

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

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

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 193/RPR/2023

निर्धारण वर्ष / Assessment Year : 2008-09

Maya Devi Agrawal
Near Dena Bank, Dupan Para Kharora,
Raipur (C.G.)-493 225

PAN : ACIPA5876A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-1(3),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 07.09.2023

घोषणा की तारीख / Date of Pronouncement : 08.09.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 20.03.2023, which arises from the order passed by the AO under Sec. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2014 for assessment year 2008-09. The assessee has assailed the impugned order on the following grounds of appeal:

- "1. On the facts and in the circumstances of the case as well as in law, the Id. CIT(A) erred in sustaining the addition of Rs.6,23,903/- on account of long term capital gain.
2. The assessee craves leave to add, urge, alter, modify and withdraw any ground/grounds before or at the time of hearing of the appeal."

Also, the assessee has raised additional grounds of appeal, which reads as follows:

- "1. On the facts and circumstances of the case and in law, reopening of the concluded assessment u/s.143(3) dt.2-12-10 in absence of any fresh/new material, be treated merely change of opinion on the same material facts, is not permissible in the eyes of law, is liable to be quashed."
- "2. On the facts and circumstances of the case and in law, initiation of reassessment u/s.147/148 is invalid, since it is assessed u/s.143(3) dt.2-12-10 and beyond 4 years and there is no allegation in the reasons recorded which indicate any failure on the part of the assessee to disclose fully & truly all material facts necessary for the

original assessment made u/s.143(3) dt.2-12-10; initiation u/s.147/148 is not permissible as per first proviso to sec.147; is liable to be quashed."

2. Succinctly stated, the assessee had filed her return of income for A.Y.2008-09 on 30.09.2009, declaring an income of Rs.3,72,070/- [including Long term capital gain (LTCG) of Rs.2,21,602/-]. Return of income filed by the assessee was processed as such u/s. 143(1) of the Act.

3. Original assessment was, thereafter, framed by the A.O. vide his order passed u/s. 143(3) of the Act dated 02.12.2010, wherein income of the assessee was assessed at Rs.4,42,070/- (including LTCG of Rs.2,21,602/-). Thereafter, the A.O. reopened the case of the assessee u/s.147 of the Act. Notice u/s.148 of the Act dated 29.03.2013 was issued to the assessee.

4. The A.O. thereafter framed assessment vide his order passed u/s.143(3) r.w.s. 147 of the Act dated 28.03.2014, wherein the LTCG on sale of land at Dumar Talab (Kh. No.245/13) was reworked out by him at Rs.8,45,505/- as against LTCG of Rs.2,21,602/- that was disclosed by the assessee in her original return of income and was earlier accepted by his predecessor vide assessment framed u/s.143(3) of the Act dated 02.12.2010.

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals), who partly allowed the same. For the sake of clarity, the observations of the CIT(Appeals) are culled out as follows:

“4. The assessment order, grounds of appeal and the submissions of the appellant made through statement of facts have been perused. The AO reopened the assessment after obtaining proper approval and by issue of the notice u/s. 148. It was noticed by the AO that there was wrong claim of the appellant in so far as the year of acquisition of the property is concerned. Therefore, the ground no.1 regarding the assessment and reopening of the same is dismissed.

4.1. The ground no.2 is with regard to determining the cost of acquisition of the property. It is noticed that the AO took the cost of acquisition of the property at Rs.9000/-. However, the appellant submitted that the property was purchased on 17.04.1982 by her husband Shir Virendra Agarwal and the cost of registry and other Govt charges amounting to Rs.998/- was incurred for registering the property and that the indexed cost of acquisition would be Rs. 50,540/- (Rs. 9998/109*551), where as the AO allowed the same at Rs. 45,495/- only. The registration charges and the amounts paid to the Government are to be considered for arriving at the cost of acquisition of the property. Therefore, the AO shall verify the actual charges paid and allow the cost of acquisition of the property and the subsequent indexation as claimed by the appellant after such verification. The ground no.2 is allowed with the above directions.

4.2. The ground no.3 pertains to allowing cost of improvement of the property. The appellant in her submissions stated that she has incurred cost of improvement of the property as legal heir of Late Shri Virendra Agarwal and that she has incurred Rs. 3,22,510/- over the years viz., for Murum with labour charges in 2001-02: Rs. 68,875/-, 2002-03: Rs.87,259/-, 2003-04: Rs. 96,481/-, 2004-05: Rs. 45,2121- and in 2005-06 for construction of boundary wall & labour charges of Rs. 34,383/-, and claimed indexed cost of improvement of Rs. 4,01,816/-. She has submitted that as the property was in the name of her late husband the appellant had incurred the expenses as legal heir. This appears to be an afterthought as the AO brought on record that Late Shri Virendra Agarwal was passed away on 08.04.1999. The action of the AO in disallowing the cost of improvement is accordingly upheld and the ground no.3 is dismissed.

