

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.848/Chny/2022**
(निर्धारण वर्ष / **Assessment Year: 2012-13**)

Ramamirtham Mangaladhevi, No.19/13, Sarvanayalam, PS Sivasami Salai, Mylapore, Chennai – 600 004.	बनाम / Vs.	ITO Corporate Ward-5(3), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AADPR-3182-R		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri Y. Sridhar (FCA) & Ms. Revathi (C.A) - Ld. ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	11-05-2023
घोषणा की तारीख / Date of Pronouncement	:	17-05-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] dated 31-08-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the Act on 12-09-2018. The grounds raised by the assessee are as under:

1. The order of Id. CIT(A) is contrary to law and facts and circumstances of the case.

2. The assessment was completed u/s 148 with the following additions:
i) LTCG Rs.11,42,818/-: The Id. CIT (A) failed to consider the revised computation of capital gains based on indexation for 2006-07 (earlier calculated based on 2003-04 inadvertently), filed during the course of hearing of Mr. S Ramamirtham (husband of the appellant), which was also under assessment before the same Assessing Officer.

ii) Rental income-Rs.5,46,116/-: The Id. CIT (A) erred in confirming the addition of rental income of Kannathur property, which is co-owned by the appellant, her husband and her son, under the pretext that there was tax arbitrage. Further, when all the three co-owners are in high tax bracket, the Revenue is not at loss and in all the earlier assessment years the rental income was shown under husband's return only.

3. The assessment was reopened only based on audit objection, purely on borrowed satisfaction of the Id. AO and not on Id. AO's independent enquiries.

4. The Id. CIT(A) has also erred in confirming the order passed by the Id. AO u/s 143(3) rws 147 of the Act, as there are no "income which has escaped assessment" per se. Further, it may please be noted that the assessment was reopened after the expiry of four years from the end of the relevant assessment year.

Relevant AY : 2012-13: Ending 31/03/2013

Date of notice u/s 148: 26/03/2018

5. The appellant has disclosed all material facts during assessment proceedings u/s 143(3) and the order was passed after exhaustive scrutiny of the appellant's accounts.

6. For the above reasons and other reasons that may be adduced at the time of hearing, the Order u/s 250 by the CIT(A) may kindly be quashed and justice be rendered.

As is evident, the assessee assails the validity of reassessment proceedings. The assessee also challenges quantum additions on merits. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

2. The registry has noted delay of 717 days in the appeal, the condonation of which has been sought by Ld. AR on the strength of affidavit of the assessee. The Ld. Sr. DR opposed condonation of delay on the ground that there was no reasonable cause for the assessee to delay the appeal. We find that impugned order was passed on 31.08.2020 and substantial period of delay fall in lockdown situation arising out of Covid-19 Pandemic. The assessee is a senior

citizen. Excluding Covid-19 lockdown delay, there is effective delay of 230 days only. Considering all these factors, we condone the delay and admit the appeal for adjudication on merits.

Proceedings before lower authorities

3.1 The original return of income filed by the assessee was scrutinized u/s 143(3) on 19.03.2015. However, the case was reopened beyond 4 years from end of relevant assessment year and notice u/s 148 was issued on 26.03.2018. In the recorded reasons, as placed on page nos. 17 of the paper-book, Ld. AO alleged that Long Term Capital Gains (LTCG) to the tune of Rs11.42 Lacs was omitted to be offered by the assessee. Secondly, rental income of Rs.7.20 Lacs from Kanathur Property was to be treated as assessee's income. Lastly, medical expenses of Rs.0.97 Lacs were not allowable u/s 37(1). The assessee objected to the reopening vide its letter dated 26.07.2018 and furnished working of capital gains. It was also submitted that rental income was already offered in the hands of other co-owners. Since all the co-owners were in higher income tax brackets, there was no loss to the revenue. The medical expenses were stated to be incurred for driver who met with an accident. Apparently, the reopening is at the behest of internal audit objection, a copy of which has also been furnished by Ld. AR during the course of hearing. Upon perusal of the same, it could be seen that the audit objection raises all the three issues as raised by Ld. AO in the recorded reasons and the reopening is prima facie made at the behest of revenue audit objection. In the recorded reasons, there is no allegation by Ld. AO that there was failure on the part of the assessee to disclose fully and truly all

material facts necessary for her assessment for impugned assessment year.

