

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

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:2257/CHNY/2019

निर्धारण वर्ष/ Assessment Year 2009 – 2010

Shri. P. Murugan,
No.D-4, Jayabharath House, Unit-4,
Aruppukottai Main Road,
Avaniapuram, Madurai – 625 012.

PAN : AJIPM 6475G

The Income Tax Officer,
Vs. Non-Corporate Ward – 2(4),
Income Tax Office,
Bibikulam, Madurai – 625 002.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/Appellant by

: None

प्रत्यर्थीकीओरसे/Respondent by

: Mr. Ravindra T. Mishra, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.07.2022

घोषणा की तारीख/Date of Pronouncement

: 22.07.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2 in ITA No.005/2016-17, order dated 31.05.2019. The Assessment was framed by the Income Tax Officer, Ward – II(1), Madurai for the Assessment Year 2009-2010 u/s.143(3) of the Income Tax Act, 1961 (hereinafter "the Act) vide order dated 27.12.2011.

2. The only issue in this appeal of the Assessee is against the order of the Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in assuming the jurisdiction for reopening of the assessment u/s.147 r.w.s.148 of the Act. For this, the Assessee has raised the following six grounds, reproduced as under:

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to law and facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the additions made in the re-assessment proceedings u/s.147 dated 19.02.2016.

3. The learned Commissioner of Income Tax (Appeals) has erred in holding that in the reassessment proceedings, the Assessing Officer has merely taken the profit margin which was adopted by the Appellant himself in the Income Tax Return and so it is not a case of change of opinion.

4. The learned Commissioner of Income Tax (Appeals) ought to have seen that the Appellant has disclosed all the facts during the regular assessment and original assessment has been completed by the Assessing Officer by considering

the net unaccounted contract receipts and the Assessing Officer has applied his mind in fixing the reasonable estimate of percentage of profit and hence ought not to have sustained the addition made by the Assessing Officer in the reassessment proceedings.

5. The learned Commissioner of Income Tax (Appeals) ought to have seen that the reopening has been done purely on the basis of change of opinion in regard to the rate of percentage of profit mentioned in the reasons recorded by the Assessing Officer which is not permissible in view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Kelvinator of India Limited [320 ITR 561] and hence ought to have allowed the appeal of the Appellant.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed before the Hon'ble ITAT that the order of the Assessing Officer may be set aside and the additions made in the reassessment proceedings may kindly be deleted and render justice."

3. We have heard the learned Senior Departmental Representative and had gone through the facts and circumstances of the case.

4. The brief facts of the case is that the Assessee is an individual carrying out Civil Contract works and had filed the return of income for the Assessment Year 2009 - 2010 admitting a total income of Rs.2,82,532/-. The Assessing Officer completed the assessment u/s.143(3) of the Act on 27.12.2011 by making an addition of Rs.4,13,850/- to the income on the adoption of reasonable estimate of income at the rate of 6% on the net unaccounted contract receipts as per the directions of the Joint Commissioner of Income Tax, Range - II, Madurai. Subsequently, the case was reopened u/s.147 of the Act merely for change of opinion and the reassessment was completed on 19.02.2016 u/s.143(3) r.w.s.147 of the Act with a further addition of Rs.5,87,666/- by adopting the net profit at the rate of 14.52% instead of 6% that was adopted in the original assessment that was already completed u/s.143(3) of the Act on 27.12.2011. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who in turn confirmed the action of the Assessing Officer in the reassessment proceedings.

Aggrieved, the Assessee is now in appeal before the Tribunal.

5. We noted that the Assessee is engaged in the business of Civil Contract works and the Assessee's original assessment was framed during the scrutiny assessment u/s.143(3) of the Act dated 27.12.2011 in which the Assessing Officer estimated the income at the rate of 6% on the unaccounted contract receipts of Rs.68,97,417/- and thereby adopted an additional income of Rs.4,13,850/-. Now, the Assessee's case was reopened by issuing notice u/s.148 of the Act and the reopening was done u/s.147 of the Act on the ground that the admission of the net profit of 14.52% on the income admitted has not been applied to the unaccounted contract receipt but only 6% of profit was worked out on the escaped income (contract receipts). Since, there was an escapement of income chargeable to tax, the assessment completed u/s.143(3) of the Act was reopened u/s.147 of the Act by issuing a notice u/s.148 on 12.09.2014.

6. Now, the question arises, as to whether on the same set of facts, the assessment framed u/s.143 of the Act can be reopened. This has been answered by the decision of the Hon'ble Supreme Court in the case of Commissioner of Income

Tax Vs. Kelvinator of India Limited reported in 320 ITR 561; wherein the Hon'ble Supreme Court has held as under:

"The concept of "change of opinion" on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of Section 147 of the Income Tax Act, 1961 by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment, the Assessing Officer has to have a reason to believe that the income has escaped assessment but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of change of opinion must be treated an in-built test to check the abuse of power. Hence, after April 1, 1989, the Assessing Officer has the power to reopen an assessment, provided there is tangible material to come to the conclusion that there was an escapement of income from the assessment. Reason must have a link with the formation of the belief."

7. In view of the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Kelvinator of India Limited (supra), in the present case the Assessing Officer has neither brought out any tangible material nor any material and had relied on the same material on which the original

assessment was framed u/s.143(3) of the Act and this clearly tantamount to the change of opinion which is not permissible in law. Hence, we reverse the order of the Commissioner of Income Tax (Appeals) and allow the appeal of the Assessee.

8. In the result, the appeal of the Assessee in I.T.A No.:2257/CHNY/2019 is allowed.

Order pronounced in the court on 22nd July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 22nd July, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF