

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA-IT No.777/Hyd/2020		
Assessment Year: 2008-09		
Mrs.Tahera Abida Ghorl, Hyderabad PAN:AEEPG1482L (Appellant)	Vs.	Dy. CIT-2 International Taxation, Hyderabad (Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Smt. Sheetal Sarin, DR	
Date of hearing:	25/10/2023	
Date of pronouncement:	29/12/2023	

ORDER

PER K. NARASIMHA CHARY, J.M :

This appeal filed by the assessee is directed against the order dated 19.10.2020 of the learned CIT (A)-10, Hyderabad relating to A.Y.2008-09.

2. Facts in brief are that the assessee is an individual and an NRI and according to learned Assessing Officer the assessee has not filed her return of income. Subsequently, learned Assessing Officer recorded the following reasons for reopening of the assessment:

Office of the
Deputy Director of Income-tax (IT)-2,
Hyderabad

Date: 30.03.2015

F.No. DDIT(IT)-II/U/s 147/2010-11/PAN:AEEPG1482L

To
Smt. Tahera Abeda,
R/o. 16-2-40,
Akbar Bagh,
Hyderabad.

Madam,

Sub: Income tax assessment in the case of Smt. Tahera Abeda,
Hyderabad - Communication of reasons for reopening -
A.Y. 2008-09 - Regarding

Please refer to the above.

2. As requested, the reasons for reopening the assessment for the asst. year 2008-09 are communicated as under :-

"Information was received from the DDIT(Inv), Unit-II(1), Hyderabad that one Konda Lakshmaiah had purchased agricultural land admeasuring 9.35 Acres situated at Sy. Nos. 219/A, 219/AA of Malkapur Village, Choutuppal Mandal, Nalgonda for a consideration of Rs. 9,87,500/- from the assessee, Smt. Tahera Abeda vide sale deed dated 16.01.2008 and sold the same for a consideration of Rs. 4,44,37,500/- vide sale deed dated 05.02.2008 to Maytas Hill County Developers Pvt. Ltd., Hyderabad pertaining to the A.Y. 2008-09. Sri Konda Lakshmaiah claimed that he had paid on money over and above the purchase consideration of Rs. 9,87,500/- to Smt. Tahera Abeda but has not furnished any proof. The assessment in this case was completed on protective basis on 31.12.2010 u/s 143(3) r.w.s. 147 of the I.T. Act, 1961 in the hands of Sri Konda Lakshmaiah, treating the profit as business income as he held ownership of the said land for only one month. Sri Konda Lakshmaiah further claimed that he only received a small benefit of Rs. 11,67,080/- from the transaction and the balance proceeds were refunded to Smt. Tahera Abeda. However, it is seen that Smt. Tahera Abeda has not filed her Return of Income for the A.Y. 2008-09."

"In view of the above, the Assessing Officer had reason to believe that income has escaped assessment and therefore, notice u/s 148 was issued re-opening the assessment for the A.Y. 2008-09. Hence the assessee is requested to comply with the statutory notices."

Ch. Rajeswar Reddy
(CH. RAJESWARA REDDY)
Deputy Director of Income-tax-2,
International Taxation,
Hyderabad

Certified True Copy//

CH. RAMAKRISHNA
ADVOCATE
A.P/1134/2000

3. Accordingly, the notice u/s 148 of the Act was issued to the assessee, in response to which, the assessee filed her return of income on 15.03.2014 declaring total income of Rs.2,33,170/-. Subsequently, learned Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the Act calling for certain information from the assessee. The AR of the assessee appeared before learned Assessing Officer from time to time and filed the requisite details.

4. During the course of assessment proceedings, learned Assessing Officer confronted the letter addressed by Shri Konda Laxmaiah to the ACIT, Circle 9(1) Hyderabad stating that the sale proceeds of agricultural land amounting to Rs.4,43,37,500/- were received through cheques and deposited in his Savings Bank Account and an amount of Rs.9,87,500/- was paid to the vendor Smt. Tahera Abida. An amount of Rs.1.00 crore was paid through cheque and the balance through cash on various dates as mentioned in the copies of the receipts given on the stamp paper. Learned Assessing Officer also confronted the affidavit given by Shri Fakruddin Alias Arif confirming cash and cheque payment of Rs.4,28,16,500/- by Shri Konda Laxmaiah to Shri Shaik Fakruddin alias Arif, the GPA holder of the assessee. Accordingly, learned Assessing Officer asked the assessee to explain as to why the amount of Rs.4,28,16,500/- should not be treated as income of the assessee and brought to tax.

5. Assessee replied that she has not received any such amount other than the amount mentioned in the sale deed. Learned Assessing Officer thereafter issued summons u/s 131 to Shri Konda Laxmaiah who in response to the said summon appeared before learned Assessing Officer and gave his statement stating that he has received only some commission and the entire money was given to the assessee Smt. Tahera Abida. Learned Assessing Officer also issued summons to one Shri V. Srisailam, who in response to the said summon, appeared before learned Assessing Officer and gave a statement. In view of

the above statements recorded from Shri Konda Laxmaian and Shri V Srisailam, learned Assessing Officer rejected the explanation given by the assessee as not correct and not acceptable by recording the following reasons:

1. the assessee's claim that he has not received any money after the sale of property on 16/01/2008 to Konda Lakshmaiah is not correct. Because, the assessee has received an amount of Rs. 1,00,00,000/- through cheques. From the information received from Bank of India, Hyderabad branch it is found that Cheque no: 871220 dt. 07.02.2008 for Rs. 50,00,000 favouring Smt. Tahera Abeda was paid on 18/02/2008 through Axis Bank, Banjara Hills Branch and Cheque no: 871221 dt.871221 for Rs. 50,00,000/- favouring Mr.Mohammed Moinduddin Ghori Husband of the assessee was paid on 08/02/2008 through Axis Bank, Banjara Hills Branch.

The above details confirm that the assessee has receive the money even after the sale over in the month of January by her to Sri.Konda Lakshamaiah. The assessee's statement that she was not aware of the transaction between the M/s Maytas and Sri Konda Lakshmaiah looks like wrong statement as the cheques credited to the bank account were given by Sri.Konda Lakshmaiah and that too immediately after the sale deed between Sri. Konda Lakshmaiah and M/s Maytas. The sale deed was entered between M/s Maytas and Sri Konda Lakshmaiah was entered on 05/02/2008 and cheques were dated 07/02/2008. It shows that the whole transaction was done under the knowledge and supervision of the assessee.

2. though Sri. Fakruddin Alias Arif has denied giving any receipt to Sri. Konda Lakshmaiah on behalf of Smt. Tahera Abeda, the signatures in the statement given by Sri Arif and the copy of the receipt submitted by Sri. Konda Lakshmaiah is similar. It shows it is the assessee who is managing the issues and things after thought.
3. Only and main advantage to the assessee was he was able to ensure that no major documentary evidence of receing the huge money by her. At the same time we can not neglect the statements givne by Sri.Srisailam and Sri. Konda Lakshmaiah and other circumstantial evidence like money credited in to the assessee's account from the accounts of Sri Srisailam and Sri Konda lakshmaiah even after the sale deeds executed with them.
4. As requested by the assessee to cross examine Sri.Srisailam and Sri.Konda Lakshmaiah, the AR was asked to bring the assessee and Sri.Srisailam and Sri. Konda Lakshmaiah also informed to appear on 31/03/2015 for cross examination with Smt. Tahera Abeda. However, only Srisailam appeared on 31/03/2015 but Smt. Tahera Abeda was failed to appear. If the version as depicted by the assessee is correct, she should have appeared for cross

examination to find out the truth. The assessee has also not appeared against the summons issued to her in the month of November.

5. Further more, the claim of the assessee the land sold by her was agricultural land was not correct because the AR was asked to furnish the documents and certificates supporting his claim that the land sold was agricultural land as per the provisions of the Income-tax Act. However, the assessee has not furnished any submit a evidence except she has shown agricultural income of Rs. 50,000/- in her return of income for the AY 2008-09.

6. Learned Assessing Officer also rejected the explanation given by the assessee that the land is agricultural and accordingly computed the Long-Term Capital Gains at Rs.4,39,53,353/- by recording the following:

Sale consideration and nature of land sold:

From the sale deed dated 16/01/2008 entered into in relation to Ac. 9-35Guntas situated at Malkapur village, Choutuppal mandal by Smt.Tahera Abeda and Sri. Konda Lakshmaiah the sale value was Rs. 9,87,500/-. However the same land was sold to M/s Maytas Hill County Developers Private Limited for Rs. 4,43,37,500/- by Sri. Konda Lakshmaiah on 05/02/2008. As per the statement given by Sri Konda Lakshmaiah and Circumstantial evidence of some of the amount i.e. Rs. 1,00,00,000 crediting to the bank accounts of the assessee, the whole amount Rs. 4,43,37,500/- is considered as sale consideration received by the assessee on account sale of above mentioned property.

With the nature of the land, the claim of the assessee that the above land is agricultural land can not be accepted because of the following reasons:

- When asked to furnish the copies of the revenue records mentioning the nature of land, the assessee was not produced any evidence proving that as per the revenue records the land in question is agricultural land.
- When asked to furnish the copies of the passbook and other documents proving that the nature of the crops cultivated. The assessee has only mentioned that the maize was cultivated but failed to furnish any evidence in this regard.
- When asked to give the details of agricultural income derived prior to the sale of the land, the assessee has not given any evidence of deriving agricultural income from the land in question.
- In addition to that the assessee is a non-resident residing most of the days in UAE. Hence the assessee was never intended to cultivate the land. As the Land in question was adjacent the National Highway -9, the purpose of the holding of the asset was only to derive the income by way of capital gains.

- Further more, the final buyer i.e. M/s Maytas Hill County Developers Limited, has bought for the purpose of only for real estate development.
- The assessee was also not able to prove that the land in question is beyond 8 kms from the nearest ubmit ality or any town panchayat with more than 10000 population.
- The consideration received of Rs. 4,43,37,500 for Acres 9-35 Guntas is also very high for any agricultural land to get that much price.
- With regard to holding of the land, the assessee has bought the land in July, 2001 and entered into sale agreement with Srisailam for Rs.39,50,000 per acre and the same was executed as sale deed in the name of Sri.Konda Lakshmaiah and Finally the land was sold M/s Maytas Hill county Developers Private Limited. Further more, the assessee is not farmer to buy the land for cultivation. The assessee went ot UAE more than 20 years back and doing business in UAE. All these shows that the assessee has not carried out any agricultural operations on the above land. Hence the claim of the assessee that the land sold was agriculture in nature is not correct.

Based on the above discussion and in view of the decision of the Hon'ble Supreme court in the case of Smt.Sarifabibi Mohamed Ibrahim v. CIT (1993) 204 ITR 631, the land in question was not agricultural land the assessee is not eligible to claim exemption under agricultural land and hence the assessee needs to pay capital gains tax on the capital gains arised out of the sale of ubmi land.

Total sale consideration received = Rs. 4,43,37,500

Less: indexed cost of acquisition = Rs. 3,84,147

(2,97,000*551/426)

Long term capital gains = Rs. 4,39,53,353/-

Therefor addition on account of LTCG is : **Rs. 4,39,53,353/-**

7. Before the learned CIT (A), the assessee apart from challenging the addition on merit challenged the validity of reopening of the assessment on the ground that the reopening of the case was based on the statement by a third party before the Investigation Wing and not supported by any evidence or proof. Further, there was inordinate delay in issuance of notice u/s 148 of the Act to the assessee as well as supply of reasons. It was argued that the

assessment was reopened on borrowed satisfaction of another Assessing Officer and learned Assessing Officer has not applied his mind before reopening of the case. It was argued that learned Assessing Officer reopened the case of the assessee on the premise that return was not filed as per the database of the Department although it was already filed, therefore, such reopening proceedings are not in accordance with law. The assessee further argued that the sale of agricultural land is not taxable under the head "Capital Gain" and is exempt from tax. The assessee also flatly denied to have received any on money from the buyer.

8. However, the learned CIT (A) was not satisfied with the arguments advanced by the assessee. After calling for a remand report from learned Assessing Officer and rejoinder of the assessee to such remand report, he upheld the validity of the re-assessment as well as the addition on merit.

9. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds:

"In the facts and circumstances of the case,

1. The order of the Learned Commissioner of Income Tax -Appeals-10, Hyderabad ("the Ld.CIT (A") upholding the initiation of reassessment proceedings as valid is bad and unsustainable in law.

2. The Ld.CIT (A) failed to appreciate that in the present case, the mandatory conditions for assuming jurisdiction u/s 147 r.w. section 148 of the Income Tax Act 1961(the Act') were not satisfied and therefore, the order of the Ld.CIT (A) upholding the initiation of reassessment proceedings is unsustainable both in law and on facts.

3. The Ld. CIT(A) failed to appreciate that there is no reason to believe, or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax as escaped assessment. Therefore, the order of the CIT(A) confirming the initiation of the reassessment proceedings is bad in law and to be quashed.

4. The Ld.CIT (A) erred in holding that learned Assessing Officer (the AO') independently applied his mind and arrived at satisfaction without appreciating the fact:

a) That the assessment was reopened solely based on the statement of Sri.K.Konda Laxmaiah furnished by the Investigation Wing which was a mere statement without any proof which fact also was communicated by the Investigation Wing; and

b) That the Appellant has not filed her return of income for the subject AY which is also a wrong fact.

Thus, to uphold the assumption of jurisdiction under section 147 of the Act on incorrect and non-existent grounds would render the reassessment proceedings invalid and bad in law.

5. The Ld.CIT(A) failed to appreciate that non furnishing of reasons within reasonable time vitiates the entire reassessment proceedings as fortified by the various judicial decisions and therefore ought to have held that the reassessment proceedings is bad in law and to be quashed.

6. The Ld.CIT(A) failed to appreciate that the right to appeal cannot take away the legal right of the assessee under law to receive the reasons recorded for reopening within a reasonable period to seek appropriate remedies. Therefore, the order of the CIT(A) holding that no prejudice is caused to the appellant on account of delay in furnishing the reasons suffers from statutory infirmities which cannot be cured and therefore the reassessment proceedings to be quashed.

7. The Ld.CIT (A) failed to appreciate that the reasons recorded suffers from statutory infirmities as the quantum of income escaping assessment is not specified in the 148 notice as enjoined in section 147 of the Act. Therefore, the order of the CIT (A) upholding the reassessment proceedings is bad in law and to be quashed.

Without prejudice to ground No.1 to 7,

8. The Ld.CIT (A) erred in holding that the lands transferred are not agricultural lands.

9. Without prejudice to ground no 8 that the lands are agricultural lands not liable to capital gains, the Ld. CIT (A) failed to note that Pahani records are also statutory records as far as title for agriculture lands are concerned. Therefore, erred in holding that the Pahani record issued by the Deputy Tehsildar, Choutuppal record, Nalgonda showing Laxmaiah as owner for FY 2006-07 cannot be treated as evidence to support stand of the Appellant that the transfer of the property took place in AY 2007-08.

10. Without prejudice to the ground that the lands are agricultural lands not liable to capital gains, the Ld.CIT(A) erred in holding that the subject land was never transferred. Therefore, the question of capital gains does not arise.

11. *The Ld.CIT(A) having found as a matter of fact that the sum of Rs 2,78,17,400 is in connection with transfer of agricultural lands erred in taxing the same under the head income from other sources.*

12. *The action of the Ld.CIT(A) in assessing an amount of Rs 2,78,17,400 under the head "income from other sources" amounts to discovery of a new source of income which is not within the scope of powers of the CIT(A). Therefore, the order is unsustainable in law and to be quashed.*

13. *Without prejudice to the above grounds, the Ld.CIT(A) erred in changing the head of income without providing an opportunity to the Appellant for its rebuttal is in violation of principles of natural justice and fair play. Therefore, the order passed is void ab initio and must be annulled.*

14. *Without prejudice to the ground no 10 to 13, the Ld.CIT(A) completely ignored the statement to Shri Fakruddin alias Arif recorded under section 131 of the Act on 27.03.015 completely denying that he is neither the GPA holder of the Appellant and nor as he received the alleged consideration of Rs.3,94,37,500 from Sri.Laxmaiah on behalf of the Appellant. Further he has also denied the signature on the receipt. Thus, to tax the Appellant on the alleged consideration received by Shri Fakruddin without further investigation is against the principles of natural justice and fair play. Therefore, the order passed is invalid, bad in law and to be quashed.*

15. *The Ld.CIT(A) erred in not sending the signature of Shri Fakruddin on the receipts produced by Sri.Laxmaiah and on the statement recorded under section 131 of the Act to the GEQD for verification when Shri Fakruddin alias Arif has completely denied the signature on the receipt and stated that he is not the GPA holder of the Appellant.*

16. *The Ld.CIT(A) erred in confirming the action of the AO in taxing the amount of Rs 30,00,000 credited in Axis Bank account as unexplained income under section 68 of the Act.*

17. *The Ld.CIT(A) erred in confirming the addition of agricultural income of Rs 50,000 as "income from other sources".*

18. *Any other ground(s) that may be urged at the time of hearing."*

10. Learned AR strongly objected to the order of the learned CIT (A) in upholding the validity of the re-assessment proceedings as well as the addition on merit.

11. So far as the validity of the re-assessment proceeding is concerned, learned AR drew the attention of the Bench to Para 7.10 of the order of the learned CIT (A) where the learned CIT (A) has observed as under:

7.10 The appellant has also placed reliance upon the decision of the Hon'ble Apex Court in the case of G.K.N. Driveshafts India Limited, 259 ITR 19. It is an admitted fact that the reasons for reopening the assessment were supplied on 30.03.2015. Undoubtedly, there was substantial delay in furnishing the reasons to the appellant. It is not the case of the appellant that objections were raised and that the AO proceeded to complete the reassessment proceedings without passing a speaking order against the objections. Clearly, the facts in the present case are different from those in the case of G.K.N. Driveshafts India Limited. In addition to this, it is to be noted that the right to appeal against the reopening of the assessment, as well as assessment proceedings, could be taken up in a regular appeal, hence, no prejudice is caused to the appellant. It was so held by the Hon'ble Kerala High Court, in the case of Palakkad District Cooperative Bank Limited, (2017) 392 ITR 539 (Kerala). Similar view was taken by the Hon'ble Gujarat High Court, in the case of Thakorbbhai Maganbbhai Patel, (2017) 393 ITR 612 (Gujarat). The Hon'ble Apex Court dismissed SLP against the said decision ruling where reopening of assessment u/s. 147 was held to be valid despite the AO not passing speaking order against objections filed by the assessee. The sum and substance of the matter is that no prejudice is caused to the appellant on account of delay in furnishing the reasons.

12. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd reported in (2012) 340 ITR 66 (Bom.) and the decision in the case of CIT vs. trend Electronics (2015) 379 ITR 456 (Bom) and various other decisions filed in the paper book, learned AR submitted that when the reasons were not supplied to the assessee before completion of the assessment or when there is inordinate delay in supply of the reasons despite asking for the same, such re-assessment proceedings are invalid in the eyes of law.

13. Learned AR further submitted that the reasons for reopening of the assessment is based on wrong appreciation of facts. Referring to the Paper Book filed, learned AR submitted that the assessee has filed her original return of income on 1.08.2008. The assessee filed revised return of income on 27.02.2009 which was processed u/s 143(1) of the I.T. Act. Despite such original return and revised return, learned Assessing Officer in the reasons has recorded that the assessee has not filed her return of income. Therefore, the

reopening of the assessment on wrong appreciation of facts is not in accordance with law. For the above proposition, he relied on the decision of the Delhi Bench of the Tribunal in the case of Hafizuddin Hazi vs. Income Tax Officer in ITA No.3690/Del/2016 dated 16th Feb. 2022.

