ITR 561 (SC), wherein, the Hon'ble Supreme Court clearly held that the AO has power to re-open the assessment provided, there is tangible material came to the possession of the AO subsequent to completion of original assessment. In this case, from the reasons recorded by the AO what we could notice is that there is no fresh tangible material come to the knowledge of the AO subsequent to completion of first re-assessment proceedings. Therefore,

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we are of the considered view that this is a classic case of change of opinion, which is not permissible under the law.

9. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that re-opening of assessment in the present case is bad in law and thus, we quashed re-assessment order passed by the AO u/s.143(3) r.w.s.147 of the Act.

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

Order pronounced on the 15th day of June, 2022, in Chennai.

Sd/-
(वी. दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 15th June, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF