

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1220/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2012-13

Shri R.G. Deenatayalan,
12/9, Pertho Street,
Royapettah,
Chennai – 600 004.

The Income Tax Officer,
vs. Non-Corporate Ward 11(3),
Chennai.

PAN: ADYPD 4209M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. N.V. Lakshmi, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.09.2022

घोषणा की तारीख/Date of Pronouncement

: 06.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.60/CIT(A)-13/2012-13 dated 12.03.2018. The assessment was framed by the Income Tax Officer, Non-Corporate Ward 11(3), Chennai for the assessment year 2012-13 u/s.144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.06.2016.

2. The first issue in this appeal of assessee is as regard to the order of CIT(A) upholding the reopening of assessment u/s.147 r.w.s. 148 of the Act. For this, assessee has raised the following Ground No.2:-

“2. The CIT(A) erred in upholding the reopening of the assessment under section 147 of the Income Tax Act. The CIT(A) failed to appreciate that the notice under section 148 of the Income Tax Act was not served on the appellant. Non service of notice under section 148 of the Income Tax Act vitiates the entire assessment proceeding. The CIT(A) concluded that the reopening was made after due service, without any material evidence to support the service and opportunity to the appellant before arriving such conclusion.”

3. Brief facts are that the assessee is an individual and has not filed his return of income for the assessment year 2012-13. The Income Tax Department carried out a search u/s.132 of the Act on the business premises of Jaycee Earth Pvt. Ltd., at 19/1, Raghavaiya Road, T.Nagar, Chennai on 19.04.2012. During search, an agreement for sale dated 14.01.2011 was found and seized, wherein it is found that Shri S. Raghuraman entered into a purchase agreement with Shri R.G. Deenatayalan for purchase of his immovable property at Flat No.H3-D3, Vijayaraghava Manor, No.1, Vijayaraghava Road, T.Nagar, Chennai. As per this agreement found and seized during search, the sale consideration of the property was fixed at Rs.90,00,000/-. This information was intimated by DCIT, Central Circle 3(4), Chennai to the AO of the

assessee and accordingly notice u/s.148 of the Act dated 18.12.2015 was issued. Now, the assessee has challenged the reopening before CIT(A) and CIT(A) has confirmed that notice u/s.148 of the Act was duly served upon the assessee and for this, the CIT(A) gave his finding at page 3, which reads as under:-

“I have carefully examined this issue and it is found that the assessee has not filed return of income for AY 2012-13 despite the fact that the appellant has sold a property which was liable to capital gains tax. The AO, after recording reasons in writing issued Show cause notice to the assessee u/s.148 which was duly served upon the assessee and thereafter re-assessment proceedings u/s.147 were completed. Therefore, the appellant ground of appeal on the issue is not sustainable, hence dismissed.”

Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, the Id.counsel for the assessee drew our attention to the paper-book filed by the Revenue consisting of 15 pages wherein he has particularly referred to inspector report enclosed at page 13 and stated that the proper procedure of service is not followed. She stated that once a phone number is given to the inspector, he is duty bound to contact the assessee Shri Deenatayalan and hence, service of notice through affixture is bad.

5. On the other hand, the Id. Senior DR supported the valid service of notice issued u/s.148 of the Act on the assessee.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noticed that the assessee Shri R.G. Deenatayalan has not filed his return of income for the assessment year 2012-13. The AO recorded reasons and issued notice u/s.148 of the Act, dated 18.12.2015 after taking approval of the Joint Commissioner of Income Tax, Non-Corporate Range 11, Chennai. This notice was served by affixture on 07.03.2016 at the address given above of assessee, as the assessee was not available at the address and the occupants of the house refused to receive the notice. Now, the Revenue has filed paper-book before us and service of proof of notice u/s.148 of the Act through affixture and the relevant report of the inspector reads as under:-

**AFFIXURE REPORT IN THE CASE OF SHRI R.G. DEENATAYALAN:
PAN:ADYPD4209M : AY:2012-13**

Since the notice u/s 148 of I.T. Act for the AY 2012-13 issued to Shri R.G. Deenatayalan, whose PAN is ADYPD4209M, could not be served by the Notice Server at the address No.12/9, Pertho Street, Royapettah, Chennai-600 014, I was deputed to effect service of the said notice to the assessee.

Mrs. G.S. Lalitha who was present at the address has informed that Shri R.G. Deenatayalan is Her brother who he has resided earlier has vacated the house. On insistence she revealed that Shri R.G. Deenatayalan is he is working in Andhra Pradesh as driver and his two daughters residing at this address and pursuing their studies. She gave the phone number of Shri Deenatayalan as 7299976056. However, she refused to accept the notice as she did not know when Shri R.G. Deenatayalan will come.

Therefore, I affixed the Notice u/s 148 of I.T. Act, dated 18/12/2015, at the entrance of the House No.12/9, Pertho Street, Royapettah, Chennai-600014, where the assessee is said to have resided and being his last known

address. Smt G.S. Lalitha residing in that house has also signed on the copy of the notice stating that the notice was pasted on the entrance of the house.

Submitted.

(R. NARASIMHAN)
Inspector of Income Tax

Dated:17/03/2016

The Revenue has also enclosed envelope which returned un-served, which contains notice u/s.148 of the Act and letter from Central Circle. The Revenue, according to us, has tried their best to serve the notice in regular manner and when it became impossible only, they resorted to service of notice by way of affixture on the last given address of the assessee and admitted fact are that the assessee sister Mrs. G.S. Lalitha who was present at the given address informed that Shri R.G. Deenatayalan is her brother and who has resided earlier in this house and has vacated the house now. No new address was given by the assessee to the Income Tax Authorities. It means that notice u/s.148 of the Act was served on the last known address to the Department and service of notice through affixture is as per the procedure laid down by law and hence, we find no infirmity in the same. Hence, this ground of assessee's appeal is dismissed.

7. The issue on merits raised by assessee in this appeal is as regards to the order of CIT(A) confirming the action of the AO in

assessing the capital gains on the basis of purported agreement to sale dated 14.01.2011 regarding sale consideration of Rs.90,00,000/- as against the consideration received by assessee duly disclosed in the registered sale deed and the assessee did not receive any additional sale consideration. The main grievance of the assessee is that the alleged sale agreement was never provided to the assessee before making assessment and neither CIT(A) nor AO did not give adequate opportunity even in the original assessment proceedings or appellate proceedings.

8. Brief facts are that the Income Tax Department during the course of search u/s.132 of the Act, at the business premises of Jaycee Earth Pvt. Ltd., found an agreement for sale entered between Shri S. Raghuraman and the assessee Shri R.G. Deenatayalan for sale of immovable property Flat No.H3-D3, Vijayaraghava Manor, No.1, Vijayaraghava Road, T.Nagar, Chennai. As per agreement, sale consideration of the property was fixed at Rs.90,00,000/-. The AO on perusal of agreement of sale noted that the assessee has received sale consideration as per agreement dated 14.01.2011 at Rs.90,00,000/- and after allowing cost of acquisition of the property, as property was purchased by assessee on 16.03.2011, sold this property on 18.01.2012 determining short

term capital gain on sale of property at Rs.70.62 lakhs. The AO made the proposed assessment vide letter dated 15.06.2016 but assessee failed to respond to this letter and therefore, the AO assessed the short term capital gain arising out of sale of this property at Rs.70.62 lakhs.

8.1. Aggrieved assessee preferred appeal before CIT(A) and CIT(A) after considering the submissions of the assessee confirmed the action of the AO assessing short term capital gain at Rs.70.62 lakhs by observing as under:-

The assessee's basic grievance that he was not given a detailed opportunity of being heard during the assessment proceedings is therefore not found sustainable. Therefore, relying on the finding of the AO that the assessee has sold the property and thereafter even not filed return of income for AY 2012-13, disclosing the sale receipts from the sale of property. Thus, considering the factual aspect that the AO has mentioned in the assessment order stating that Shri S. Raghuraman entered into a purchase agreement with the assessee Shri R.G. Deenadayalan for purchase of property Flat No.H3-D3 Vijayaraghav Manor, T. Nagar, Chennai for a sale consideration of Rs.90,00,000/-. However, the sale deed was registered on 18.01.2012. The assessee has not offered such capital gain for taxation under the Income Tax Act. The sale agreement dated 14.01.2011 clearly mentions that the purchaser has paid sum of Rs.11,00,000/- by cash on 14.07.2011 as advance and has agreed to pay further consideration of Rs. 14,00,000/- by cash and balance of sale consideration of Rs.65,00,000/- at the time of registering the sale deed. Thus, when the factual information regarding the consideration for sale is very well supported by the evidence therefore, the assessee showing sale consideration value of the property at the time of registration of sale deed at Rs.34,00,000/- has been shown at such a abnormal low value is to evade the tax. Despite 2nd opportunity provided to the assessee by way of Remand Report proceedings the appellant is not able to prove his point before the AO. Therefore, it is held that the AO has rightly brought the sale

value of the property in question by adopting sale consideration at Rs.90,00,000/-. Therefore, the AO's action to bring to tax STCG as per calculation given below is accordingly confirmed."

Aggrieved, now assessee is in appeal before the Tribunal.

9. Before us, the Id.counsel for the assessee stated the CIT(A) and the AO during the remand proceedings held that the assessee did not file any details and dismissed the appeal of the assessee. He further stated that the assessee was neither provided a copy of the purported agreement nor an opportunity to examine the purchaser of the property, even after the same was specifically requested by the assessee during the course of remand proceeding. The Id.counsel submits that due to the ongoing income tax cases being completed without even providing the copy of the purported agreement to the assessee, he approached the purchaser of the property to give a written confirmation about the transaction. The Id.counsel submits that the assessee could not immediately obtain the confirmation from the purchaser. The Id.counsel stated that both at the assessing officer stage and the first appellate stage, the proceedings were completed without giving the assessee sufficient opportunities and without providing all the materials. The Id.counsel submitted that the assessee has only completed High School final and was not immediately able to get the papers from the purchaser.

It is further submitted that the letter of the purchaser is a crucial document evidencing that he has only made a payment of Rs. 32,00,000/- as consideration as mentioned in the Sale deed. The non-production was only since the assessee did not have a copy of the document during the course of assessment and proceedings before the CIT(A) and that the same could not be obtained from the purchasers due to reasons mentioned above. The non-production was neither willful nor warranted.

10. On the other hand, the Id.Senior DR heavily relied on the assessment order and the order of CIT(A). He only relied on sale agreement found during the course of search dated 14.07.2011, which is signed by both purchaser and seller and terms & conditions are clearly spelt out and consequent to this agreement a sale deed was also registered. The relevant document i.e., agreement to sale dated 14.07.2011 is enclosed in Revenue's Paper-book at pages 1 to 4.

11. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the entire case records including the paper-book filed by assessee and additional evidences that is the denial by the purchaser Shri S. Raghuraman

dated 15.07.2011 which needs to be considered and even, we have gone through the paper book filed by the Revenue filing copy of sale agreement dated 14.01.2011, whereby alleged payment received by assessee to the tune of Rs.90 lakhs, all these need to be examined because assessee should be given fair opportunity and should have been confronted with all the documents before deciding the issue. Hence, on merits we set aside the orders of lower authorities and remand the matter back to the file of the AO for fresh adjudication according to law.

12. In the result, the appeal filed by the assessee is partly-allowed for statistical purposes.

Order pronounced in the open court on 6th September, 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 6th September, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |