

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 142/Chny/2021
निर्धारण वर्ष/**Assessment Year:2011-12**

Mr. Muthusamy Madhanagopal,
2/12, Indhu Nagar, Vilankurichi,
Coimbatore 641 035.
[PAN:AHTPM0258Q]

The Principal Commissioner of
Income Tax-1,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri B. Ramakrishnan, F.C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT
सुनवाई की तारीख/ Date of hearing : 09.05.2022
घोषणा की तारीख /Date of Pronouncement : 01.07.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Principal Commissioner of Income Tax-1, Coimbatore, dated 25.02.2021 relevant to the assessment year 2011-12.

2. The appeal filed by the assessee is delayed by 7 days in filing the appeal before the Tribunal, for which, the assessee has filed a petition for condonation of the delay in the form of an affidavit, to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of seven days in filing of the

appeal stands condoned and the appeal is admitted for adjudication.

3. Facts are, in brief, the assessee sold an immovable property of 30 cents of land located at Eachanari, Coimbatore, along with four others during the period relevant to the assessment year 2011-12 for a consideration of ₹.45,30,000/- through Power of Attorney given to Mr. D. Sundararajan on 14.07.2010. But the assessee has filed his return of income on 25.05.2016, admitting income of ₹.6,63,524/- only without admitting any income under the head 'Capital gain' on the transfer of the above said capital asset for the assessment year 2011-12. Since there was reason to believe that income chargeable to tax has escaped the assessment, the Assessing Officer issued notice under section 148 of the Act r.w.s. 147 of the Act to the assessee. In response to the notice under section 148 of the Act, the assessee filed his revised return of income on 19.04.2018 admitting a taxable income of ₹.12,63,999/-, which includes assessee's share of income admitted under the head 'capital gain' of ₹.5,89,625/-. During the course of assessment proceedings, after considering the seized materials during search and seizure action under section 132 of the Act, sworn statement of the assessee and verification of documents, the Assessing Officer issued a pre-assessment order dated 19.12.2018 to the assessee proposing an addition of ₹.12,56,667/-

as assessee's income for the assessment year 2011-12 in addition to the admitted total income. In response to the above, the assessee filed detailed objections and after considering the objections of the assessee, the Assessing Officer has completed the assessment under section 144 of the Act dated 28.12.2018 by assessing total income of the assessee at ₹.25,09,289/- after making addition under section 69A of the act of ₹.12,45,290/-.

3.1 On examination of the assessment records, the Id. PCIT has found certain error, which was prima facie prejudicial to the interest of the Revenue. Therefore, by invoking the provisions of section 263 of the Act, the Id. PCIT issued notice to the assessee and also communicated the reasons for which the assessment order was treated as erroneous and prejudicial to the interest of Revenue. After considering the details available on record, the Id. PCIT has noted that the total value of the land sold was ₹.1,08,45,000/-. The assessee has received ₹.63,15,000/- in cash from M/s. Sree Annapoorna Sree Gowrishankar Hotels Pvt. Ltd. and ₹. 45,30,000/- as cheque amount towards sale of the said immovable property. The entire cash payment received by the assessee of ₹.21,05,000/- (1/3rd share of the assessee) was to be brought to tax. The Id. PCIT further noted that during the course of assessment proceedings,

the Assessing Officer made an addition of ₹.12,45,290/- under section 69A of the Act and the Assessing Officer has wrongly reduced the 1/3 of 50C value of the property instead of reducing the LTCG worked out by the assessee. After working out the capital gains of the assessee, which should have been brought to tax, the Id. PCIT set aside the assessment order and directed the Assessing Officer to redo the assessment afresh after giving due opportunity to the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee has already opted to avail the Vivad-se-Vishwas Scheme 2020 and filed Form 1 and Form 2 on 10.11.2020 and subsequently Form 3 were issued to the assessee on 23.12.2020 by the Designated Authority and moreover, Form 4 was filed on 04.02.2021 for issuance of Form 5. However, the Id. PCIT erroneously issued notice on 25.01.2021 for revising the assessment order and completed the revision order under section 263 of the Act dated 25.02.2021 without taking cognizance of the proceedings under Direct Tax Vivad-se-Vishwas Scheme 2020 and prayed for quashing the order passed under section 263 of the Act.

5. On the other hand, the Id. DR relied on the order passed by the Id. PCIT.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below as well as Form 1 to Form 5 filed by the assessee for availing Vivad-se-Vishwas Scheme 2020. In this case, the assessment was completed on 28.12.2018 and the Id. PCIT has issued notice under section 263 of the Act on 25.01.2021 for proposing to revise the assessment order and thereafter completed the revision order under section 263 of the Act dated 25.02.2021. Much prior to issue of notice under section 263 of the Act by the Id. PCIT, and in order to settle the tax matter, the assessee has already opted to avail the Vivad-se-Vishwas Scheme 2020 and filed Form 1 and Form 2 on 10.11.2020 and subsequently Form 3 were issued to the assessee on 23.12.2020 by the Designated Authority and moreover, Form 4 was filed on 04.02.2021 for issuance of Form 5 and Form 5 was already issued and taxes accordingly paid as per page No. 5 of the paper book filed before the Tribunal.

6.1 Before us, the Id. Counsel for the assessee has relied on the extract of FAQ of Direct Tax at page No. 6 of the paper book, wherein, it has been clarified that "Section 5(3) restricts the rights of the Income-tax Authorities from reopening any issues under the IT Act. The order passed by designated authority is conclusive, comprehensive and final order, in

respect of matters covered by such order including tax arrears and sums payable towards full and final settlement. Once the declarant makes payment of the amount so determined, the immunity springs into effect. Thereafter, it would not be open to the Income-tax authorities to sit over such orders and initiate any proceeding under the IT Act. It is only in cases, wherein, the declaration is presumed to have never been made because of false declaration or violation of provisions of the Act or violation of an undertaking (section 4(6) of the Act), the income-tax authorities can take appropriate actions under the IT Act. We find force in the arguments of the Id. Counsel. The relevant provision of Section - 5, Direct Tax Vivad se Vishwas Act, 2020 is extracted as under:

“Section - 5, Direct Tax Vivad se Vishwas Act, 2020

Time and manner of payment

5. (1) xxxxxxxxxxxx
(2) xxxxxxxxxxxx
(3) *Every order passed under sub-section (1), determining the amount payable under this Act, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Income-tax Act or under any other law for the time being in force or under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.”*

6.2 From the above provisions, it is amply clear that order passed by designated authority is conclusive, comprehensive and final, in respect of matters covered by such order. In the present case, the assessee has opted to avail the Vivad-se-Vishwas Scheme 2020 and filed Form 1 and

Form 2 on 10.11.2020 and subsequently Form 3 were issued to the assessee on 23.12.2020 by the Designated Authority and moreover, Form 4 was filed on 04.02.2021 for issuance of Form 5 and Form 5 was also issued and taxes paid accordingly, much before the revision order under section 263 of the Act was passed on 25.02.2021. Since the assessee could produce the above details of availing Vivad-se-Vishwas Scheme 2020 and the Designated Authority has already issued Form 5 during the course of revision proceedings, the Id. PCIT was not aware of the above facts.

6.3 Considering the above facts and circumstances we of the considered opinion that the revision order passed under section 263 of the Act by the Id. PCIT cannot survive. Accordingly, the revision order passed under section 263 of the Act is quashed.

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

Order pronounced on the 01st July, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 01.07.2022

Vm/-

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.