

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' 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.:189/CHNY/2019  
निर्धारण वर्ष/ Assessment Year 2012 - 2013

The ACIT,  
Circle - 1,  
Kancheepuram.

Shri Sadasivan Jayabalan,  
Vs. No.243, Eswara Nagar,  
Main Road, Veppampattu,  
Tiruvallur Taluk & District  
Pincode - 602 024  
**PAN: AQQPJ 7037A**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

प्रत्यर्थी की ओर से/Respondent by  
अपीलार्थी की ओर से/Appellant by

: Shri P. Sajit Kumar, JCIT  
: Shri T. Vasudevan, Advocate

सुनवाई की तारीख/Date of Hearing

: 08.09.2022

घोषणा की तारीख/Date of Pronouncement

: 08.09.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the Revenue is arising out of the order passed by the Commissioner of Income Tax (Appeals)-7, Chennai in ITA No.79/CIT(A)-7/2017-18 dated 26.09.2018. The assessment was framed by the Income Tax Officer, Ward - 2 (i/c), Tiruvallur for the Assessment Year 2012 - 2013, u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 26.12.2017.

2. The only issue in this appeal of the Revenue is as regards to the order of the Commissioner of Income Tax (Appeals) in holding that the re-assessment u/s.147 of the Act is liable to be rendered null and void, when no material facts existed to form the basis for the Assessing Officer to form an opinion that income has escaped assessment within the meaning of Section 147 of the Act without considering the decision of the Hon'ble Supreme Court. For this, the Revenue has raised the following Grounds numbering 1 to 10, as under:

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

2. The Commissioner of Income Tax (Appeal) erred in holding that the re-assessment u/s.147 of the Act is liable to be rendered null and void when no new material fact existed to form the basis for the Assessing Officer to form an opinion that income has escaped assessment within the meaning of Section 147 of the Act without considering the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. M/s. PVS Beedies (P) Limited [237 ITR 13].

3. The Commissioner of Income Tax (Appeals) erred in quashing the re-assessment by treating it as null and void. But it cannot be merely said to be null and void when application of mind of his superior officer like the JCIT is also there by approving the re-opening proposal.

4. The Commissioner of Income Tax (Appeals) erred in deleting the addition made u/s.56(2)(vii) by holding that the capital gain arising from the transfer of a land which was situated in non-urban area and the same was compulsorily acquired and compensation has been received from the NHAI would not fall under Section 56(2)(vii) of the Act without considering the ownership of the land.

5. The Commissioner of Income Tax (Appeals) omitted to consider the decision of the Hon'ble Supreme Court in the case of M/s. Suraj Lamp and Industries (P) Limited [340 ITR 1].

6. The Commissioner of Income Tax (Appeals) erred in allowing the Assessee's claim by merely relying the evidences viz. Chitta, Adangal and VAO Certificate without establishing the ownership of the impugned land.

7. The Commissioner of Income Tax (Appeals) omitted to call for remand report u/s.46A of the Act, when the Assessee furnished any details / fresh evidences (Chitta, Adangal and VAO Certificate) in support of its claim during the Appellate proceedings on which the CIT(A) relied on the same and allowed the ground of the Assessee.

8. The Commissioner of Income Tax (Appeals) ought to have appreciated the fact that Mr. J. Balaraman had confirmed only the receipt of the sale consideration and not the transfer of the ownership of the impugned land.

9. The Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the Assessee had furnished only a power of attorney in support of his claim on ownership of the land, which was considered as a valid proof.

10. For these and other grounds that may be adduced at the time of hearing prayed that the order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.”

