

आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A. Nos. 3277 & 3278 / Chny/ 2016

(निर्धारणवर्ष / Assessment Years: 2002-03 & 2003-04)

Mrs. Sadhana Bai 87, Mint Street, Sowcarpet, Chennai-600 079.	Vs	The Income Tax Officer, Non-Corporate Ward-6(3) Chennai-6.
PAN: AASPS 2515G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. T.Banusekar, C.A.,
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. P.Sajit Kumar, JCIT

सुनवाईकीतारीख/Date of hearing	:	29.06.2022
घोषणाकीतारीख/Date of Pronouncement	:	01.07.2022

□ देश / **ORDER**

PER G. MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals)-5, Chennai, both dated 06.10.2016 and pertain to assessment years 2002-03 & 2003-04. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for both the assessment years, therefore, for the

sake of brevity, grounds of appeal filed for the assessment year 2002-03 are reproduced as under:-

“1. For that the order of the Commissioner of Income Tax Appeals) is contrary to law, facts and circumstances of the case and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the reassessment is bad in law.

4. For that the reassessment is barred by limitation.

5. For that without prejudice to the above grounds, the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.2,80,745/- as unexplained investments.

6. For that the provisions of Section 69 are not invocable in the facts and circumstances of the case.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in rejecting the books of the appellant and adopting the valuation as given by the DVO.

8. For that, without prejudice to the above grounds, the Commissioner of Income Tax (Appeals) failed to appreciate the revised cost of construction arrived by the Registered Valuer after distinguishing DVO's Valuation Report.

9. For that, without prejudice to the above grounds, the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought to have adopted State PWD rates instead of CPWD rates in estimating the cost of construction.

10. For that, without prejudice to the above grounds! the Commissioner of Income Tax (Appeals) ought to have directed the Assessing Officer to consider the cost of extra Items and additional Items on the basis of the actual amount spent instead of estimated basis.”

3. The brief facts of the case are that in the assessee's case, assessment for the assessment year 2004-05, was completed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961, on 31.12.2010. On the date of assessment of assessment year 2004-05, time limit for reopening of assessment for assessment years 2002-03 & 2003-04 was expired. The Assessing Officer has issued notice u/s.148 of the Act, in pursuant to directions of the Tribunal in their order dated 11.10.2012 for the assessment year 2004-05 and reopened assessments for the assessment years 2002-03 & 2003-04, in terms of provisions of section 150(1) of the Income Tax Act, 1961, and completed assessments for both the assessment years. The assessee has challenged the assessment order before the first appellate authority and contended that assessments for both the assessment years are barred by limitation, because as per sub-section (2) of Section 150 of the Act, in a case where any such assessment, reassessment or recomputation as is referred to in sub-section (1) relates to assessment year in respect of which assessment, reassessment or recomputation could not have been made at the time, order which was subject matter of appeal, reference

or revision, as the case may be, was made by reason of any other provision limiting time within which any action for assessment, reassessment or recomputation may be taken. In other words, when the assessment order for the assessment year 2004-05 was passed time limit for issue of notice u/s.148 was expired for both the assessment years and thus, even if direction from the Tribunal, assessment cannot be reopened, in view of the provisions of section 150(2) of the Income Tax Act, 1961. The learned CIT(A), however, was not satisfied with the explanation furnished by the assessee and according to the CIT(A), assessment has been reopened in pursuant to direction of the Tribunal, as per which assessment can be reopened as per provisions of section 150(1) of the Income Tax Act, 1961, and thus, rejected legal ground taken by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us for both assessment years.

4. The learned A.R for the assessee referring to dates and events submitted that notice issued u/s.148 of the Act, for both the assessment years in pursuant to the direction of the Tribunal in their order for the assessment year 2004-05 dated

11.10.2012 is barred by limitation, because when the order of the assessment for the assessment year 2004-05 was made on 31.12.2010, six year period for reopening of assessments for the assessment years 2002-03 and 2003-04 was expired on 31.03.2010. Therefore, in view of sub-section (2) of section 150 of the Act, assessment cannot be reopened and thus, notice issued u/s.148 and consequential assessment proceedings u/s.143(3) r.w.s. 147 of the Act is barred by limitation and liable to be quashed. In this regard, the learned A.R relied upon decision of the Hon'ble Andhra Pradesh High Court in the case of CIT Vs G.Viswanatham (1998) 172 ITR 401 and also decision of the Hon'ble Punjab & Haryana High Court in the case of Mrs.Parveen Kumari Vs. CIT (1999) 237 ITR 339.

5. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that assessment has been reopened on the basis of direction of the Tribunal in their order for the assessment year 2004-05 and as per provisions of section 150(1) of the Act, the Assessing Officer can reopen assessment without any limitation as to issue of notice and

there is no merit in arguments of the assessee and thus, order of the learned CIT(A) should be upheld.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have carefully considered dates and events and relevant provisions of section 150(1) & 150(2) of the Income Tax Act, 1961. Admittedly, assessments for the assessment years 2002-03 & 2003-04 have been reopened in pursuant to direction contained in the order of the Tribunal for the assessment year 2004-05 dated 11.10.2012. In fact, the Assessing Officer had reopened assessments for both assessment years on the basis of directions contained in the order of the Tribunal. Admittedly, assessment for the assessment year 2004-05 has been completed u/s.143(3) r.w.s. 147 of the Act, on 31.12.2010. Further, when the assessment order for the assessment year 2004-05 was made on 31.12.2010, six year period for reopening assessments for assessment years 2002-03 & 2003-04 was expired on 31.03.2009 & 31.03.2010 respectively. In this case, order which is subject matter of appeal before the Tribunal, is order

of assessment for the assessment year 2004-05 which was passed on 31.12.2010, further, six years period of reopening of assessment for the assessment years 2002-03 & 2003-04, as per provisions of section 149 of the Income Tax Act, 1961, is expired on 31.03.2010. Therefore, we are of the view that assessments for assessment years 2002-03 & 2003-04 cannot be reopened in terms of provisions of section 150(2) of the Income Tax Act, 1961, because even though, provisions of section 150(1) empowers the Assessing Officer to reopen the assessment in consequence of or to give effect to any findings or direction contained in order passed by any authority in any proceedings under this Act, by way of appeal, reference or revision or by a Court in any proceedings under any other law, but, because of provisions sub-section (2) of section 150 of the Act, assessments for impugned assessment years cannot be reopened, because limitation period of six years for reopening assessments for both assessment years was expired on 31.03.2009 & 31.03.2010 respectively, much before assessment for the assessment year 2004-05, which is subject matter of appeal before the Tribunal was passed on 31.12.2010. This legal principle is supported by the decision of

the Hon'ble Andhra Pradesh High Court in the case of CIT Vs G.Viswanatham (supra), where it has been held that order of original assessment as well as AACs and Tribunal's order being barred by limitation u/s.149(1)(b) of the Act, reopening to give effect to the order of the Tribunal was barred u/s.150(2) of the Income Tax Act, 1961. A similar view had been expressed by the Hon'ble Punjab & Haryana High Court in the case of Parveen Kumari Vs CIT (supra), wherein, it has been held that notice issued u/s.148 of the Act, in pursuant to the direction or order of the CIT(A) is barred by limitation, as the orders of the CIT(A) which was subject matter of appeal before the Tribunal was passed on dates which fell beyond time limit specified in section 149(1)(b) r.w.s 150(2) of the Income Tax Act, 1961. In this case, assessment for the impugned assessment years have been reopened, in consequential or to give effect to findings of the Tribunal in their order for the assessment year 2004-05 dated 11.10.2012 and such assessment order has been passed on 31.12.2010. Further, by the time, assessment order for the assessment year 2004-05 was passed on 31.12.2010, six year period for reopening of assessment for the assessment years 2002-03 &

2003-04 was expired on 31.03.2009 & 31.03.2010 and thus, we are of the considered view that reopening of assessment in terms of section 150(1) of the Act, is clearly barred by limitation, because of exception provided u/s.150(2) of the Income Tax Act, 1961, and thus, notice issued u/s.148 and consequent assessment order passed u/s.143(3) r.w.s. 147 for the assessment years 2002-03 & 2003-04 is barred by limitation. Hence, we quash reassessment order passed by the Assessing Officer for both the assessment years.

7. In the result, appeals filed by the assessee for both the assessment years are allowed.

Order pronounced in the open court on 1st July, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य /Accountant Member

दिनांक/Dated 1st July, 2022

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☐ देशकीप्रतिलिपिअग्रेषित/Copy to:

- Appellant 2. Respondent 3. ☐ यकर ☐ युक्त (अपील)/CIT(A)
4. ☐ यकर ☐ युक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.