

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.180/Chny/2021
निर्धारण वर्ष /Assessment Year: 2016-17

Murugesan Shanthi,
256-6, Anaivizhuthan Kulam
Street, Pattukkottai-614 601.
[PAN: DRAPS-5818-C]

The Income Tax Officer,
Ward-1,
Thanjavur.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से /Revenue by : Shri R. Mohan Reddy, CIT
सुनवाई की तारीख/Date of Hearing : 31.05.2023
घोषणा की तारीख /Date of Pronouncement : 14.06.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

The appeal filed by the assessee is directed against order of the Learned Principal Commissioner of Income Tax, Madurai-1 [hereinafter "PCIT"] dated 24-03-2021 and pertains to assessment year 2016-17.

2. The assessee has raised following grounds of appeal:-

- "1. The order of the Commissioner of Income Tax passed under sec.263 of the Act is contrary to law, erroneous and unsustainable on the facts of the case.*
- 2. The CIT erred in passing the impugned order under sec.263 dated 24.3.2021 with a direction to the officer to re-do the assessment.*

3. The CIT failed to appreciate that the order u/s.143(3) dated 30.11.2018 was passed after the assessment was taken up for 'Limited Scrutiny' to examine the 'cash deposit for demonetisation period' and having considered the entire issue in the regular assessment, the revision of the order amounts to review and hence is untenable in law.

4. The CIT further failed to appreciate that the assessing officer had accepted the income returned in the proceedings under sec.143(3) after examining the reporting by the assessee as per STF-14 and that there is no error in the order of officer warranting the action u/s.263 of the Act.

5. The CIT further failed to appreciate that the source for the cash deposit during the demonetisation period was verified by the officer with evidences produced by assessee, that cash was received by assessee from an NRI purchaser as sale consideration for her house and due to the sudden announcement of demonetisation, the assessee had to deposit in the bank account on various dates and hence considering the reason adduced, there was no prejudice caused to the revenue warranting the action u/s.263 of the Act.

6. The CIT was not justified in directing the officer to re-do the assessment with reference to Claiming of exemption u/s 54F in respect of property sold on Power of Attorney of M. Krithika, Major daughter of the assessee, purchase of property and the source for sold property, which were all part of the record before the officer in the 143(3) proceedings and that sec.263 cannot be invoked where it does not satisfy the twin conditions of error in the AOs order and prejudice to the department

7. The CIT was not justified in substituting his views over that of the officer arrived at after examination of the records in the assessment proceedings and treating the conclusion of officer as erroneous clearly tantamount to review of the proceedings, which is impermissible in law.

8. The CIT further failed to appreciate the settled law that revision u/s.263 is permissible only in the event of lack of enquiry and where the officer has examined the records and passed the assessment order, invoking the powers under sec.263 is wholly opposed to intent and purpose of the revisionary jurisdiction vested by the statute and so is not accordance with law.

9. The CIT, in any event, was not justified in passing the order under sec.263 without satisfying both the parameters, namely, erroneous and prejudicial to the interests of revenue in the order passed by the officer and hence the order of CIT is liable to be annulled."

3. The Registry has noted delay of 15 days in the appeal, the condonation of which has been sought by Ld. AR. Considering the

period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

4. Brief facts of the case are that the assessee is a house wife and earning income from house property only. She has filed her return of income electronically on 03-04-2017 for the Assessment Year 2016-17 admitting total income of Rs. 65,090/- which was subjected for limited scrutiny through CASS for the reason that "cash deposit for demonitisation period (9th November to 30th December) is reported as per SFT-14 reporting. The assessee did not file return of income for the preceding assessment year and current year return has been filed after 07-11-2016 due to which notice under section 143(2) of the Act dated 09-08-2018 was served upon the assessee on 18-09-2018. Notice under section 142(1) of the Act dated 20-11-2017 was also mailed to the assessee. In response to such notices, the assessee uploaded copies of return of income ack, ITR-2, statement of total income, receipts & payment account, Bank statement, sale deed & purchase deed including an explanation letter dated 20-11-2018. The Ld. Assessing Officer [AO] have verified the same and found to be correct. The learned AO vide order dated 30-11-2018 completed the assessment by observing that, the assessee has sold her house for Rs. 1,00,00,000/- to an NRI party on 21-03-

2016 the payment of which were received by the assessee in cash. The amount was kept by her without anticipating the call of demonitisation on 08-01-2016 and deposited in her bank account on various dates during the A.Y. 2017-18. The learned AO further observed that, the assessee had made an advance of Rs. 9,00,000/- during the F.Y. 2015-16 to buy a house and the same was renovated at a cost of Rs. 49,30,400/- (total Rs. 58,30,400/-) the capital gain of Rs. 30,12,614/- was claimed as exemption under section 54F of the Act. The learned assessee find that due to non-taxable income for the earlier years, the assessee did not file return of income for the earlier years.

5. The said case has been subsequently taken up for revision u/s 263 of the Income Tax Act, 1961 and consequently, show cause notice dated 02-03-2021 was issued and served on the assessee and called upon to explain why the assessment order should not be subject to proceedings under section 263 of the Act. As no reply was filed by the assessee in response to the notice dated 02-03-2021, another notice dated 09-03-2021 was issued to the assessee by the Ld. PCIT.

6. In response to the notice u/s 263 of the Act dated 09-03-2021 the assessee filed written submissions dated 15-03-2021.

The Ld. PCIT has considered the said written statements of the assessee. The observations of the Ld. PCIT as stated in his order dated 24-03-2021 read as under:-

"5. I have considered the submissions of the assessee in the light of the facts of the case, the provisions of the law and the material information available on records. With regard to the issue of legal owner of the property transferred, the assessee as explained as under:

"The house property at Nadiambalpuram, Pattukottai was owned by the deceased M.N.S. Murugesan. Late Murugesan died intestate. The legal heirs of the estate of deceased Murugesan are his mother RamamirthamAmmal, Wife Shanthi and his minor daughter Karthika. In March, 1995 the transmission of the property was made between the legal heirs. The portion of land with super structure were transmitted to mother RamamirthamAmmal and M. Shanthi and whereas the vacant site was transmitted in the name of Shanthi as guardian to the minor daughter Karthika. But the entire estate of the deceased was divided among the legal heirs. The instance is loan due from Abraham and is yet to be divided. The anomaly of arbitrary division was settled after attaining the majority of Minor Karthika. Consequent to the House at Nadiambalpuram, Pattukottai was given to Shanthi and consequent to the settlement, the daughter M. Karthika executed a Power of attorney in favour of Shanthi on 18-11-2015. On the strength of the above settlement, the gain on the sale of vacant site was offered in the hands of Petitioner and claimed exemption u/s 54F of the Act"

However, the assessee has not furnished any documentary proof in support her claim. The assessing officer shall call for the copies of settlement deed and other details from the assessee and examine the claim of the assessee after conducting proper enquiry and verification in accordance with law.

5.1. With regard to the issue of purchase consideration paid to Mr. Abraham is less than the guide-line value fixed by the Registration Authorities and the difference is not assessed as income under section 56(2) is Concerned, the assessee has explained as under:

"It is submitted as per recital of sale deed executed by Abraham the consideration was adjusted against the receipt of loan from the petitioner. The loan to the tune of Rs.30 lakh availed by Mr.Abraham transferred the property to M.Shanthi, the petitioner in lieu of settlement

of loan of Rs.30 lakhs. Hence, the question of assessing the difference between the guideline value and actual consideration under section 56(2) of the Act is doubtful because registering the property for settling the loan of Rs.30 lakh."

However, on verification of records it is seen that the assessee has made submission before the AO on different foot. The assessee's submission before the AO is as under:

The assessee is a widow and was left out with undivided portion of properties of her husband. The assessee as a part of her husband's family arrangement to settle properties amongst themselves as undertaken this purchase transaction with the son of Mr.Kulanthaisamy who is her husband's cousin brother. Since the seller is the relative of the assessee as per definition given under section 56(2), the provisions of Section 56(2) (vii)(b) does not apply to this transaction as per the proviso provided therein.

It is pertinent to mention here that the assessee has taken a different standsat different stages. Moreover, the assessee has not furnished any documentary proof in support of either of her claim. The assessing officer is directed to collect the necessary details and conduct proper enquiry and verification in order to ascertain the claim made by the assessee as per law."

7. Heard both the parties and perused the materials on record.

8. The Ld. AR representing the assessee submitted that, the assessment was for limited scrutiny only. All the relevant materials were submitted before the Ld. AO and the Ld. AO have verified the same and found to be correct. The Ld. AR has relied on the decision of the co-ordinate Bench of this Tribunal also. Further, he relied on circulars of the Department. It is his submission that as the assessment was for limited scrutiny, the Ld. PCIT should not travel beyond the purpose of the limited scrutiny. On the other hand, the Ld. DR submitted that, the

assessee did not furnish return of income for the preceding assessment year and the current year's return filed after 07-11-2016. The purchaser of the property had paid the consideration amount in cash who was an NRI person. The Ld. DR supports the Revision order as passed by the Ld. PCIT.

9. We have considered the submissions of both the parties and observe that, the assessee's submission before the Ld. AO was that, the sold property was belonging to the assessee; whereas, before the Ld. PCIT the assessee submitted that she has sold the property as a power of attorney holder. The submissions made before the lower authorities by the assessee were contradictory. Whether the property was belonging to the assessee or to her daughter. A question of fact was involved therein. The Ld. AO ought to peruse the settlement deed of the sold property as the property was an inherited property. In our view, the deed of power of attorney was also to be verified by the Ld. AO so as to ascertain the authority of the assessee to sell and for retention of the consideration amount etc. as received by her. The assessee did not furnish documentary evidence regarding the loan given by her Late husband to the seller of the property, Abraham before the Ld. AO.

10. In view of the aforesaid, we are of the view that the Ld. PCIT has rightly observed that the assessment order as framed by the Ld. AO is erroneous and prejudicial to the interest of Revenue. Therefore, we confirm the order of the Ld. PCIT vide which he has set aside the assessment order dated 30-11-2018 and directed the Ld. AO to frame the assessment after making necessary enquiry and verification in accordance with law in respect of the issues discussed by the Ld. PCIT in exercise of powers under section 263 of the Act.

Order pronounced on 14th June, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 14.06.2023.

EDN/-

Sd/-
(मनोमोहन दास)
(Manomohan Das)
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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