4.3. The ground no.4 is general and hence needs no adjudication.”

6. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before me.

7. I have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on

record, and considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. As the Ld. Authorized Representative (for short 'AR') for the assessee has assailed the validity of the jurisdiction assumed by the A.O for initiating proceedings u/s.147 of the Act on two-fold grounds, viz. (i) the reopening of the concluded assessment based on a "mere change of opinion" was not sustainable in the eyes of the law; and (ii) that as per the mandate of "1st proviso" to Section 147 of the Act, the concluded assessment of the assessee could not have been reopened in the absence of any failure of the assessee to disclose fully and truly all material facts necessary for her assessment; therefore, we shall first deal with the same.

9. The Ld. AR in order to buttress his aforesaid contention has relied on the following judicial pronouncements:

(i) A & J Associates & Anr. Vs. ACIT (2023), Writ Petition No.2435 of 2022 dated 4th May, 2023

(ii) Milton Plastics Ltd. Vs. DCIT (2023) Writ Petition No.735 of 2005 dated 13.03.2023

(iii) Ananta Landmark P. Ltd. Vs. DCIT (2021), Writ Petition No.2814 of 2019

(iv) Gopal Rice Industrial Vs. DCIT, ITA No291/RPR/2017 dated 17.10.2022.

10. On a perusal of the records, I find substance in the claim of the Ld. AR that the A.O. had dislodged the concluded assessment of the assessee based

on a mere “change of opinion”. Before proceeding any further, it would be relevant to cull out “reasons to believe” which had formed the very basis for reopening the case of the assessee, as follows (Page 5 of APB) :

“Reasons for issue of notice u/s.148:

In this case the assessee filed return of income on 30.03.2009 showing total income of Rs.1,50,464/- AND LTCG of Rs.2,21,602/-. The assessment was completed u/s.143(3) on 02.12.2010 determining the income at Rs.2,20,464/- and LTCG of Rs.2,21,602/-.

In the return of income the assessee has shown the sale of property during F.Y.2007-08 at Rs.8,91,000/- whereas the property was purchased during the year 1982 (F.Y.1982-83) for Rs.45,495/-. The total capital gain works out to Rs.8,45,505/-. Whereas the capital gain shown by the assessee in her return of income is Rs.2,21,602/-.

Considering the facts and circumstances of the case, I have reason to believe that income of Rs. 6,23,903/- chargeable to tax has escaped assessment and the case is required to be reopened u/s 147 of the Act.

Raipur
Dated : 28.03.2013

Sd/-
Income Tax Officer-1(3)
Raipur

As stated by Shri Sunil Kumar Agrawal, Ld. AR, a conjoint perusal of the copy of the return of income filed by the assessee for the year under consideration i.e., A.Y.2008-09, and the original assessment framed in her case vide order passed u/s. 143(3) of the Act dated 02.12.2010, Page 29 of APB, reveals that not only the assessee had duly disclosed the transaction of sale of the

property under consideration, i.e., land at Damur Talab (Kh. No.245/13) in her return of income and offered the resultant LTCG for tax, but the same after deliberations by the A.O was accepted by him while framing the original assessment vide his order passed u/s.143(3), dated 02.12.2010. Our view above is fortified by a reference to the order passed by the A.O u/s.143(3) dated 02.12.2010, which reads as under (relevant extract) :

“2. The assessee is an individual deriving income from interest and misc. receipt and LTCG. During the course of assessment proceeding, and on discussion held with the counsel of the assessee, it is revealed that no books of account are maintained and income from job work receipt is shown on estimate basis only. In absence of any supporting evidence, the other income shown by the assessee can not be accepted in toto. Looking to the facts, circumstances and nature of business of the assessee, a lump-sum addition of Rs.70,000/- is being made to the total income of the assessee, so to prevent the possible leakages of revenue.

In view of the discussions in the foregoing paras, assessee's total income is determined as under:

Total income returned as shown:	Rs.1,50,464/-
Add:	
As discussed in para-2 above.	Rs. 70,000/-
Total income	Rs.2,20,464/-
Long-Term Capital Gains	Rs.2,21,602//-

11. Based on the aforesaid factual position, it transpires that the transaction of sale of property under consideration a/w. complete details of the cost of acquisition and improvement had not only been disclosed by the assessee in her return of income but the same had also been considered by the A.O. while framing the original assessment in her case. Considering the facts above, I find substance in the claim of the Ld. AR that concluded assessment in the

case of the assessee had been reopened by the A.O not based on any fresh material coming to his notice after the culmination of the original assessment proceedings but on the same set of facts as were there before his predecessor while framing the original assessment vide his order passed u/s. 143(3) dated 02.12.2010.

