

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.1476/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Ramani Timber Corporation 3/132A. Tanjore Road, Opp.UDC Kattur, Trichy-620 019.	बनम / Vs.	ACIT Circle-3(1) Trichy.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.	AAEFR-9407-J	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Mrs. T.V. Muthu Abirami (Advocate)-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of final Hearing	:	13-03-2024
घोषणाकी तारीख / Date of Pronouncement	:	13-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 17-10-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 147 of the Act on 31-12-2018. This is second round of litigation. Earlier, the Tribunal vide its order in ITA No.125/Chny/2020 dated 09-11-2021 had set aside the appeal to Ld. CIT(A) for fresh consideration. Pursuant to the same, impugned order

has been passed which is in further appeal before us. The grounds taken by the assessee read as under: -

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of natural justice, equity and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

Legal Grounds

3. For that the reopening is bad in law.
4. For that the reassessment completed u/s.147 r.w.s.143(3) is bad in law.
 - a.The Learned Assessing Officer ('Ld. AO') erred in reopening the assessment u/s.147 of the Act without any proper reason to believe that income has escaped assessment.
 - b.The Ld AO erred in reopening the assessment is mere change of opinion and is without any tangible material to substantiate that income chargeable to tax which has escaped assessment.
 - c.The Ld AO has incorrectly assumed jurisdiction by initiating the assessment beyond 4 years by stating that there is no true and full, disclosure by the appellant.
 - d.The Ld. AO proceeded to complete the assessment without providing the reasons for reopening of the assessment u/s.147 of the Act which is against the law laid down by Hon'ble Supreme Court and the reassessment order is liable to quashed as bad in law.

Unexplained credit u/s.68

5. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of capital introduced by partners in cash to the tune of Rs.21,00,000/- as unexplained credit u/s.68 in the hands of the appellant.
6. The CIT(A) failed to appreciate that capital contribution by the partners can be made at any point in time of the financial year and just because it was introduced at the end of the financial year the genuineness cannot be disputed.
7. For that the Learned AO and CIT(A) failed to appreciate that the appellant has discharged its onus by explaining the nature of source for credit in its account and therefore addition of capital contribution in the hands of the firm u/s.68 is erroneous.
8. For that the addition is based on mere conjectures, surmises and suspicions.

Levy of Interest u/s.234A and 2348

9. For that the appellant objects to the levy of interest u/s.234A and 2348 of the Income Tax Act, 1961.

As is evident, the assessee is challenging the reassessment proceedings on legal grounds. The assessee is also challenging quantum addition on merits.

2. The Ld. AR advanced arguments assailing the assumption of reassessment jurisdiction. It has been submitted that reopening was beyond 4 years and the case has been reopened on mere change of opinion without there being any tangible material on record. To support

the same, Ld. AR drew our attention to the reasons recorded by Ld. AO to reopen the case of the assessee. The Ld. Sr. DR, on the other hand, submitted that reopening was in accordance with law. Having heard rival submissions, the appeal is disposed-off as under.

3. From the records, it emerges that the assessee was originally assessed u/s 143(3) on 13-03-2015 making certain disallowances. However, the case was reopened. The reasons as recorded to reopen the case as placed on page no.13 of paper-book read as under: -

The assessee Firm M/s.Ramani Timber Corporation is having its registered office at 3/132-A, Opp. UOC kattur, Thanjavur Road, Trichy 620 019. The 5 partners in this firm are Gangaben N.Patel, Girish N Patel, Vimala G Patel, Radha V. Patel and Ramesh N Patel each having 20 % of profit sharing ratio. The assessee-firm is a dealer in Timber and Allied products.

In this case, return of income for AY 2012-13 was filed returning an income of Rs.9,34,720/-. Return was processed u/s 143(1) on 28.11.2012. Scrutiny assessment u/s 143(3) of the Act was completed on 13.03.2015 by making disallowance on travelling expenses and car maintenance on the basis of usage of car for personal purposes. The income was assessment u/s 143(3) at Rs.9,98,432/-.

Examination of the details filed under the head "Fixed assets" for the AY 2011-12 & 2012-13, it is seen that the assessee has acquired land at Madavaram for a consideration of Rs.3,32,73,212/-. The assessee has failed to furnish the details regarding the source for the acquisition of land.

The Balance sheet for the year ending 31.03.2012 and the Annexure to form 3CD reveal that the assessee has taken fresh loans to the tune of Rs.75 lakhs from 3 parties during the year. Further, on examination of the schedules to the Balance sheet for the year ending 31.03.2012, it is seen that the assessee has claimed receipt of loan of Rs.47,04,000/- from 10 parties. The assessee has failed to establish the genuineness of the creditors.,

Examination of the Schedules to the Balancesheet for the year ending 31.3.2012 reveal that the five partners of the assessee firm have introduced an amount of Rs.1,82,90,000/- towards their capital on various dates during the year under consideration. The assessee has failed to produce the necessary details with regard to this Introduction of fresh capital during the year.

As stated above, there is failure on the part of the assessee to disclose fully and truly the materials necessary for completion of assessment for AY 2012-13. Hence, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 in this case for AY 2012-13. Therefore, I solicit the approval of the Principal Commissioner of Income Tax, Tichy-2, Trichy for Issue of notice u/s 148 of the Income Tax Act.

Thus, from perusal of details filed by the assessee, it was alleged that the assessee failed to provide the details regarding source of acquisition

of land. Further, the assessee took fresh loans during the year and the assessee failed to establish the genuineness of the creditors. Also, the assessee failed to produce details of introduction of fresh capital during the year. The Ld. AO alleged that there was failure on the part of the assessee to disclose fully and truly the material necessary for completion of assessment and the case was reopened by issuance of notice u/s 148 on 28-03-2018 which is beyond 4 years from the end of relevant assessment year. After considering the submissions of the assessee, Ld. AO made addition of Rs.21 Lacs on account of unexplained cash credit. The Ld. CIT(A) confirmed the addition against which the assessee is in further appeal before us wherein the assessee assails impugned addition on merits as well as assumption of reassessment of Ld. AO.

4. Upon perusal of case records, it transpires that during original assessment proceedings, detailed questionnaire was issued to the assessee u/s 142(1) on 23-12-2014 wherein the assessee was directed to file its financial statements and various other details. The same were duly furnished by the assessee and the same were duly taken note of in para-3 of assessment order passed u/s 143(3) on 13-03-2015. Thus, the requisite details as called from the assessee were duly filed by the assessee during original assessment proceedings. It could not be said that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Upon perusal of reasons recorded, it could also be seen that no fresh tangible material has come into the possession of Ld. AO to arrive at a conclusion that there was escapement of income. The formation of belief is on the same set of material as available during assessment proceedings u/s 143(3). Therefore, the reopening is on mere change of opinion which is

impermissible as per the decision of Hon'ble Apex Court in **Kelvinator of India Ltd. (187 Taxman 312)** Hence, for the above stated reasons, the assessment order could not be sustained in law. By quashing the assessment order, we allow the legal grounds as urged by Ld. AR. Delving into merits of the case have been rendered infructuous.

5. The appeal stand partly allowed in terms of our above order.

Order pronounced on 13th March, 2024.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 13-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF