



IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 2121/PUN/2019 : A.Y. 2009-10

The Asstt. Commissioner of Income-tax
Cir. 3, Pune.

Appellant

Vs.

Shri Dinesh M. Raste
2 Prasanna Apartment
Ashok Path, 55/22 Erandawne,
Pune-411 004
PAN: AAQPR0114A

Respondent

C.O. No. 26/PUN/2022

Arising out of ITA No. 2121/PUN/2019 : A.Y. 2009-10

Shri Dinesh M. Raste
2 Prasanna Apartment
Ashok Path, 55/22 Erandawne,
Pune-411 004
PAN: AAQPR0114A

Cross Objector

Vs.

The Asstt. C.I.T. Cir. 3, Pune.

Appellant-in-appeal.

Assessee by : Shri Nikhil Pathak
Department by : Shri Arvind Desai
Date of Hearing : 26-08-2022
Date of Pronouncement : 30-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the Revenue and the Cross Objection by the assessee emanates from order of the Id. Commissioner of Income Tax (Appeals)-3, Pune, dated 24-10-2019 for the Assessment Year 2009-10 as per the following grounds of appeal.

1. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in holding that the issue of notice u/s 148 was bad in law as the proceedings initiated were merely on change of opinion without appreciating the fact that in the original Assessment order u/s 143(3) of*



the Act there was a failure on the part of the assessee to disclose fully and truly that the land in question has been sold.

2. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in holding that there is no discussion on the issue of transfer of immovable property nor there is a finding given to that effect.*
3. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in holding that the re-opening was bad in law when the CIT(A) himself while deciding the grounds of appeal with respect to addition of Rs. 3,31,00,000/- has held that the assessee has sold his property thereby upholding the addition made by the A.O.*
4. *On the facts and circumstances of the case, the Id. CIT(A) failed to appreciate the fact that the AO has rightly assumed jurisdiction u/s 147 of the Act as per Explanation 2(c) of sec. 147 of the I.T. Act, 1961.*
5. *The appellant prays to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings."*

2. At the outset, the Id. D.R submitted that the grievance of the revenue in this appeal is that the Id. CIT(A) has allowed the relief to the assessee by holding that the reopening of the assessment u/s 147/148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was bad in law and invalid. The Id. Counsel for the assessee on the other hand submitted that if on this legal issue, the assessee succeeds, in such scenario, the Cross Objection raised by the assessee would become infructuous. Therefore, the issue for adjudication before us is with regard to the validity of the re-assessment proceedings initiated by the A.O which has been held to be invalid by the first appellate authority. Admittedly, the reopening has been done beyond the period of four years and as per the proviso to section 147 of the Act, such reopening beyond four years is permitted only if the A.O proves that the assessee during the original assessment proceedings has failed to disclose fully and truly all the material relevant facts.

3. The relevant facts regarding this case are that the assessee filed his return of income declaring total income of Rs. 66,69,954/- on 28-07-2009. The original assessment was completed u/s 143(3) of the Act on 31-10-2011 and the return of income of Rs. 66,69,954/- was accepted. The case was reopened for the assessment year 2009-10. The A.O issued notice u/s 148 on 28-03-2016



as according to him the income chargeable to tax had escaped assessment to the extent of Rs. 3,18,22,500/-. In response to this notice, assessee filed written submissions and prayed that the return of income filed for A.Y. 2009-10 may be treated as return in compliance. After considering the submissions of the assessee, the A.O held that transfer as per section 2(47) in relation to a capital assets include sale, exchange or relinquishment of the assets or extinguishment of the assets or extinguishment or any rights thereon or the compulsory acquisition thereof under any law and also that during the year under consideration, the assessee has transferred immovable properties with right for Rs. 3,31,00,000/-. Therefore, the amount of Rs. 3,31,00,000/- was added back to the total income of the assessee u/s 45 clause (1) of the Act.

