

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.377/NAG/2016
निर्धारण वर्ष / Assessment Year : 2006-07

The Income Tax Officer,
Ward – 1(4), Nagpur

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Prabodh Sadashiv Sadavarte (HUF),
138, Ramnagar, Nagpur

PAN : AAHHP0169E

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.547/NAG/2016
निर्धारण वर्ष / Assessment Year : 2006-07

Shri Prabodh Sadashiv Sadavarte (HUF),
138, Ramnagar, Nagpur

PAN : AAHHP0169E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1(4), Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Saket Bhattad
Revenue by : Smt. Rashmi Mathur

सुनवाई की तारीख / Date of Hearing : 18-07-2023
घोषणा की तारीख / Date of Pronouncement : 03-08-2023

आदेश / ORDER**PER S.S. VISWANETHRA RAVI, JM :**

These cross appeals by the Revenue and assessee against the common order dated 17-03-2016 passed by the Commissioner of Income Tax (Appeals)-I, Nagpur [‘CIT(A)’] for assessment year 2006-07.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal of Revenue in ITA No. 377/NAG/2016, for A.Y. 2006-07.

4. The Revenue raised two grounds of appeal concerning the only issue is as to whether the CIT(A) justified in allowing deduction u/s. 54B of the Act in favour of the assessee.

5. At the outset, we note that the AO disallowed an amount of Rs.24,57,440/- u/s. 54B of the Act, wherein, he denied the deduction to the assessee by holding that the assessee being HUF is not entitled to claim deduction u/s. 54B of the Act vide order dated 26-03-2014. Aggrieved by the same, the assessee preferred an appeal before the CIT(A). The CIT(A) discussed the said issue in detail with reference to the amendment came into effect from 01-04-2013. The CIT(A) held the

amended provisions are applicable prospectively, but not retrospectively. We note that the benefit of deduction u/s. 54B of the Act is available to HUF prior to the amendment by Finance Act, 2012 w.e.f. 01-04-2013, the assessment being A.Y. 2006-07 under consideration before us, the amendment w.e.f. 01-04-2013 is not applicable. Therefore, we find no infirmity in the order of CIT(A) and we completely agree with the reasons recorded in para 9.2 of the impugned order. Thus, the grounds raised by the Revenue fails and are dismissed.

6. In the result, the appeal of Revenue is dismissed.

Now, we shall take the appeal of assessee in ITA No. 547/NAG/2016 for A.Y. 2006-07.

7. We find that this appeal was filed with a delay of 136 days. The assessee filed notarized affidavit dated 19-10-2016 explaining the reasons for delay. On perusal of the same and hearing both the parties, we find that the reasons stated by the assessee are bonafide which really prevented the assessee to file the present appeal in time. Therefore, the delay of 136 days is condoned.

8. The assessee raised two grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in holding the reassessment proceedings u/s. 147 of the Act is valid under law in the facts and circumstances of the case.

9. We note that the assessee challenged reopening of assessment before the AO. The AO discussed the said issue from pages 3 to 9 of the assessment order, wherein, he rejected the objections of the assessee vide speaking order. On perusal of the record vide Form No. 35, we note that the assessee questioned the finding of the order of AO in holding the reassessment proceedings u/s. 147 of the Act is not valid, before the CIT(A). The CIT(A) discussed the same in detail at para 8 of the impugned order. The CIT(A) held the AO rightly formed an opinion that there was no detailed examination of the issue u/s. 54B of the Act in the intimation proceedings. The relevant portion at para 8 is reproduced here-in-below for ready reference :

“8. Ground relating to the validity of notice issued u/s. 148 of the Act: *The return of income was filed on 29/07/2006, declaring total income of Rs.1,87,390/- and agricultural income of RS.1 lacs. The return was processed u/s. 143(1) on 31-03-2008. The AO on perusal of the documents enclosed with the return of income found that the assessee has sold land at Shankarpur district, Nagpur vide 2 sale-deeds dated 23/11/2005 for Rs. 14,40,000/- and sale-deed dated 26/12/2005 for Rs. 14,40,000/- In his HUF capacity. Further on perusal of the computation of income, the AO found that the assessee has computed the capital gains at Rs. 24,57,440/- and claimed the exemption u/s 54B of the Act, treating such transactions as sale of agricultural lands. However, on perusal of the sale-deeds the AO found that the assessee had sold the plots of land and not the agricultural lands. Thus, the AO conceived that the deduction claimed by the assessee u/s. 54B of the Act is not in order. Based on these material facts, the AO had formed a brief that the income to the tune of Rs. 24,57,440/- has escaped the assessment within the meaning of section 147 of the Act and accordingly issued a notice u/s. 148 of the Income- tax Act, 1961. The ld. AO before issue of notice has also obtained the statutory approval from the Joint Commissioner of Income-tax u/s. 151(2) of the Act, 1961. Thus the notice u/s. 148 was issued on 09/03/2013 after obtaining the approval of the Joint Commissioner as per the relevant provisions of the Income-tax law. The assessee vide his letter dated 26/03/2013 had asked for reasons recorded by the AO for issue of notice u/s. 148 for reopening the assessment. The reasons recorded were provided to the assessee vide letter dated 06/05/2013 the assessee filed his objections vide letter dated 06/06/2013 against the notice issued u/s. 148. The ld. AO has disposed off the objections raised by the assessee by passing a speaking order dated 19/09/2013. The assessee had filed a writ petition No. 6373/2013 dated 21/11/2013 before the Hon'ble Bombay High Court Nagpur Bench Nagpur and the Hon'ble High Court vide its interim order dated 10/03/2014 has directed the respondent No.1, the Joint Commissioner of Income-tax, Range-1, Nagpur to complete the assessment meanwhile. The Hon'ble High Court also directed the assessee to com-operate the assessment proceedings. Accordingly in pursuance to the*

notice u/s.142(1) issued by the AO on 11/03/2014, the assessee vide letter dated 14/03/2014 filed before the AO submitted that the original return filed by the assessee on 29/07/2006 may be treated as return having been filed in response to the notice u/s.148 of the Act. The reasons recorded by the AO for reopening of the assessment are reproduced in para no. 3)i) on page no. 3 of the assessment order. The ld. AO on page no. 3 to 9 of the assessment order has thoroughly and meticulously dealt with the objection raised by the assessee against the issue of notice u/s. 148 of the Act. Thus, after careful examination of the material facts as emanated from the records, I do not find any infirmity in the notice issued u/s.148 by the AO. Therefore, the contention raised by the appellant that the issue of notice u/s.148 by the AO is a mere change of opinion is not sustainable in the eyes of law, the same being devoid of any merits. The return in this case was processed u/s. 143(1). The AO had no occasion to examine the claim of the appellant u/s. 54B as the case was not selected in scrutiny. Therefore, the ld. AO based on the material information as emanated from the records had invoked the provisions of section 147 of the I. T. Act to bring to tax the income which, the AO had reason to believe, had escaped the assessment by way of wrong claim u/s.54B of the Act. Thus the ld. AO having formed such belief had issued the notice u/s.148 of the Act, after duly recording the reasons and disposal of objections raised by the appellant against issue of notice u/s. 148, forming the part of the record. On perusal of the reasons recorded by the AO, it is seen that nowhere the AO has referred that the notice u/s. 148 for reassessment has been issued pursuant to the observations of the Audit partly. Therefore, the ratio of the judicial decisions relied upon by the appellant is not applicable to the facts of the case of the present appellant. Therefore, the notice issued u/s. 148 after forming his own belief based on the material in hand forming part of the records cannot be held to be unjustified. This ground is dismissed accordingly.”

10. We note that the assessee challenged the issuance of notice u/s. 147 of the Act before the Hon’ble High Court of Bombay at Nagpur Bench, wherein, as emanating from the record that the Hon’ble High Court of Bombay at Nagpur Bench was pleased to allow the AO to complete the reassessment proceedings. Further, the CIT(A) also examined the reasons recorded by the AO as well as objections raised by the assessee regarding the reasons recorded and held that the AO is right in reopening the assessment made u/s. 143(a)(1) of the Act as it demonstrate that there was no occasion to AO to examine the claim made by the assessee in the intimation proceedings. Therefore, we find no infirmity in the reasons recorded by the CIT(A) vide para 8 of the impugned order in holding the

reassessment is valid under law. Thus, grounds raised by the assessee fails and are dismissed.

11. In the result, the appeal of assessee is dismissed.

12. To sum up, both the appeals of Revenue and assessee are dismissed.

Order pronounced in the open court on 03rd August, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd August, 2023.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Nagpur
4. The CIT-I, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune