

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' 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.458/Chny/2023  
निर्धारण वर्ष /Assessment Year: 2013-14

**Jayaraman Muthukumar,**  
No.12/8, Dharmapuram Road,  
North Kumarakattalai Street,  
Mayiladuthurai,  
Nagapattinam – 609 001.  
**[PAN: AMUPM-6987-E]**  
(अपीलार्थी/**Appellant**)

**The Income Tax Officer,**  
**Vs.** Ward-2,  
Kumbakonam.  
  
(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri N Arjun Raj, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 06.11.2023  
घोषणा की तारीख /Date of Pronouncement : 29.12.2023

**आदेश / O R D E R**

**PER MANOMOHAN DAS, J.M:**

This appeal by the assessee is directed against the order of the learned Commissioner of Income-Tax, National Faceless Appeal Centre (NFAC) [CIT(A)] dated 10-02-2023 and pertains to the Assessment Year [AY] 2013-14. The grounds of the assessee are as under:

*"1. The order of the NFAC dated 10.02.2023 vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1049637768(1) for the above*

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*assessment year is contrary to law, facts, and in the circumstances of the case.*

*2. The NFAC erred in sustaining the reopening of the proceedings for second time u/s 147 of the Act and consequently erred in sustaining the reassessment order passed for the second time without assigning proper reasons and justification.*

*3. The NFAC failed to appreciate that failed to appreciate that the order of re-assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

*4. The NFAC failed to appreciate that having not examined / ignored the scope of first re-assessment proceeding, sustenance of the second reassessment proceeding again for the issue of computing of Long Term Capital Gains should be reckoned as nullity in law.*

*5. The NFAC failed to appreciate failed to appreciate that having not complied with the principles laid down by the Supreme Court in the case reported in 259 ITR 19 for conducting the reassessment proceedings, the consequential second re-assessment should be reckoned as bad in law.*

*6. The NFAC failed to appreciate that the lack of fresh materials would vitiate the second reassessment order in view of wrong assumption of jurisdiction u/s 147 of the Act for the second time for recomputing the long term capital gains once again and ought to have appreciated that change of opinion would tantamount to excessive use of the power vested in section 14 7 of the Act while vitiating the consequential second reassessment order.*

*7. The NF AC erred in sustaining the re-computation of the long-term capital gains for the second time and ought to have appreciated that the recomputation of long-term capital gains in the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law on Various facets.*

*8. The NFAC failed to appreciate that the adoption of Fair Market Value as on 1.4.1981 being the cost of acquisition for the land component at Rs.12,632/- being the allotted consideration shown in the document as at 23.12.1974 before indexation was wholly unjustified and ought to have appreciated that the cost of acquisition of the land in the computation of long term capital gains adopted at Rs.28,500/- as at 1.4.1981 being the Fair Market Value at the option of the Appellant which would be substituted cost of acquisition was reasonable and fair while vitiating the impugned order in its entirety in this regard.*

*9. The NFAC failed to appreciate that procedure for conducting*

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*Faceless Regime Appeal was not followed and ought to have appreciated that in the light of the procedural irregularities committed, the impugned order under consideration accordingly should be reckoned as bad in law.*

*10. The NFAC failed to appreciate that the entire re-computation of taxable total income on various facets was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*

*11. The NFAC failed to appreciate that there was no proper opportunity before completing the re-assessment as well as before passing the impugned order and ought to have appreciated that any order passed in violation of NJP would be nullity in law.*

*12. The Appellant craves leave to file additional grounds/arguments at the time of hearing.”*

2. The background facts of the case are that the deceased assessee Mr. M. Jayaraman represented by his son and legal heir, Shri J. Muthukumar, an individual, filed his return of income for the AY 2013-14 and the case was selected for scrutiny assessment by issuing notice u/s. 148 of the Act. The assessment was completed u/s. 143(3) r/w Section 147 of the Act on 31-03-2016 after making total addition of Rs. 45,64,220/-. The assessee preferred an appeal before the Id. CIT(A) on the ground that the notice under section 148 of the Act was issued despite there was time available for issuing notice u/s 143(2) of the Act. Meanwhile, the case was again reopened under section 147 of the Act with the ground that the cost of acquisition adopted in the original assessment order was Rs.28,500/- as on 01-04-1981 whereas, the cost of acquisition was Rs. 12,632/-. Accordingly, case

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was completed u/s 143(3) r/w section 147 of the Act by adopting the cost of acquisition at Rs.12,632/- and determine the total assessed income at Rs. 46,99,416/- vide assessment order dated 20-11-2018. Later on, the first appeal filed by the assessee against the original assessment order passed on 31-03-2016 was disposed of by the Id. CIT(A), Trichy, on 07-07-2020 holding that proceedings u/s 147 of the Act cannot be initiated when the time available u/s 143(2) of the Act has not expired. However, second reassessment order was before the Id. CIT(A) for disposal and the same has been disposed of by the Id. CIT(A) vide order dated 10-02-2023. The Id. CIT(A), NFAC vide this order dismissed the appeal of the assessee. The observations made by the Id. CIT(A), NFAC are as under:

*“7.3. Further, the appellant’s contention is that the second re-assessment proceedings cannot be reopened on the basis of change of opinion. In this context, it is pertinent to note that there is no change of opinion in the findings of AO. The case laws referred by the appellant does not similar to the facts and circumstances of the instant case. The fact of the case is that while passing of first assessment order, the AO did not examine the cost of acquisition of the sold property and the appellant had claimed the higher side of cost of acquisition without any documentary evidence. The section 55 of the Act stipulates clearly that where the capital asset has become property of the assessee before 01-04-1981, then the cost of acquisition of such an asset will be the actual cost to the assessee or fair market value as on 01-04-1981 at the option of the assessee. The appellant however, did not provide any documentary evidence to claim actual fair market value of the sold property as on 01-04-1981, the purchase value was taken as cost of acquisition. Therefore, there was reason to believe that there was escapement of income and thus, the undersigned is of considered opinion that the reopening of assessment was according to the procedure of the Act”.*

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Being aggrieved, the assessee filed the present appeal before the Tribunal.

3. Heard the representatives of both the parties and perused the materials on record. The Ld. AR submitted that the reassessment proceedings have been initiated by changing of opinion and the non-acceptance of cost of acquisition at Rs. 28,500/- as was accepted vide assessment order dated 31-03-2016 is incorrect. The Ld. AR further submitted that the cost of acquisition of asset of the year 1974 cannot be taken in 1981 as the cost is higher in 1981 than in 1974. On the other hand, the Ld. DR supports the order of the Id. CIT(A), NFAC.

4. We carefully considered the submissions of the parties. We observe that the lower authorities have decided the matter against the assessee on the ground that the assessee did not furnish documentary evidence in support of his claim of cost acquisition of property. The Id. CIT(A) referred provision of section 55 of the Act which is where the capital asset has become the property of the assessee before 01-04-1981, then the cost of acquisition of such an asset will be the actual cost to the assessee or fair market value as on 01-04-1981 at the option of the assessee. This provision of section 55 of the Act clearly says about the option of the assessee. The assessee has exercised his option by claiming the cost of acquisition of the asset

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as per provision of section 55 of the Act and that exercise of option of the assessee cannot be interfered by the Id. AO. However, the assessee failed to produce documentary evidence in support of his claim.

5. The fact remains that the assessee could not furnish documentary evidence on the fair market value of the property as on 01.04.1981 before the lower authorities. However, it is our considered view that the value of the property as on 01.04.1974 cannot be remained as same on 01.04.1981. The value of the property certainly increased during the period between 01.04.1974 to 01.04.1981. The lower authorities did not consider this. Therefore, it is our considered opinion that Rs. 15,000/- instead of Rs. 12,632/- should be fixed as the fair market value of the property for the ends of the justice. Order accordingly.

6. In the result, the appeal of the assessee is allowed.

*Order pronounced on 29<sup>th</sup> December, 2023.*

**Sd/-**  
**(मंजुनाथ. जी)**  
**(Manjunatha. G)**

**लेखा सदस्य /Accountant Member**

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

चेन्नई/Chennai, दिनांक/Dated: 29<sup>th</sup> December, 2023.

EDN/-

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

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