3. The brief facts of the case is that the assessee, an individual filed his return of income admitting a total taxable income of Rs.9.55,710/- with agricultural income of Rs.25,000/- for the Assessment Year 2012-2013. The return of income was processed u/s.143(1) of the Act and the case was selected for scrutiny under Computer Aided Scrutiny Selection [CASS]. During the assessment proceedings, the assessee had furnished details / documents called for by the then Assessing Officer and the assessment was completed on 20.01.2014 u/s.143(3) of the Act accepting the returned income. Subsequently, a notice u/s.148 of the Act was issued on 30.03.2017

after recording the following reasons (reasons were supplied by AO vide letter dated 12.06.2017)

“The scrutiny assessment was completed u/s.143(3) dated 20.01.2014 accepting the income returned. The assessee has acted as a power of Attorney to M/s.M. VW.John Kennedy and M.W.Robert Kennedy to sell the property of 3060 Sq.ft. situated at Plot Nos.596A & 596B comprised in Survey No.64/1A in Veppampattu Village, Tiruvallur and the said property was acquired by the State Government and a sum of Rs. 13,44,485/- was given as compensation vide proceedings No.RC36/2010/Unit IV dated 25.11.2011. The assessee has submitted an affidavit on 12.01.2013 by stating that the above property was transferred to him on 12.01.2013. Since the claim of purchase is not proved as no registered sale deed was produced before the acquisition took place, the entire sale consideration is liable to be taxed u/s.56(2)(vii) as income from other sources.

Similarly the assessee received an amount of Rs.3,25,46,943/ as compensation from NHAI on 09.09.2011. According to the assessee land was purchased for a sum of Rs.85,71,429/- during the year. However, no evidence for the claim was produced. Being an immovable property the transfer can be made only through a registered sale deed. However, only power of attorney was given to the assessee obtained the compensation of Rs.3,25,46,943/- from NHAI Which falls u/s.56(2)(vii) as income from other sources"

From the above reasons and from the reassessment order, it is gathered that the AO from the details / documents furnished by the assessee during original assessment proceedings noted that the assessee has acted as power of attorney to M.W. John Kennedy and

M.W. Robert Kennedy to sell his property of 3060 sq.ft., at Plot Nos.596A & 596B comprised in survey no.641A in Veppampattu Village, Tiruvallur. This property was acquired by state government i.e., Government of TamilNadu for a sum of Rs.13,44,485/- and compensation was given vide certificate No.RC36/2010/Unit IV dated 25.11.2011. The AO noted that since the assessee could not prove the claim of purchase as no sale deed was registered or produced before the acquisition took place, the entire sale consideration is liable to assessed u/s.56(2)(vii) of the Act as 'income from other sources'. The assessee received another compensation amount from National Highways Authority of India (NHAI) on 09.09.2011 amounting to Rs.3,25,46,943/- as against the alleged purchase of land for a consideration of Rs.85,71,429/- during the year from one Shri J. Balaraman. Hence in view of the above reasons, assessment was reopened and the compensation received on agricultural land was assessed as 'income from other sources' u/s.56(2)(vii) of the Act by the AO by observing in para 3.2 as under:

3.1 The above reply is carefully examined with reference to the details furnished. However, it is found that the purchase consideration of the agricultural Land of Rs. 85,71,491/- claimed to have been passed on to the owner Shri J. Balaraman is primacy not variable and the Land Owner Shri J. Balaraman vide his letter filed on 15-11-2017 has not confirmed that the

possession of such agricultural land was given to the assessee. In view of the above, the assessee's claim that he had right over the property which is authorized by the land owner Shri J. Balaraman through POA cannot be accepted and therefore the entire compensation of Rs. 3,25,46,943/- from NHAI received by the assessee is falling under Sec. 56(2)(vii) of Income-tax Act, 1961 and accordingly brought to tax in the hands of the assessee as Income from Other Sources for asst. year 2012-13. Add: Rs.3,25,46,943/-.”

Aggrieved assessee preferred appeal before CIT(A).

4.The CIT(A) quashed the reopening on change of opinion and also allowed remedial measures to be taken by AO as per law vide para 12 & 12.1 as under:-

“12. In the light of the judicial precedents laid down above and after a careful perusal of the case records pertaining to the Assessment year 2012-13, it is concluded that no new "material fact" existed to form the basis for the A.O. to form an opinion that income has escaped assessment. Therefore, in my considered view, A.O. had no "reason to believe" that income had escaped assessment within the meaning of sec 147 of the IT Act.

12.1 On this legal footing, the re-assessment u/s 147 for the AY 2012-13 is liable to be rendered null and void. As has been pointed out, the I.A.P. recorded the objection via Audit Memo dated 30.01.2015 and alternative remedial measure was available under the Act at the relevant time. Therefore, the action taken u/s 147 cannot be held to be legally tenable.”

Aggrieved against quashing of reopening on change of opinion, Revenue came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. The assessee himself submitted the details of amount of compensation received from NHAI on 09.09.2011 before AO during assessment proceedings, the land was purchased for a sum of Rs.85,71,429/- during financial year 2011-12 relevant to assessment year 2012-13. This fact is also noted by the AO in his reassessment order with the reasons recorded from the details / documents so furnished by the assessee during the course of hearing. We noted that the same reasons were available before the AO during original assessment proceedings for making assessment as AO has relied on the same details and documents for reopening the assessment and for recording of reasons. It is also fact that the sale consideration of Rs.85,71,429/- was paid by cheque and the details of sale consideration amount given to the party was also mentioned by the AO in his original assessment order framed u/s.143(3) of the Act dated 20.01.2014. The assessee purchased the rural agricultural land and also got the possession of the land which was subsequently acquired by the NHAI. In such circumstances, can the AO initiate reopening on mere change of opinion, if in the original assessment the AO has formed a view. In our view such recourse cannot be had, to issue notice u/s.148 of the Act for retaining of assessment or formulation of a different view on

the same set of facts. The full Bench of Hon'ble Delhi High Court in the case of CIT V. Kelvinator of India Ltd. reported in [2002] 256 ITR 1 (Del), held as follows:

“We are unable to agree with the submission of Mr. Jolly to the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report had already been submitted by the assessee. It is one thing to say that the Assessing Officer had received information from an audit report which was not before the Income-tax Officer, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself.

We also cannot accept the submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded an analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147 of the Act. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding with out anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong.”

The above said decision of the Full Bench of the Delhi High Court was upheld by the Supreme Court in the decision reported in [2010] 320 ITR 561 (SC) wherein the Hon'ble Supreme Court has considered that there cannot be change of opinion based on the

material which was already available with the AO at the time of original assessment. The Hon'ble Supreme Court further held that there should be some tangible material came to the notice of the AO after completion of assessment and on that basis reopening can be done. The Hon'ble Supreme Court observed as under:-

“On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, reopening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in Section 147.--A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

5.1 Even the Hon'ble Madras High Court in the case of CIT vs. Arvind Remedies Ltd., TCA No.1363 of 2007, order dated 08.06.2015 has held as under:-

"We hold that when the Assessing Officer had failed to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment. On the contrary, it was the Assessing Officer, who failed to consider the materials placed before him at the time of regular assessment for which the assessee cannot be found fault with. Therefore, the notice issued under Section 147 of the Income Tax Act beyond the period of four years was wholly without jurisdiction and cannot be sustained. Accordingly, for the reasons stated above, the substantial question of law is answered in favour of the respondent/assessee and against the appellant/Revenue"

5.2 In view of the above pronouncements by Hon'ble Supreme Court and Hon'ble Jurisdictional High Court, the essence for re-opening is tangible material and in the present case before us, the entire information was available before the AO during original

assessment proceedings and the AO has formed an opinion on the same, in the absence of any tangible material reopening is not valid and hence, we confirm the order of CIT(A) quashing the reopening. The appeal of Revenue is dismissed solely on this ground.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 8<sup>th</sup> 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 8<sup>th</sup> September, 2022

**RSR**

आदेशकीप्रतिलिपिअग्रेषित/Copy 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.            |