14. So far as the merit of the case is concerned, learned AR submitted that the addition was based merely on the basis of statement of one Mr. Konda Laxmaiah who stated to have given the money to the assessee without any proof. He submitted that once the assessee has sold the property to Shri Konda Laxamaiah giving of on money after purchase of the property is beyond imagination. He submitted that once the property is duly registered, the purchaser will never pay on-money that too after 5 months from the date of sale. Referring to the sworn statement of Shri Shaik Fakruddin Arif u/s 131 of the I.T. Act, 1961 on 27.03.2015, learned AR drew the attention of the Bench to his reply to question No.7 to 11 which are as under:

7. What are the transactions you entered into with Smt. Tahera Abida ?

Ans : I have not entered into any transaction with Smt. Tahera Abida. I have never entered into any transaction with Sri Konda Lakshmaiah. I do not have any General Power of Attorney either from Sri M.M. Ghori or from Smt. Tahera Abida.

8. Have you assisted them in any way in their transactions ? and by doing so have you received any commission from them ?

Ans : As a family friend I have done only a post-man's job. I have never expected nor taken any commission from them. I totally maintain my family friendship only with them.

9. I am showing a Xerox copy of receipt given by Sri Konda Lakshmaiah. Please confirm whether the receipt copy on Rs.20/- non-judicial stamp paper mentioning that you are Power of Attorney holder for Smt. Tahera Abida. Please explain your response to the above receipt ?

Ans : No. This is not the receipt given by me to Sri Konda Lakshmaiah. This receipt is a fabricated one. I have not received any cash from them.

10. I am showing you a copy of letter given by Sri Konda Laxmaiah to the Asst. Commissioner of Income-tax, Circle 9(1), Hyderabad stating that he has given Cash and cheques to you. Please explain.

Ans : As told above I totally deny the allegations made by Sri Konda Lakshmaiah.

11. Do you have anything else to say.

Ans : I would like say that I have not given any receipt to Sri. Konda Lakshmaiah. As a prudent person how anyone give receipt after one year of taking money. Hence the above copy of the receipt shown by you does not relate to me.

15. He submitted that once the witness of the Revenue has denied to have issued any receipt on behalf of the assessee to Shri Konda Laxamaiah, no addition should have been made in the hands of the assessee. He accordingly submitted that the reopening is bad in law and the addition made by learned Assessing Officer and sustained by the learned CIT (A) is without any basis.

16. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A) both legally and factually. So far as the validity of the re-

assessment proceedings are concerned, the learned DR relying on the decision of the hon Supreme Court in the case of Raymond Woollen Mills Ltd vs. Income Tax Officer reported in 236 ITR 34 (S.C) submitted that at the time of initiation of the proceedings u/s 147, sufficiency of escapment of the income is not necessary to be established. She submitted that the issuance of notice u/s 148 was well within the statutory time limit and delay in issuance of notice u/s 148 does not vitiate the re-assessment proceedings. She submitted that before the reopening of the assessment, learned Assessing Officer has noted that he has verified the information received and the nature of transaction and thus formed the belief that there is income that has escaped the assessment in the hands of the assessee for which the case was reopened. So far as the argument of learned AR that the inordinate delay in furnishing the reasons for reopening of the assessment makes the reopening invalid is concerned, she submitted that the assessee has been furnished with the reason for reopening of assessment/reasons for issue of notice u/s 148. She submitted that mere delay in submission of the reasons does not vitiate the proceedings. Further, the assessee furnished the information as called for by learned Assessing Officer from time to time during the course of assessment proceedings and has never filed any objection as to why such information was called for. Therefore, the argument of learned AR that delay in furnishing of reasons vitiates the reopening of the assessment is not correct.

17. So far as the argument of learned AR that reopening was based on wrong facts that the assessee has not filed her return of income whereas the assessee has filed such return of income is concerned, the learned DR submitted that escapment of income is proved and is in fact brought on record by the assessee herself by not admitting the Long-Term Capital Gain in the original as well as in the revised return. She submitted that a mistake as to whether or not a return has been filed by the assessee is clerical in nature and it does not alter the fact that the income has escaped assessment. She

submitted that since there is tangible material for learned Assessing Officer to believe that income has escaped assessment, therefore, such reopening is justified.

18. So far as the argument of learned AR that the land so sold was agricultural land and no capital gain is attracted is concerned, the learned DR drew the attention of the Bench to the ratio laid down by the Hon'ble Supreme Court in the case of Ms.Sarifabibi Mohd. Ibrahim vs. CIT reported in 204 ITR 631 and drew the attention of the Bench to the 13 parameters laid down in the said decision. She accordingly submitted that the land is not agricultural in nature.

19. So far as the merit of the case is concerned, the learned DR heavily relied on the order of learned Assessing Officer as well as the order of the learned CIT (A) and submitted that the learned CIT (A) has given justifiable reasons while upholding the addition made by learned Assessing Officer. Therefore, the grounds raised by the assessee should be dismissed.

20. We have gone through the record in the light of the submissions made on either side. We have also considered the various decisions cited before us. We find the assessee in the instant case has filed her original return of income on 1.8.2008 declaring total income of Rs.1,50,000/- which was subsequently revised on 27.02.2009 by declaring total income of Rs.2,33,170/-. The revised return was processed u/s 143(1)(a) vide intimation dated 19.03.2010. Learned Assessing Officer reopened the assessment u/s 147 of the Act on 12.3.2014. In response to the same, the assessee filed her return of income on 15.3.2014 by recording reasons which are already reported in the preceding paragraphs and vide letter dated 16.4.2014 the assessee requested learned Assessing Officer to furnish the reasons for reopening of the assessment. We find learned Assessing Officer supplied the reasons to the assessee only on

30.03.2015, a finding given by the learned CIT (A) at para 7.10 of his order and not disputed by the Revenue. Learned Assessing Officer passed the order on 31.3.2015. Under these circumstances first of all we have to see as to whether such delay in furnishing of the reasons makes the re-opening invalid or not. We find the Hon'ble Bombay High Court in the case of CIT vs. Videsh Sanchar Nigam Ltd reported in 340 ITR 66 has observed as under:

“The finding of fact recorded by the Income-tax Appellate Tribunal is that in the present case the reasons recorded for reopening of the assessment though repeatedly asked by the assessee were furnished only after completion of the assessment. The Tribunal following the judgment of this Court in the case of CIT v. Fomento Resorts and Hotels Ltd., has held that though the reopening of the assessment is within three years from the end of the relevant assessment year, since the reasons recorded for reopening of the assessment were not furnished to the assessee till the completion of assessment, the reassessment order cannot be upheld. Moreover, special leave petition filed by the Revenue against the decision of this Court in the case of CIT vs. Fomento Resorts and hotels Ltd has been dismissed by the Apex Court, vide order dated July, 16, 2007.

In this view of the matter, the present appeal is also dismissed with no order as to costs.”

21. We find the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs Income Tax Officer And Ors on 25 November, 2002 reported in (2003) 1(SCC) 72 has held that where a notice u/s 148 of the Act is issued, the proper course of action for the noticee is to file return and if he so desires to seek the reasons for issuance of notice, learned Assessing Officer is bound to furnish the reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file the objection to the issuance of notice and learned Assessing Officer is bound to dispose of the same by passing a speaking order. However, in the instant case, despite the assessee filing the return of income in response to notice u/s 148 and thereafter asking for the reasons, we find that such reasons were provided to the assessee only on 30.03.2015 i.e. one day prior to the completion of the assessment on 31.3.2015. Thus, learned Assessing Officer has not followed the mandatory requirements as laid down by the

Hon'ble Supreme Court cited (Supra). Therefore, the re-assessment proceedings are liable to be quashed.

22. Further, there is one more reason why the re-assessment proceedings cannot be held to be in accordance with law. As stated earlier, the original return of income was filed manually on 1.8.2008 which was subsequently revised on 27.02.2009. The return was processed u/s 143(1)(a) vide intimation dated 19.03.2010 copy of which is placed at page 6 of the Paper Book. However, the reasons recorded by learned Assessing Officer which has already been reproduced earlier, states that the assessee Smt. Tahera Abida has not filed her return of income for the A.Y 2008-09. Thus, learned Assessing Officer without verifying the return already filed by the assessee and which has already been processed u/s 143(1)(a) recorded that the assessee has not filed her return of income and accordingly re-opened the assessment.

23. We find identical issue had come up before the Delhi Bench of the Tribunal in the case of Hafizuddin Hazi vs. Income Tax Officer (Supra) where the Tribunal after considering the various arguments advanced by both sides and relying on various decisions of Hon'ble Delhi High Court and Hon'ble Gujarat High Court quashed the re-assessment proceedings by observing as under:

"19. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions relied by Id. Counsel for the assessee. We find, the assessee, in the instant case, had filed the original return of income on 31.10.2006 declaring the total income at Rs.10,87,058/- which was processed accordingly. We find, the AO reopened the assessment on the ground that the assessee has purchased residential property amounting to Rs.31,50,000/- and the same is not verifiable from the return of income filed for the AY 2006-07 and the assessee has not furnished the return of income. The reasons of such reopening has already been reproduced in the preceding paragraph. From the above, it is clear that the reopening was made on the ground that the assessee has not filed the return of income and, therefore, the income to the extent of Rs.31,50,000/- has

escaped assessment. Since the assessee has already filed the return of income, a fact brought on record by the AO himself in the body of the assessment order itself, therefore, the very reason for which the case of the assessee was reopened is factually incorrect.

20. It has been held in various decisions that when the AO reopened the case of the assessee on the premise that the return was not filed as per the database of the Department although it was already filed, then, such reassessment proceedings are not in accordance with the law and has to be quashed. For this proposition, we rely on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. RMG Polyvinyl (I) Ltd. (supra), and the decision of the Hon'ble Gujarat High Court in the case of Vijay Harishchandra Patel vs. ITO (supra) relied on by learned AR. The various other decisions relied on by the learned Counsel on this issue also support his case to the proposition that when reopening of was based on the premise that the assessee has not filed his return of income as per database of the Department, but, the assessee has actually filed the return of income, then, such reopening is not the law and has to be quashed since such reopening was based on wrong facts. We, therefore, quash the reassessment proceedings initiated by the AO and accordingly quashed. Since the assessee succeeds on this legal ground, the various other grounds challenging the reopening of the assessment as well as addition on merit become academic in nature and, therefore, are not being adjudicated.”

24. Wrong recording of fact by the learned Assessing Officer, strengthens the argument of the learned AR that proper care and caution is not taken at the time of re-opening of the assessment. Apart from this, there is no dispute that the assessee requested for reasons on 16.04.2014, but the learned Assessing Officer furnished the same on 30.03.2015 while he passed the assessment order on 31.03.2015, thereby not allowing sufficient time for the assessee to file the objections to the reasons for re-opening. In terms of the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd., vs. DCIT [2003] 259 ITR 19 (SC), the assessee was denied an opportunity to file the objections to the reasons and get them disposed-of by way of speaking order. It is a valuable right recognized by the Hon'ble Apex Court and to that extent, the assessee's case is prejudiced. For denial of this right of the assessee, as has been held by the Hon'ble Bombay High Court in the cases of

Videsh Sanchar Nigam Limited and Trend Electronics (supra), the assessment is bad and nonest in the eye of law.

25. Thus, viewing from any angle, we are of the considered opinion that the assessment order is not legally sustainable. We, therefore, quash the re-assessment proceedings initiated by learned Assessing Officer. Since the assessee succeeds on the legal ground of validity of re-assessment proceedings the other grounds challenging the addition on merit, being academic in nature, are not adjudicated.

26. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 29th December, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
dated : 29th December, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Smt. Tahera Abida, 16-2-40 Akbar Bagh, Hyderabad 500036
2	Dy. CIT-2, International Taxation, 5 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.
3	The Commissioner of Income Tax (IT & TP), Hyderabad.
4	The Chief Commissioner of Income Tax (IT) (SZ), Bengaluru.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order