4. Being aggrieved, the assessee preferred appeal before the Id. CIT(A). The CIT(A) observes vide para 5.4 of his order that so far as the facts are concerned, the assessee prepared an Indenture of Assignment dated 02-05-2008 and assigned his rights, entitlements, benefits, compensation including future development thereof to M/s. Bhumiraj Agro (India) Pvt. Ltd., for a consideration of Rs. 3,31,00,000/-. The assessee also executed an Irrevocable Power of Attorney in favour of the buyer which was duly registered on 26-06-2008. The assessee showed the gain of assignment of rights of Rs. 3,18,22,500/- in his capital account. The assessee did not pay any capital gain on this gain of Rs. 3,18,22,500/- on the ground that the title to the land was not clear and that no formal registered deed was executed and that the possession of land was not given. Originally, the assessment was completed u/s 143(3) of the Act on 31-10-2011 and the returned income of Rs.66,69,954/- was accepted. Thereafter recording the reasons of notice u/s 148 dated 28-03-2016 was issued to the assessee. After considering the replies of the assessee, the A.O held that the transfer as per section 2(47) in relation to



capital assets includes sales, exchange or relinquishment of the assets, extinguishment of the assets etc. and also that during the year under consideration, the assessee has transferred immoveable property for Rs. 3,31,00,000/-. Therefore, this amount was added to the total income of the assessee. It was contended by the assessee that the reopening was bad in law since the assessment u/s 143(3) was completed and the reopening was beyond the four years period from the end of the relevant assessment year and all the material facts were duly submitted by the assessee in the course of original scrutiny assessment proceedings which has been completed u/s 143(3) of the Act and the reopening is also not valid since there was no failure on the part of the assessee to furnish fully and truly all materials facts. Thereafter, the Id. CIT(A) examined that during the course of original proceedings, the assessee has submitted two letters – one dated 08-08-2011 and another dated 11-08-2011 detailing the entire transfer to M/s. Bhumiraj Agro (I) Pvt. Ltd. and all details of receipt of Rs. 3,31,00,000/- from Bhumiraj Agro (I) Pvt. Ltd. again were submitted before the A.O. That at para 5.9 the Id. CIT(A) observed that vide letter dated 08-08-2011 the assessee furnished all the material facts relevant for the assessment and as per para 7 of the letter dated 11-08-2011 the details of income claimed as exempt were given along with separate detailed explanatory letter regarding amount of Rs. 3,31,00,000/- received from M/s. Bhumiraj Agro (I) Pvt. Ltd. Further, a copy of Indenture of Assignment, copy of Irrevocable Power of Attorney, copy of proceedings u/s 21 of the Maharashtra Agricultural Land (C on H) Act, 1961, copies of 7/12 extracts of land at village Wakrul, Dushmi, Kharpada and Jite Tal. Pen Dist. Raigad were also submitted in support of not treating the said receipt as taxable receipt or income. After considering all these facts and documents, the A.O in the original assessment order has accepted the returned income of the assessee. It is also



further mentioned by the Id. CIT(A) at para 5.10 of his order that even the A.O while recording the reasons for reopening of case also acknowledged the letter dated 08-08-2019 and has accepted that the assessee disclosed the fact that the title of the land was disputed. The only objection of the A.O is that no material was produced by the assessee in support of this contention. The Id. CIT(A) also gave a categorical finding that even in the re-assessment order, the A.O has also not disputed the fact that the title of the land was disputed. It was further observed that from the perusal of the letters dated 08-08-2011 and 11-08-2021 the assessee never claimed that the land was an agricultural land and therefore, sale consideration was exempt from tax. In fact, the reasons for reopening refers to para 4 of page 2 of the indenture where it is written "that the assignee is aware that the Assignor has never visited the property and the assignor is not aware about its physical condition, its use by others etc." Thus, the assessee never claimed that the land was an agricultural land and therefore, sale consideration was exempt from tax. That further, the A.O in the reopening order has not brought out any fact on record which was not disclosed by the assessee during the original proceedings. That, as per the proviso to sec. 147 of the Act, when there is no failure on the part of the assessee either to file return of income or to disclose fully and truly all material facts necessary for assessment in such scenario reopening of assessment done beyond four years is invalid and bad in law.

5. We have gone through the entire case records and the orders of the subordinate authorities. We have also perused the original assessment order as well as re-assessment order and the reasons for reopening of the assessment. We have also perused the letters dated 08-08-2011 and 11-08-2022 and find that the original assessment proceeding was completed u/s 143(3) of the Act which is the scrutiny assessment proceeding and in the



course of such proceeding these letters were submitted by the assessee giving full details of transfer of right to M/s. Bhumiraj Agro (I) Pvt. Ltd., and details of receipt of payment from the said concern. That on perusal of the reasons for reopening, it is absolutely identical and the same as were there during the original assessment proceedings. There is nothing new on record nor not even a whisper of any evidence brought on record by the A.O to justify the proceeding u/s 147/148 of the Act. These facts have been examined by the Id. CIT(A) and he also gave a categorical finding that the A.O has not brought any facts on record which were not disclosed by the assessee during the original assessment proceedings. The proviso to section 147 is crystal clear that in the given circumstances when the assessee has disclosed fully and truly all material facts necessary for the assessment then no reopening of the said assessment can be done beyond the period of four years and if it has to be done then the A.O has to prove that the assessee has failed to disclose fully and truly all material facts, which in this case, the A.O has failed to do so. We find the Hon'ble Bombay High Court in the case of Harsh Kaushal Corporation Vs. ITO in Writ Petition No. 1179 of 2022 dated 26-4-2022 for A.Y. 2014-15 has observed that in the present case, it is evident from the reasons recorded for reopening that the petitioner had truly and fully disclosed all material facts necessary for the purpose of assessment. In fact, in the reasons for reopening, there is not even an iota of whisper as to what was not disclosed. The A.O has relied upon the records filed by the petitioner including P & L account and the balance-sheets and it is irrelevant that there is closing stock in trade of Rs. 33,49,8,003/-. Therefore, the respondent No. 1 is relying upon some primary facts which were before the A.O who completed the assessment proceedings to take a different view. The Hon'ble High Court has held that this is not a case where the assessment is sought to be reopened on the reasonable belief that



the income has escaped the assessment on account of failure on the part of the assessee to disclose truly and fully all material facts that were necessary for computation of income, but this is a case wherein the assessment sought to be reopened on account of change of opinion of the A.O about the manner of computation made. In view of the proviso to section 147 of the Act the same was not permissible. Reverting to the facts of the present case, all the material facts were already disclosed by the assessee before the A.O at the time of original assessment and even we have observed that the Id. CIT(A) in his order has verified that the A.O has acknowledged all these information which were before him during the original assessment proceedings while resorting to the re-assessment proceedings. Therefore, in the instant case also the re-assessment is not a case where the assessee has not disclosed fully and truly all material facts but it is a case where the re-assessment proceedings were initiated only on a mere change of opinion by the A.O which is not permissible in law. We are of the considered view having perused the order of the Id. CIT(A) and examination of facts and circumstances in this case as well as aforesaid judicial pronouncement of the Hon'ble Bombay High Court, we find that here is the case where all the material facts were fully and truly disclosed by the assessee in the original scrutiny assessment proceedings. The Id. D.R also could not refute these facts on record. He could not demonstrate by placing any material to show that whether there was even a whisper of any new evidence enabling the A.O for resorting to re-assessment proceeding. It is also admitted by the parties that such re-assessment was undertaken by the department beyond the period of four years and when the assessee has disclosed fully and truly all material facts at the time of original assessment proceedings the proviso to section 147 does not warrant the A.O to further reopen such assessment when there is no new material or evidence in his



possession to warrant such reopening of the proceedings. In view thereof, we have no reason to interfere with the findings of the Id. CIT(A) on facts as well as in law whereby the re-assessment proceedings has been held to be invalid and bad in law and we uphold the same. The appeal of the revenue is dismissed.

6. Before parting, since the Id. Counsel for the assessee at the very outset has submitted that if the revenue's appeal is dismissed, the Cross objection of the assessee would become infructuous, therefore since we have decided the issue involved in the revenue's appeal in favour of the assessee holding the re-assessment to be invalid and bad in law and dismissed the revenue's appeal, considering the submissions of the Id. A.R for the assessee the Cross Objection of the assessee becomes infructuous and the same is dismissed.

7. In the combined result, the **appeal of the Revenue is dismissed and the Cross Objection of the Assessee is also dismissed.**

Order pronounced in the open Court on this 30th August 2022.

Sd/-

Sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 30th August , 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT – (A)-3 Pune
4. Pr. C.C.I.T. Pune
5. D.R. ITAT 'A' Bench
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.



ITA 2121 of 2019 & CO 26 of 2022
Dinesh M. Raste
A.Y. 209-10 1392 & 1393/PUN/2018