12. On a careful perusal of the aforesaid “reasons to believe” that had formed the basis for reopening the assessee’s case u/s.147 of the Act, it transpires that the same as stated by the Ld. AR and, rightly so, is based on a mere “change of opinion” of the A.O, on the same set of facts as were there before his predecessor while framing the original assessment u/s. 143(3) dated 02.12.2010. In my view, reopening a concluded assessment based on the same set of facts as were available on record during the original assessment is not permissible under law. The aforesaid view is supported by the judgment of the **Hon’ble Supreme Court in Commissioner of Income-Tax Vs case. Kelvinator of India Ltd., (2010) 320 ITR 561 (SC)**. Thus, in terms of my aforesaid observations, I concur with the contention advanced by the Ld. AR that as the case of the assessee had been reopened based on a mere “change of opinion”, therefore, the A.O had wrongly assumed jurisdiction and framed the impugned assessment u/s.143(3) r.w.s 147 of the Act, dated 28.03.2014.

13. Apart from that, I also concur with the claim of the Ld. AR that as the assessment in the case of the assessee was originally framed vide order passed u/s. 143(3), dated 02.12.2010, therefore, in the absence of satisfaction of either of two conditions as contemplated in the “1st Proviso” to Sec. 147, which had allegedly resulted in the income of the assessee chargeable to tax having escaped assessment, viz. (i). there was failure of the assessee to make a return under section 139 or in response to notice issued under sub-section (1) of section 142 or section 148; or (ii). there was the failure of the assessee to fully and truly disclose all material facts necessary for assessment; her case could not have been reopened beyond four years from the end of the relevant assessment year. Admittedly, there had been no failure on the part of the assessee to make a return under section 139 or in response to notice under sub-section (1) of section 142 or section 148 of the Act. Also, a perusal of the “reasons to believe” clearly reveals that it is neither a fact nor the case of the department that there was any failure of the assessee to fully and truly disclose all material facts necessary for her assessment for the year under consideration i.e., AY 2008-09. Instead, a perusal of the reasons forming the very basis for reopening the assessee’s case reveals that there is no allegation of the A.O that the income of the assessee chargeable to tax had escaped assessment because of failure on her part to make full and true disclosure of all material facts necessary for her assessment. On the contrary,

the A.O. holding a belief that LTCG on sale of property had been under assessed by his predecessor while framing the original assessment, thus, for the said reason, had reopened her concluded assessment. Based on our observations above, we are inclined to accept the claim of the Ld. AR that as the completed assessment in the case of the assessee had been reopened by the A.O by issuing notice u/s. 148 of the Act, dated 29.03.2013, i.e., beyond four years from the end of the relevant assessment year i.e., A.Y 2008-09, therefore, the assessment so framed in absence of valid assumption of jurisdiction on his part could otherwise also not be sustained and is liable to be struck down on the said count itself. Our view above that as per the mandate of the "1st proviso" to Sec. 147 of the Act, the reopening of a concluded assessment beyond four years from the end of the relevant assessment year, inter alia, in the absence of any failure of the assessee to disclose fully and truly all material facts which were necessary for her assessment is not permissible is supported by the judgment of the **Hon'ble High Court of Delhi** in the case of **Haryana Acrylic Manufacturing Company Vs. CIT (2009) 308 ITR 38 (Del)**. Also, a similar view had been taken by the **Hon'ble High Court of Punjab & Haryana** in the case of **Duli Chand Singhania vs. Assistant Commissioner of Income (2004) 269 ITR 192 (P& H)**. Apart from that, we find that the **Hon'ble Supreme Court** in the case of **New Delhi Television Ltd. vs Deputy Commissioner of Income**

Tax, (2020) 116 Taxmann.com 151 (SC) had, inter alia, held, that though the assessee is obligated to disclose the “primary facts”, but it is neither required to disclose the “secondary facts” nor required to give any assistance to the A.O by disclosure of the other facts, and it is for the A.O to decide what inferences are to be drawn from the facts before him. As in the present case before me the assessee had disclosed fully and truly all the material facts; therefore, by no means could she have been saddled with any failure to disclose fully and truly all material facts that were necessary for framing her assessment, which would have otherwise justified bringing her case within the realm of the extended period contemplated in the “1st proviso” of section 147 of the Act for validly reopening the same.

14. I, thus, in terms of my observations above, being of the view that the A.O had wrongly assumed jurisdiction and reopened the concluded assessment of the assessee, which was earlier framed by his predecessor vide order passed u/s.143(3) dated 02.12.2010, therefore, quash the consequential assessment order passed by him u/s.143(3) r.w.s. 147 dated 28.03.2014.

15. As I have quashed the assessment framed by the A.O for want of valid assumption of jurisdiction on his part, I refrain from adverting to and therein adjudicating the other contentions that have been raised by the assessee as

regards the sustainability of the addition on the merits of the case, which, thus, are left open.

16. In the result, the assessee's appeal is allowed in terms of my observations above.

Order pronounced in open court on 08th day of September 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 08th September, 2023.

**SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.