3.2 Though the assessee objected to the reopening of the assessment, the objections were nowhere disposed-off by Ld. AO in the assessment order and Ld. AO made addition of rental income in the hands of the assessee besides recomputing the capital gains earned by the assessee. No disallowance was made u/s 37(1). In nutshell, the income was further enhanced to the extent of Rs.16.88 Lacs.

3.3 During appellate proceedings, the assessee assailed the reassessment jurisdiction on the ground that there was no failure on the part of the assessee to disclose material facts. Reliance was placed, inter-alia on the decision of Hon'ble Apex Court in **CIT vs Foramer France (129 Taxman 72)** wherein it was held that in the absence of any failure on the part of the assessee to make return or disclose fully and truly all material facts necessary for assessment, proviso to new section, which bars issue of notice under section 148 after expiry of four years from end of relevant assessment year, squarely applied to facts of instant case and, therefore, impugned notice was barred by limitation. Since notice u/s 148 was without jurisdiction, the consequential assessment would be nullity.

The assessee's submissions were subjected to remand proceedings wherein Ld. AO supported the assessment order.

3.4 The Ld. CIT(A) rejected legal grounds by observing that Ld. AO had picked up the information from the assessment of other co-owner which formed the basis for reopening of the assessment proceedings. Therefore, it was not a case of change of opinion but reopening was

based upon a fact which was intrinsically linked to the case of the assessee. The assessment, on merits, was also upheld. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the stated factual matrix, it emerges that the reassessment proceedings have been undertaken at the behest of revenue audit objection. The recorded reasons are prima facie based on observations made by the audit party. In the recorded reasons, there is no allegation that the income escaped assessment since the assessee failed to disclose fully and truly all material facts necessary for her assessment for impugned assessment year. It could be seen that the return was already scrutinized u/s 143(3) and the reopening exercise has been undertaken beyond 4 years. In such a case, one of the essential requirements is that there should be failure on the part of the assessee to disclose fully and truly all material facts necessary for her assessment for impugned assessment year. During the course of original assessment proceedings, Ld. AO, vide notice dated 27.10.2014, required the assessee to file purchase and sale deed of Kanathur property. The same was duly furnished by the assessee along with computation of Long-Term Capital Gains. The other details as called for by Ld. AO were also furnished by the assessee vide reply dated 18.11.2014. Considering the same, the assessment was framed on the assessee making certain additions. Thus, it was a case wherein there was no failure on the part of the assessee to disclose material facts necessary for her assessment. Therefore, applying the ratio of cited decision of Hon'ble Apex Court in **CIT vs Foramer France (129 Taxman 72)**, it was to be held that notice issued u/s 148 was barred by

limitation and consequential assessment framed by Ld. AO would be nullity.

5. The decision of Hon'ble Apex Court in **Pr. CIT vs. S. Chand & Co. Ltd. (100 Taxmann.com 353)** also supports the proposition that reassessment proceedings merely at the behest of audit objection as based on mere appraisal of the same record without any tangible material or information, would be bad in law. In the present case, we find that there is no independent application of mind by Ld. AO while recording the reasons for reopening. There is no new tangible material to reopen the case. Therefore, the assessment was to be held as bad-in-law. We order so. In the result, delving into the merits of the case has been rendered mere academic in nature.

6. The Ld. Sr. DR has referred to the decision of Hon'ble High Court of Madras in **Cognizant Technology Solutions India (P) Ltd. vs ACIT (129 Taxmann.com 327)**. Upon studying the same, we find that in that case, the reopening was done by revenue within 4 years from the end of relevant assessment year. Therefore, this case is not applicable.

7. In the result, the appeal stand allowed in terms of our above order.

Order pronounced on 17th May, 2023.

Sd/-
(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

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

चेन्नई / Chennai; दिनांक / Dated : 17-05-2023
EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF