

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.949/Chny/2020
निर्धारण वर्ष/Assessment Year:2013-14

The Income Tax Officer,
Non Corporate Ward 11(1),
Chennai.

Vs. Shri Elumalai Muthukumaran,
No. 29, Ramasamy Street,
Mannady, Chennai 600 001.

[PAN:AAJPM9856B]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Hema Bhupal, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri T. Vasudevan, Advocate
सुनवाई की तारीख/ Date of hearing : 08.11.2023
घोषणा की तारीख /Date of Pronouncement : 10.11.2023

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the
Id. Commissioner of Income Tax (Appeals) 13, Chennai, dated
22.09.2020 relevant to the assessment year 2013-14. The Revenue has
raised following grounds:

- 1) *The order of learned CIT(A) is contrary of law and facts and circumstances of the case.*
- 2) *The Ld CIT(A) erred in directing the Assessing Officer to allow the profit on sale of property under the head 'capital gains'.*
- 2.1) *The Ld CIT(A) failed to appreciate that the reopening of assessment is not bad in law, since section 147 of the IT Act clearly says that if the Assessing Officer*

has reason to believe that any income chargeable to tax has escaped assessment, the AO can assess or re-assess the assessment.

2.2) The Ld CIT(A) failed to appreciate that the above case notice u/s 148 was served on the assessee on 24.08.2017, well before the expiry of four years.

2.3) The observation of the Ld CIT(A) that the revision of assessment was based on change of opinion, is an incorrect finding and obtaining of fresh tangible material is not necessary, when the assessment is reopened within four years from the end of the Assessment Year.

2.4) Though the tax effect is below Rs.50 lakhs, the case falls under exceptional clause vide Board's circular No.3/2018 dated 11.07.2018 in Para No.10 (c) "Where Revenue Audit Objection in the case has been accepted by the department"

3) The CIT(A) failed to give an opportunity to the AO as per Rule 46(3) although he has stated in his order that fresh evidences were filed by the assessee during the course of appellate proceedings (stated in Para No.5.12 of order). The fact remains that the assessee had produced no evidence whatsoever before the Assessing Officer, in support of his claims.

4) For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

2. Facts are, in brief, that the assessee is an individual, deriving income from drum cleaning business has filed the return of income for the assessment year 2013-14 on 28.12.2013 declaring taxable income of ₹.9,70,270/-. The assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short] was completed on 30.03.2016 assessing the income at ₹.10,93,780/-. During the course of assessment proceedings, the Assessing Officer found that the assessee made a sale of property at Door No. 3, Plot No. 3, Ambika Nagar, Third Street, Selavoyal, Chennai-51, executed by him as power agent on behalf of Shri K.H. Venitesh and Smt. R.S. Sharma Kumari vide document No. 1434/2012. The assessee had submitted before the Assessing Officer that the sale was executed by

him only as a power agent of Shri K.H. Venitesh and Smt. R.S. Sharmila Kumari for a consideration of ₹.72,00,000/- and hence he was not liable for any tax under capital gains, if any, involved in sale, though he had quoted his PAN while executing the sale. The PANs of the parties were not available on the sale deed. Accepting the reply of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act.

3. Subsequently, on perusal of the balance sheet for assessment year 2012-13, the Assessing Officer found that the above property sold at Ambika Nagar was shown as "Fixed Asset" and observed that the assessee was the owner of the property and hence the sale proceeds has to be assessed in the hands of the assessee. Accordingly, the case was reopened under section 147 of the Act and notice under section 148 of the Act dated 22.08.2017 was issued on the assessee. Subsequently, notices under section 143(2) and 142(1) of the Act were issued on the assessee. In response to the notices issued, the assessee vide letter dated 30.11.2018 has stated as follows:

"1. Originally the assessee entered into an agreement with K.H. Venkitesh and R.S. Sharmila Kumari for the purchase of property at Ambika Nagar on 10.10.2011 for a consideration of Rs.69,75,000/-. The assessee paid an advance of Rs. 30,00,000/- in total. The break-up of the above advance is as follows:

Rs. 10,00,000/- by way of 2 cheques at the time of signing the agreement and later on he further paid Rs. 20,00,000/- vide 3 Demand drafts.

2. *The above said advance amount of Rs.30,00,000/- was wrongly shown as Ambika Nagar Property purchase in Fixed Assets of the Balance Sheet as on 31.03.2012 instead of showing it under Loans and Advances in Current Assets.*

3. *Assessee paid Rs. 30,00,000/- as advance and he was unable to pay the balance amount for the purchase of property. Hence, the assessee, along with the two sellers arrived at a conclusion and decided to sell the property to third party and the sellers gave the power of attorney in favour of the assessee for arriving a solution for this property dealing.*

4. *Later, the assessee found a suitable buyer and sold the property on 07.06.2012 for a total consideration of Rs.72,00,000/-. The assessee took back his advance amount paid of Rs.30,00,000/- from the consideration so received from the sale of property and he paid the sellers the balance amount of Rs. 39,75,000/-. The remaining amount of Rs. 2,25,000/- was taken by the assessee as a reimbursement of expenses incurred in the due course of sale. ”*

As the assessee has not responded within the stipulated time, the Assessing Officer presumed that the assessee has no evidence for his claims and no objection to add back to the income of the assessee. Hence, ₹.39,75,000/- was assessed as income under the head 'Income from Other Sources.

4. On appeal before the Id. CIT(A), the assessee has raised legal issue of reopening of assessment under section 147 of the Act and submitted that during the assessment under section 143(3) of the Act, the Assessing Officer formed an opinion that the assessee was only power agent and sale receipts cannot be taxed in his hands. It was also submitted that no new tangible material has come to the notice of the Assessing Officer and therefore, reopening of assessment under section 147 of the Act is invalid by relying upon the decision in the case of CIT v.

Kelvinator of India Ltd. (2010) 320 ITR 561 (SC). By considering the submissions of the assessee and following the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd. (supra), the Id. CIT(A) observed that the action of the Assessing Officer in reopening the assessment proceedings was bad in law and cannot be held to be legal and accordingly, quashed the reopening of assessment. Even on merits, the Id. CIT(A) decided the issue in favour of the assessee.

5. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the reopening of assessment was not bad in law, since section 147 of the Act clearly says that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, the Assessing Officer can assess or reassess the assessment and pleaded that the appellate order should be reversed.

6. On the other hand, the Id. Counsel for the assessee has submitted that from the reasons recorded by the Assessing Officer, it was very clear that the Assessing Officer has reopened the assessment under section 147 of the Act based on the material available on record, which has been considered by him under section 143(3) of the Act dated 30.03.2016. Therefore, there was no tangible material came to the notice of the

Assessing Officer to reopen the assessment. He has further submitted the reopening was invalid and prayed for confirming Id. CIT(A)'s order.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessment was originally completed under section 143(3) of the Act. The Assessing Officer has examined the issue of taxability of income in the hands of the assessee or two other parties namely Shri K.H. Venitesh and Smt. R.S. Sharmila Kumari. For sale consideration of ₹.72,00,000/-, the assessee has submitted before the Assessing Officer that he was only a power agent and it cannot be taxed in his hands. After considering the explanation of the assessee, the Assessing Officer accepted the reply of the assessee and completed the assessment by taxing only commission income. Subsequently, the Assessing Officer came to a conclusion that in the assessment year 2012-13, the assessee has shown in the balance sheet, the very same property as an asset. Therefore, the Assessing Officer reopened the assessment by giving following reasons:

“However, as per the information available on record, it was found that the property sold was shown as “Asset” in the balance sheet of the assessee for the preceding assessment year, and hence it is not “just a POA sale” on the part of the assessee, and therefore the proceeds need to be taxed in the hands of the assessee.”

By close reading of above reasons recorded, we notice that the balance was already available on record. It was also noted by the Assessing

Officer that the information was already available on record. Therefore, there was no new tangible material came to the notice of the Assessing Officer to reopen the assessment. Thus, it is clear that the Assessing Officer has examined the materials which are already available on record. Therefore, it is clearly a change of opinion, which is not permissible as per the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Ltd. (supra). Under the above facts and circumstances, we find no reason to interfere with the order passed by the Id. CIT(A). Thus, the ground raised by the Revenue is dismissed.

8. So far as merits is concerned, since we have already sustained the order of the Id. CIT(A) on quashing the assessment order passed under section 143(3) r.w.s. 147 of the Act and decided the issue against the Revenue, going to merits is mere academic and no adjudication is required. Thus, the appeal filed by the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 10th November, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 10.11.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/
Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.