

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.661/Chny/2020**  
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

<b>ACIT</b> Non-Corporate Circle-22, Tambaram, Chennai.	<b>बनाम</b> / Vs.	<b>Joseph Selvan</b> No.159, Velacherry Main Road, East Tambaram, Chennai – 600 059.
स्थायी लेखा सं./जीआइ आर सं./ <b>PAN/GIR No. AAGPS-0075-F</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Assessee by</b>	:	Shri S. Seetharaman (C.A) – Ld. A.R
प्रत्यर्थी की ओरसे/ <b>Revenue by</b>	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR
सुनवाई की तारीख/ <b>Date of Hearing</b>	:	07-09-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	07-09-2022

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-10, Chennai [CIT(A)] dated 25-02-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the Act on 12-11-2018. The grounds taken by the Revenue read as under:

The order of the CIT (A) is contrary to the law and facts of the case. Though the tax effect is less than the monetary limit prescribed for filing of further appeal by the Board, but this case falls under the exception clause (RAP Objection) vide para 10(c) of Board's Circular No.3/2018 dt 11.07.2018.

1. The CIT-A(10) has erred in deleting the addition made in the assessee's case under the head "Profits and gains of the business/profession" by holding that reopening has been made merely on change of opinion.
2. The CIT-A(10) ought to have appreciated the fact that the income was assessed under the head capital gains which was assessed at too low rate which exactly fit into the Sub Clause (ii) of Clause (c) of Explanation-2 Section 147.
3. The learned CIT(A) erred both in facts and on law in not holding that the assessee has purchased land with a profit motive & converted the said land into plots and taken approval from CMDA & sold the converted plots to different persons but not to a single entity and hence the resultant income was assessed under the head "Profits and gains of the business/profession" as the action of the assessee was taken as "adventure in the nature of trade".
4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the CIT(A) be quashed and that of the revenue upheld.

2. The registry has noted a delay of 57 days in the appeal, the condonation of which has been sought by the revenue. Considering the fact that the impugned order was passed during lockdown situation arising out of Covid-19 Pandemic, we condone the delay and admit the appeal for adjudication on merits.

3. As is evident, the revenue is aggrieved by adjudication of Ld. CIT(A) in the impugned order. The Ld. Sr. DR advanced arguments supporting the assessment framed by Ld. AO which has been controverted by Ld. AR. Having heard rival submissions, the appeal is disposed-off as under.

### **Assessment Proceedings**

4.1 The assessee was assessed for the year u/s 143(3) on 23.03.2016. However, the case was reopened and notice u/s 148 was issued on 27.03.2018 which is within 4 years from end of relevant assessment year. The reasons to reopen the case were communicated to the assessee.

4.2 It transpired that the assessee was engaged in business of construction of buildings for residential use and the income was offered on presumptive basis u/s 44AD. The assessee being a partner in M/s Annai Arul received remuneration which was offered as 'Business income'. The firm was engaged in the business of construction. The assessee purchased vacant land during the year 2008 and converted the same into plots and sold the same during the year. The income thus earned was offered under the head 'Capital Gains' which was accepted in original assessment, However, Ld. AO opined that the said activities would be adventure in the nature of trade and therefore, the income was to be assessed as 'Business Income' which would be taxable at higher rates. Accordingly, the case was reopened. The assessee opposed reopening on the ground that the same was at the behest of revenue audit and based on borrowed satisfaction. It was also submitted that the reopening was on mere change of opinion and based on same material which was available at the time of regular assessment proceedings. However, rejecting the same, Ld. AO assessed the resultant gains as 'Business Income' and framed the assessment.

### **Appellate Proceedings**

5. The Ld. CIT(A) noted the replies filed by the assessee during regular assessment proceedings wherein the assessee was required to substantiate the claim of capital gains. In regular assessment proceedings, the assessee furnished copies of sale and purchase deeds and other documents for claim of exemption u/s 54F. The Ld. AO examined the taxability of the transaction under the head 'capital gains' and accepted the claim. The Ld. AO was provided with all the

details relating to the transaction. The reopening was done on the basis of audit objection only. The Ld. AO formed an opinion based on borrowed satisfaction at the instance of the audit party. Accordingly, the proceedings were held to be not as per law and the grounds raised by the assessee were allowed. Aggrieved, the revenue is in further appeal before us.

### **Our findings and Adjudication**

6. Upon careful consideration, it could be gathered that the return of income was already scrutinized u/s 143(3) and the issue of computation of capital gain was duly examined by Ld. AO. The requisite queries were raised by Ld. AO which were duly replied by the assessee along with documentary evidences. Having satisfied with the assessee's replies, Ld. AO accepted the claim of the assessee. Subsequently, the case was reopened on the basis of audit objection wherein an opinion was expressed that the gains so earned should be assessed as 'Business Income'. However, both the views are legally permissible. The Ld. AO, with due application of mind, adopted one of the views during regular assessment proceedings. Thereafter, without there being any fresh intangible material on record, Ld. AO proceeded to reopen the case merely to change the head of income. It is trite law that review of the order, on same set of facts and material, is impermissible. Therefore, we have no hesitation to hold that the reopening was merely on the basis of change of opinion. Accordingly, no fault could be found in the impugned order.

7. The appeal stands dismissed.

Order pronounced on 07<sup>th</sup> September, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022  
EDN/-

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |