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

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ **ITA No.3008/Chny/2019**
(**निर्धारण वर्ष /** Assessment Year: 1987-88)

Estate of Late A.M. Jakh Jaakh (Represented by Shri Mr. A.M. Basheer Rahman) 200, Seethakathi Street, Rajapalayam-626 117.	बनाम/ Vs.	**The Income Tax Officer** Ward-2, Virudhunagar. Madurai (TN)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AJFPJ-0549-A**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri N.V. Balaji & Shri N.V.Narayanan (Advocates) – Ld. ARs
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri P.Sajit Kumar, (JCIT)- Ld. DR

सुनवाईकीतारीख/ **Date of Hearing**	:	17-11-2022
घोषणाकीतारीख / **Date of Pronouncement**	:	23-11-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 1987-88 arises out of order of learned Commissioner of Income Tax (Appeals)-1, Madurai [CIT(A)] dated 27-08-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.144 r.w.s 147 of the Act on 14-12-2007.

2. The Ld. AR, at the outset, drew attention to ground no.1 and its sub-grounds to submit that the assessment proceedings were barred by limitation since the case was reopened beyond prescribed statutory time limit. The Ld. AR submitted that the limitation of Sec.149 would apply as against Sec.150(1) as held by lower authorities. To support the submissions, Ld. AR placed on record the decision of Hon'ble Apex Court in **Rajinder Nath vs. CIT (2 Taxman 204)** explaining the scope of expression 'finding' and 'direction' as appearing in Sec.153(3)(ii) of the Act. The revenue maintained that the case was covered u/s 150(1) as held by lower authorities. Having heard rival submission, the appeal is disposed-off as under.

3. The deceased assessee Shri A.M. Jakh Saakh was stated to be partner in a firm M/s Meeran Traders. For AY 1987-88, CIT(Appeals), Madurai passed an order in the case of firm in ITA No.188 & 187/03-04 on 10.01.2006 and held that capital contribution by partners could not be assessed in the hands of the firm and Assessing Officer was free to examine the source for capital contribution in the hands of individual partners. Considering the same, Ld. AO formed an opinion of escapement of income and reopened the case of the assessee partner to bring to tax capital contribution of Rs.5 Lacs. Accordingly, a notice u/s 148 was issued on 08.09.2006 which was much after the prescribed time limit of 10 years as prescribed u/s 149 as applicable at relevant point of time. However, Ld. AO held that there was no time limit u/s 150(1) and therefore, the case could be reopened at any time. Since the assessee failed to make any submissions, Ld. AO added amount of Rs.5 Lacs to the income of the assessee as undisclosed investment.

4. The Ld. CIT(A) concurred that there was no time limit u/s 150 for issue of notice u/s 148 for making an assessment or reassessment etc. to give effect to any finding or direction contained in an order passed by an appellate authority. The Ld. AO merely gave effect to the findings made by Ld. CIT(A) and therefore, the reopening was valid. The quantum additions were also confirmed. Aggrieved, the assessee is in further appeal before us.

5. We find that the provisions of Sec.150(1) provide that notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

6. The crucial aspect to be noted is that no time limit is prescribed for issuance of notice u/s 148 provided the purpose of the same is to give effect to any “finding” or “directions” contained in specified orders. The expressions “finding” as well as “directions” has elaborately been dealt with by Hon’ble Apex Court in the cited decision as under: -

> 11. The expressions "finding" and "direction" are limited in their meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be treated as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability

can be directly arrived at without necessitating a finding in respect of B, then finding made in respect, of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in section 153(3)(ii) is not of the Act must be accordingly confined (sic). Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under section 143 or section 144 or section 147—ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) and N. Kt. Sivalingam Chettiar v. CIT [1967] 66 ITR 586 (SC). The question formulated by the Tribunal raised the point whether the AAC could convert the provisions of section 147(1) into those of section 153(3)(ii) of the Act. In view of section 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point.

12. In the present case, the AAC found that the cost of construction of the two buildings had not been met by the partnership firm. The firm had merely advanced money to the individual four co-owners, whose personal accounts in the books of the firm had been debited accordingly. On that material the AAC held that the partnership was not the owner of the property and consequently any excess over the disclosed cost of construction could not be added in the assessments of the firm. All that has been recorded in the finding that the partnership firm is not the owner of the properties. It is true that the finding proceeds on the basis that the cost has been debited in the accounts of the four co-owners. But that does not mean, without anything more, that the excess over the disclosed cost of construction constitutes the concealed income of the assessees. The finding that the excess represents their individual income requires a proper enquiry and for that purpose an opportunity of being heard was needed to be given to the assessees. Indeed, that is now plainly required by Explanation 3 to section 153(3). The expression "another person" in the Explanation would include persons intimately connected with the person in whose case the order is made in the sense explained by this Court in Murlidhar Bhagwan Das (supra). It is one thing for the partners of a firm to be required to explain the source of a receipt by the firm, it is quite another for them in their individual status to be asked to explain the source of amounts received by them as separate individuals. On such opportunity being provided, it would have been open to the assessees to show that the excess alleged over the disclosed cost of construction did not constitute any taxable income. The finding contemplated in Explanation 3, it will be noted, is a finding that the amount represents the income of another person. We are unable to hold that the observation of the AAC can be described as such a finding in relation to the assessees.

13. It is also not possible to say that the order of the AAC contains a direction that the excess should be assessed in the hands of the co-owners. What is a "direction" for the purposes of section 153(3)(ii) of the Act has already been discussed. In any event, what ever else it may amount to, on its very terms, the observation that the ITO "is free to take action" to assess the excess in the hands of the co-owners cannot be described as a "direction". A direction by a statutory authority is in the

> nature of an order requiring positive compliance When it is left to the option and discretion of the ITO whether or not to take action, it cannot, in our opinion, be described as a direction.
> 14. Therefore, in our judgment the order of the AAC contains neither a "finding" nor a "direction" within the meaning of section 153(3)(ii) of the Income-tax Act in consequence of which, or to give effect to which, the impugned assessment proceedings can be said to have been taken.

We find that the facts of the above case are quite similar to the facts of instant case before us. Therefore, we concur with the argument of Ld. AR that the observation as made by first appellate authority in the case of firm could neither be considered as “finding” nor “direction” in terms of Sec.150(1) of the Act. This being the case, the time limit for issuance of notice would be guided by the provisions of Sec.149 of the Act. Considering the provisions of Sec.149, the notice issued u/s 148 on 08.09.2006 is certainly time barred and therefore, the assessment framed by Ld.AO could not be sustained in the eyes of law. By quashing the same, we allow the legal grounds urged by the assessee. Delving into the merits of the case has been rendered infructuous.

7. The appeal stand allowed in terms of our above order.

Order pronounced on 23rd November, 2022.

Sd/-	Sd/-
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य /JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 23-11-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF