

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 150/MUM/2023
(Assessment Year: 2011-12)**

Amarshi Avchar Gala,
Room No. 30, Bld No. 17,
Manish Nagar, Andheri (West) - 400053
[PAN: AAIPG6262A]

..... **Appellant**

Income Tax Officer,
Ward 24(1)(1), Mumbai,
Piramal Chamber, Lalbaug Parel,
Mumbai - 400012

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Surji Chheda
For the Respondent/Department : Shri Sridhar Govind Menon

Date : 16.05.2023
Conclusion of hearing : 19.05.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 30/11/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 19/12/2018, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised the following grounds of appeal:

- 1) *The learned CIT(A) has erred in law and in facts to confirm validity of issue notice u/s 148 of I.T Act.*
- 2) *Your appellant prays that the assessment u/s 148 is bad in law & required to be quashed.*
- 3) *The learned CIT(A) has erred to treat date of transfer as date of sale deed (22.12.2010) as against date of possession(26.4.2011).*
- 4) *The learned CIT(A) has erred in not quashing the assessment in spite of the fact that sanction u/s 151 is given mechanically.*
- 5) *The learned CIT(A) has erred in law and in facts to confirm to add Rs.30,97,500/-as Short Term Capital Gain inspite of the fact that property sold was not owned by the appellant & there was no transfer u/s 2(47) of I.T Act.*
- 6) *The learned CIT(A) has erred to confirm to treat long term capital gain as short term capital gain inspite of letter given & has erred in not giving benefit of Long Term Capital Gain & indexation for Long Term Capital Gain.*
- 7) *The learned CIT(A) has erred in fact & in law to confirm to apply provision of section 50C.*
- 8) *The learned CIT(A) has failed to consider that the appellant as nominee inspite of fact that AO himself has considered as nominee in assessment order."*

3. Brief facts of the case are that the Appellant, an individual, filed return of income for the Assessment Year 2011-12 on 30/03/2012 declaring total income of INR 1,49,680/-. On the basis of information received by the Assessing Officer regarding sale of property by the Appellant, reassessment proceedings were initiated against the Appellant as notice, dated 31/03/2018, was issued to the Appellant under Section 148 of the Act after recording reasons for reopening the assessment. The objections filed by the Appellant to reopening of the assessment vide letter, dated 10/08/2018, were

rejected by the Assessing Officer vide order, dated 01/10/2018. The Assessing Officer proceeded to frame assessment on the Appellant vide Assessment Order, dated 19/12/2018, under Section 143(3) read with Section 147 of the Act at total income of INR 32,47,180/- after making addition of INR 30,97,500/- being Short Term Capital Gain computed at the rate of 30% taking stamp duty value as the full value of consideration as per the provisions of Section 50C of the Act and cost of acquisition as 'Nil'.

4. In appeal preferred by the Appellant against the Assessment Order, dated 19/12/2018, the CIT(A) rejected the challenge to initiation of reassessment proceedings and held that the Assessing Officer was correct in invoking provisions of Section 50C of the Act to adopt stamp duty value as full value of consideration for the purpose of computing capital gains. However, the CIT(A) directed the Assessing Officer to re-compute the quantum of Short Term Capital Gain after allowing deduction for the corresponding cost of acquisition of the property sold by the Appellant. Thus, the CIT(A) partly allowed appeal preferred by the Appellant vide order, dated 30/11/2022.
5. Being aggrieved, the Appellant has preferred the present appeal before the Tribunal against the order dated 30/11/2022 passed by the CIT(A).
6. The Ld. Authorised Representative for the Appellant appearing before us pressed into service Ground No. 1, 2 and 4 reproduced in paragraph 2 above and contended that the reassessment proceedings are bad in law as the same have been initiated in a mechanical manner and on the basis of incorrect understanding of

fact. Even the approval under Section 151 of the Act has been granted without application of mind. In order to support the aforesaid submission, the Ld. Authorised Representative for the Appellant placed reliance upon copy of reasons recorded for reopening the assessment, details of AIR transaction showing property transaction and copy of agreement for sale forming part of the paper-book and submitted that the property sold by the Appellant was held as a nominee of one Mr. Virendra Singh Bharara as duly noted in the recital to the sale deed, dated 22/12/2010 and the possession letter, dated 19/01/2010. Further, the said property was sold for a consideration of INR 20,00,000/-. Without appreciating the aforesaid facts, reassessment proceeding were incorrectly initiated against the Appellant on the basis of incorrect information that the property has been sold for INR 30,98,500/-. Even the AIR information states that stamp duty value of the property was INR 30,97,500/- which is below the sale consideration stated in the reasons recorded for reopening the assessment. On the basis of the aforesaid, it cannot be said that income liable to tax had escaped assessment. On the strength of the aforesaid, the Ld. Authorised Representative for the Appellant submitted that the reassessment proceedings were bad in law and therefore, liable to be quashed.

7. Per contra, the Ld. Departmental Representative referred to the reasons recorded in writing and submitted that the Assessing Officer had received information from the office of Principal Commissioner of Income Tax -24, Mumbai, vide letter dated Pr. CIT-24/HQ/Verification & information/2016-17 dated 03.05.2016 that Assessee had sold property being Flat No. 704/B, 7th Floor,

Vesave Mangela Macchimar Samaj Sarvadya Sahakari Housing. The Assessee had not shown any income under the head capital gains in the return of income and therefore, Assessing Officer formed belief that income had escaped assessment and reassessment proceedings were initiated. Admittedly, the property was sold for consideration less than stamp duty value and therefore, the Assessing Officer was justified in making addition on account of capital gains by resorting to the provisions of Section 50C of the Act. Therefore, it was submitted that the order passed by the CIT(A) confirming the action of Assessing Officer should be upheld.

8. We have considered the rival submissions and perused the material on record. The validity of the reassessment proceedings would have to be examined on the touchstone of the reasons recorded in writing which read as under:

"2. Information has been received from the office of the Pr.CIT-24, Mumbai vide letter dated Pr. CIT-24(HQ)/Verification & Information/2016-17 dated 03.05.2016 that the assessee has entered in to following transaction

Registration No.	Address of the Property sold	Transaction amount	Stamp Duty Paid	xx
11798/2010	(1) CTS No. 1376 Flat No. 704/B, 7 th Flr, Vesave Mangela Macchimar Samaj Sarvadya Sahakari Housing	30,98,500	1,37,475	xx

3. *The information has been analysed vis-à-vis the return of income filed by the assessee. It is seen that, the assessee*

has shown mere income of Rs 1,49,680/- for the year, further even though the assessee has sold flat no income under the head capital gains has been offered. Thus the income element with respect to the above high value transactions remains undisclosed and the same is required to be considered in computing total income of the assessee.

5. Basis of forming reason to believe. In this case, the assessee has sold the property for aggregate consideration of Rs.30,98,500/- however, the assessee has filed return of Income and no income under head capital gains/business income has been shown, which is not in consistency with the information received in the case of the assessee. Thus, the income element in respect of above transactions remains undisclosed and the same are required to be considered in computing total income of the assessee. On the basis of this tangible information available on record, it is evidently clear that the total Income of the assessee had escaped assessment. In view of the above and by reason of the failure on the part of the assessee to disclose fully & truly all material facts necessary thereto in his return of Income. I have reasons to believe that the income to the extent of Rs 30,98,500/- chargeable to tax in the hands of the assessee has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 A notice u/s 148 rws 147 of the Act, is being proposed to be issued to assess such income and also any other income chargeable to tax which has escaped assessment, which comes to my notice subsequently in the course of assessment proceedings for AY 2011-12
6. Applicability of the provisions of section 147/151 to the fact of the case- In this case return of income was filed for the year under consideration accordingly, however, no assessment was made and the only requirement to initiate proceedings u/s 147 is to reason to believe which has been recorded in Para 5 above.
7. In view of the above, I have reason to believe that in the case of the assessee, income chargeable to tax of Rs.

30,98,500/- has escaped assessment for AY 2011-12 within the meaning of sec. 147 of the I.T. Act and therefore, it is a fit case for issue of notice u/s 148 of the IT. Act, 1961 because of the failure on the part of the assessee to disclose the fact truly and fully in its return of income

8. *In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s 148 has to be obtained separately from Principal Commissioner of Income Tax as per the provisions of section 151 of the Act. Accordingly, administrative approval for reopening the case u/s 148 may kindly be accorded.” (Emphasis Supplied)*
9. The reasons recorded state that the Appellant has sold the property '*for aggregate consideration of INR 30,98,500/-*'. This is factually incorrect, as a perusal of the AIR Transaction Statement shows that the property has been sold for INR 20,00,000/-. Thus, the basis on which the Assessing Officer has proceeded to initiate reassessment proceedings is factually incorrect. This also shows non-application on mind by the Assessing Officer as explained hereafter. If we take that the Assessing Officer was of the view, that the property was sold for the aggregate consideration of INR 30,98,500/-, then the stamp duty value of INR 30,97,500/- reflected in the AIR Transaction Statement was below the consideration amount and therefore, the transaction for sale of property could not have been reflected in the AIR transaction statement in the list of transactions where the stamp value assessed was more than the declared sale value. We are alive to the possibility of the Assessing Officer making a typographical mistake while recording reasons. However, on perusal of paragraph 1 of the Assessment Order, dated 19.12.2018, we find that the Assessing Officer has reiterated that

the specific information was received from Principal Commissioner of Income Tax -24, Mumbai, that the property has been sold for the aggregate consideration of INR 30,98,500/-. Thus, clearly the reassessment proceedings have been initiated only on the basis of letter dated 03.05.2016, received from Principal Commissioner of Income Tax -24, Mumbai, without any application on mind to the AIR Transaction Information available with the Assessing Officer and verification. Further, in our view, merely on the basis of the information stated in the reasons recorded, the Assessing Officer could not have formed the belief that *'income to the extent of INR 30,98,500/- chargeable to the tax in the hands of the Assessee has escaped assessment'*. In paragraph 5 of the reasons recorded the Assessing Officer, despite observing, that the *'income element in respect of above transactions remains undisclosed'*, concludes that the income to extent of INR 30,98,500/- has escaped assessment. There is no link between the material available and formation of the aforesaid belief by the Assessing Officer. The reasons recorded also do not make any reference of Section 50C of the Act - possibly because the Assessing Officer proceeded on incorrect understanding that the property has been sold for INR 30,98,500/-. Be that as it may, we are of the view that the reassessment proceedings initiated on the basis of incorrect understanding of the primary facts and without application on mind to the material/information available with the Assessing Officer cannot survive. Our view draws strength from the judgment of the Hon'ble Delhi High Court in the case of Oriental Insurance Co. v. CIT [2015] 378 ITR 421 which was followed by the Mumbai Bench of the Tribunal in the case of ABB Switzerland Ltd Vs. ADIT (IT) -1 (1), Mumbai: [2016] 73 taxmann.com 166 (Mumbai)[15-06-2016].

10. In view of the above, reassessment proceedings are quashed and the Assessment Order, dated 19/12/2018, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2010-11 is set aside as being bad in law. In view of the aforesaid, Ground No. 1, 2 and 4 raised by the Appellant are allowed whereas Ground No. 3, 5, 6, 7 and 8 are dismissed as being infructuous.
11. In result, the appeal preferred by the Assessee is allowed.

Order pronounced on 19.05.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.05.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai