

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

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA Nos.1836 to 1838/Hyd/2019**
(निर्धारण वर्ष / Assessment Years: 2008-09 to 2010-11)

Shri Tikkavarapu Vinayak Ravi Reddy Hyderabad PAN:ABAPT1371Q	Vs.	Dy. C. I. T. Circle 16(2) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं / **ITA Nos.1839 to 1841/Hyd/2019**
(निर्धारण वर्ष / Assessment Years: 2008-09 to 2010-11)

Shri Tikkavarapu Venkata Ram Reddy Hyderabad PAN:AAWPT6892M	Vs.	Dy. C. I. T. Circle 16(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Advocate B Shanti Kumar	
राजस्व द्वारा / Revenue by:	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख / Date of hearing:	26/03/2024	
घोषणा की तारीख / Pronouncement:	27/03/2024	

आदेश/ORDER

Per Bench:

These six appeals filed by both assesseees are directed against the separate orders dated 23.09.2019 of the learned CIT (A)-4, Hyderabad relating to A.Ys. 2008-09 to 2010-11 respectively. Since common issues are involved in all these appeals, for the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.1836/Hyd/2019 – A.Y 2008-09

2. Facts of the case, in brief, are that the assessee is the Chairman of M/s. Deccan Chronicle Holdings Ltd and is in receipt of income from salary, house property, business, capital gains and other resources. The assessee has filed his return of income for the A.Y 2008-09 on 30.09.2008 admitting an income of Rs.1,52,10,644/-. The same was processed on 11.01.2010 u/s 143(1) of the I.T. Act. Subsequently, the case of the assessee was reopened u/s 147, proposing to assess the income for the A.Y under consideration, by issuing notice u/s 148 dated 4.11.2013 after duly recording the reasons which was served on the assessee on 5.11.2013.

3. The assessment order was passed by the Assessing Officer whereby an addition of Rs.2.00 crores were made in the hands of the assessee on the basis of the disclosure made by the officials of the South Indian Educational Society. The findings of the Assessing Officer given in Para 9 to 9.3 of the assessment order are reproduced below:

“9.0 The assessee's contentions were perused and considered thoroughly. The material available with the department was also taken into consideration. Based on the material available with the department, it is an established fact that the assessee has received Rs. 2.00,00.000 during the FY. 2008-09, from M/s South Indian Education Society, in cash. When the same is put forth before the assessee, he has requested for an opportunity to cross examine the person, from whom sworn statement was recorded. The assessee's request is conceded and it is to mention here that the evidence is not gathered by the undersigned, but send through official channels. Hence, it is informed to the assessee that the opportunity to cross examine the person cannot be given. However, the assessee was given an opportunity to obtain the copy of sworn statement recorded during the search proceedings U/s 132. But the assessee did not prefer to obtain the copy of sworn statement.

9.1 Further, it is to mention that the evidence gathered during the search proceedings have great evidentiary value and the same can be used as evidence in court of law. It shows the significance and importance of evidences gathered during the search proceedings, viz., sworn statements, impounded material. Further, the sworn statement were recorded by concerned ADIT/ DDIT, as a quasi - judicial authority and after duly administering Oath, as per the statutory guidelines. Hence, the statements given by the persons reflect the truth and only truth.

9.2 The assessee, during the complete scrutiny proceedings, merely claiming that he has not received any cash from M/s South Indian Educational Society. But the department has evidence, in the form of sworn statement, that the educational society has given cash to the assessee and in turn given cheques. In the absence of any contrary evidence, credence cannot be given to the assessee's claims. Mere claims do not relieve the assessee from the burden of proof.

9.3 Keeping in view of the above facts and on account of assessee's failure to submit any contrary evidence, the contentions of the assessee cannot be considered and thus rejected. Accordingly, an amount Rs. 2,00,00,000/- received in cash from M/s South Indian Educational Society is hereby added to the income, as unaccounted cash in the books of the assessee.

[Additions. Rs, 2,00,00,000/-]

Accordingly, the assessment for the AY.2008-09 is completed as under:

Income Returned	-	Rs. 1,52,10,644/
1. Addition on account of unaccounted cash.		Rs. 2,00,00,000/-“

4. Aggrieved by the assessment order, the assessee preferred appeal before the learned CIT (A) on the following two grounds:

“1. The notice issued by the Assessing Officer is bad in law and the reopening of assessment is not in accordance with the provisions of I.T law in as much as there is no tangible material on record.

2. The Assessing Officer erred both in law and on facts in relying on third party statements while making addition of Rs.2,00,00,000/- as unaccounted cash”.

5. The learned CIT (A) while adjudicating the above grounds has granted partial relief to the assessee in para 6.1 and 6.2 of his order as under:

“6.1 I have carefully considered the facts of the case, assessment order and the submissions of the appellant along with the details available. For this A.Y it is a fact that the appellant has issued cheques of Rs.2 Crores to the South Indian Educational Society Trust. As per the survey it is also evident that the appellant has given cheques and in turn received cash. For this A.Y the appellant claimed to have gave donation of Rs.2.00 crores and claimed eligible deduction u/s 80G of Rs.1.00 crore i.e 50% of the donation given. The Assessing Officer added Rs.2.00 crores as unaccounted receipts. This fact is not correct since the appellant has issued cheques of Rs.2 crores, Rs.1.00 Crore each on 02.08.2007 from the known sources. From the evidences available with the Assessing Officer and also information available from the survey u/s I33A, it is evident that the appellant has given cheques and received back cash. Since cheques were issued from known sources, therefore, cannot be treated as unaccounted. Hence, the addition made by the Assessing Officer is deleted.

6.2 At the same time the appellant has claimed deduction u/s 89 of Rs.1.00 crores was not to be allowed since the donation is bogus since the appellant has received back cash. Tus, the claim of deduction u/s 8G is not genuine. Hence, the deduction claimed of Rs. 1.00 crore is disallowed. Therefore, the Assessing Officer is directed to disallow deduction claimed u/s 80G of Rs.1.00 crore and brought to tax.”

6. Aggrieved with such order of the learned CIT (A) the assessee preferred appeal before the Tribunal. The assessee has not raised any other grounds except the grounds mentioned therein. However, the Tribunal has remanded back the matter to the file of the learned CIT (A) for deciding the issue afresh. The finding of the Tribunal in this regard is given in para 8 & 9 of its order which reads as under:

8. Considered the rival submissions and perused the material on record. As contended by the Id. AR of the assessee, the CIT(A) has not at all given her findings or adjudicated the ground raised by the assessee with regard to reopening of assessment made by the AO. Therefore, to meet the ends of justice, we set aside the order of CIT(A) and remit the file back to her with a direction to adjudicate the ground raised by the assessee regarding reopening of assessment in accordance with law after providing reasonable opportunity of being heard to the assessee.

9. As the facts and grounds raised in all other appeals are materially identical to that of ITA No. 1237/Hyd/2016 (supra), following the conclusions drawn therein, we restore all these appeals to the file of CIT(A) for adjudication of the ground raised on reopening of assessment in all the appeals.

7. The learned CIT (A) decided the issue against the assessee vide order dated 23.9.2019 which is to the following effect:

3. I have carefully perused the assessment order, arguments of the AR and the provisions of the Act covered for re-opening of the assessment. It is seen from the facts that the AO has re-opened the assessment u/s 147 by issuing notice u/s 148 dated 04.11.2013 after duly recording the reasons for doing so and the same was duly served on the appellant on 05.11.2013. When the appellant sought reasons for re-opening of assessment, the same was provided vide the AO's letter dated 09.01.2015 along with notice u/s 142(1) was issued calling for information. To which, the appellant has merely claimed that he has objections for the re-opening of assessment vide letter dated 28.01.2015 and requested time to submit the details. Since the appellant has not submitted any information called for vide notice u/s 142(1), the AO has again addressed a

letter dated 04.02.2015. The appellant has responded vide his letter dated 23.01.2015. The AO, vide his letter dated 04.02.2015 has confirmed that due process has been followed in re-opening of the assessment proceedings, and reasons for re-opening were duly recorded before issuing of notice u/s 148 of the Act. In the same letter, the AO stated that he has relied on the materials gathered and sworn statements recorded during the search proceedings in the case of M/s South Indian Educational Society Trust, which was not available during the original scrutiny proceedings u/s 143(3). Moreover, the sworn statements recorded u/s 132(4) of the Act have great evidentiary value in the eyes of law. The AO placed reliance on the apex court decision in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC) which considered re-assessment particularly, with reference to "what amounts to reason to believe under Section 147 of the Act", and was held that "what is required is reason to believe and not the established fact of escapement of income at the stage of issuance of notice. What needs to be recorded is whether relevant material exists for a reasonable man to form a requisite belief". Therefore, it can be said that whether such material results into conclusively providing the escapement of income or not is not the concern at the state of issuance of such notice, because the formation of belief is within the realm of subjective satisfaction of the AO. In the above case law, it was held that :-

Section 147 authorizes and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. the word reason in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for public exchequer with an inbuilt idea of fairness to taxpayers".

3.2. Reference is also made to Hon'ble Supreme Court decision in Central Provinces Manganese Ore Company Limited V. ITO (1991) 191 ITR 662 for initiation of action under sec 147 wherein it was held that at the initiation stage, the final outcome of the proceedings is not relevant. In other words, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issuing of notice, the only question

is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is to because the formation of belief by the AO is within the realm of subjective satisfaction. The scope and effect of Sec 147 was substituted from 1st April, 1989 as also Sec 148 to 152 are substantially different from the provisions as they stood prior to such substitution. To confer jurisdiction u/s 147(1) two conditions were required to be satisfied, firstly the AO must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment and secondly, he must also have reason to believe that such escapement has accrued by reason of either omission or failure on the part of the appellant to disclose fully and truly all material facts necessary for his assessment of that year.

3.3 As can be seen from the above, the AO has satisfied both the above conditions and hence the AO is justified in re-opening the assessment proceedings u/s 147 of the Act. It is also seen that the AO has time and again given opportunity to the appellant to produce documents/information/evidences to substantiate his contentions. The AO has also given an opportunity to obtain a copy of the sworn statement recorded during the search/survey action of the Act in the case of M/s South Indian Educational Society Trust, which the appellant has failed to do so.

3.4 In view of the above discussion, I am of the considered opinion that the action of the AO in initiating proceedings u/s 147 is justified and hence the grounds raised on the issue of reopening of assessment are **dismissed for the years under appeal**.

4. In the result, the appeals for the Asst. Years 2008-09, 2009-10 and 2010-11 are **dismissed**.

8. The assessee before us has raised the following grounds:

1. *CIT (A) erred in upholding validity of reopening assessment u/s 147.*
2. *CIT (A) erred in rejecting claim of deduction u/s 80G of Rs.1,00,00,000/-.*
3. *Any other ground that may be urged at the time of hearing”.*

8.1 The contention of the assessee before us that as per the request of the assessee, the Assessing Officer was required to provide copy of the underline material namely the statement of the Officer of the South Indian Educational Society and other documents on the basis of which the satisfaction was recorded by the Assessing Officer before reopening of the assessment. It was submitted that since the underlined documents have not been provided to the assessee, therefore, the assessment order passed by the Assessing Officer is bad in law.

9. Per contra, the learned DR relied on the orders passed by the learned CIT (A).

10. We have heard the rival arguments made by both the sides and perused the material available on record. The learned CIT (A) while passing the order on 13.07.2016 in Para 6.1 has accepted the source of giving donation to M/s. South Indian Educational Society. However, while granting relief to the assessee, the learned CIT (A) has denied the deduction of 80G to the assessee. Despite that, the assessee has not challenged the above said finding of the learned CIT (A) before the Tribunal in the first round of litigation, as it is clear from the grounds of appeals reproduced herein above. Since the assessee has not challenged the denial of 80G before the Tribunal in the first round of litigation, therefore, the assessee cannot be permitted to raise this ground before the Tribunal.

11. In our considered opinion, once the order of the learned CIT (A) dated 14.07.2016 have not been challenged before

the Tribunal with respect to Ground No.2, then the order passed by the learned CIT (A) had attained finality and no adjudication can be made in that regard. Hence ground of appeal No.2 of the assessee is dismissed.

12. Now coming to the first issue raised before us which is in respect to the validity of the reopening of the assessment. In this regard it will be sufficient to mention that the reopening was made by the Assessing Officer by recording the following reasons:

B. Srinivasa Rao, IRS
Asst. Commissioner of Income Tax



GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
Circle-16(2), Aayakar Bhavan,
Basheer Bagh, Hyderabad-4

No.AC-16(2) AAWPT6892M

Date: 9th January, 2015

To
Sri T.Venkatram Reddy
H.No 8-2-703/A/6/V, Plot No.54,
Road No.12, Banjara Hills,
Hyderabad – 500034.

Sir,

Sub: Reasons for re-opening the assessment for AY 2009-10 in your own case – regarding.

The reasons recorded for re-opening the assessment for AY 2009-10 is provided hereunder for your information as desired :

“A survey proceedings under Section-133A of the I.T Act.1961 was conducted by DDIT(Inv.), Unit-VIII(4), Mumbai on 11-05-2010 & 12-05-2010 at M/s South Indian Educational Society College of Commerce and Economics, T.V Chidambaram Marg, Sion(East), Mumbai-22 and M/s South Indian Educational Society High School, KA Subramaniam Road, Matunga, Mumbai -19. Further upon perusal of the impounded materials and statements recorded under oath from Sri V.Shanker, Honorary Secretary of M/s South Indian Educational Society Trust, Sri G.Chidambaram, Treasurer of M/s South Indian Educational Society Trust and Sri N.Venkatanathan alias Rajamani, Life member of M/s South Indian Educational Society Trust and Personal Secretary of Sri V.Shanker it was noticed that the assessee during the F.Y 2008-09 relevant to A.Y 2009-10 has received unaccounted cash from M/s South Indian Educational Society Trust and made donation amounting to Rs.4.00.00.000 to Kanchi Maha Swami peetarohana Shatabdi Mahotsav Trust claiming qualifying deduction amount of Rs.14,73,770 under Chapter VI-A (80G Donation) in his ROI filed.

In view of the above, I have a reason to believe that income chargeable to tax has escaped assessment within the meaning of section-147 of the I.T Act.1961 and suitable course of action is re-opening of assessment for A.Y 2009-10 wherein the issue can be verified for the A.Y 2009-10 through scrutiny proceedings upon reopening the assessment under section-147 of the I.T Act.1961 through issue of notice under section-148 of the I.T Act.1961.”

2. In this connection you are required to submit all the relevant information / details / reasons for the above, in this office on 16.01.2015 for further course of action.

Yours faithfully,



(B. SRINIVASA RAO)
Asst. Commissioner of Income Tax
Circle-16(2), Hyderabad.

13. The grievance of the assessee in the first round of litigation before the Tribunal was that the learned CIT (A) had not adjudicated the grounds of 147 despite the same was raised before the learned CIT (A). As mentioned herein above, after the remand by the Tribunal this issue has been thoroughly examined by the learned CIT (A) while passing the order in Para 3 to 3.4 of the order (Supra). All the contention of the assessee has been duly examined by the learned CIT (A). In our opinion, the contention that the assessee was not given the chance to cross examine, was not the subject matter of the appeal earlier filed by the assessee. Similarly, it was not the ground of the assessee before the CIT (A)/ ITAT that the underlined documents have not been provided to the assessee. Despite this, the learned CIT (A) had examined the issue and have decided the issue against the assessee. Further, if we accept the argument and grant opportunity to the assessee at this stage, then the issue which had attained finality either in favour of the assessee or against, the issue would again be required to be adjudicated by the Assessing Officer. In our opinion, the assessee cannot be worsened of in appeal filed by him as the relief already granted would be withdrawn.

14. Considering the totality of the facts of the case and more particularly when the addition have been deleted by the learned CIT (A) in the first round and only the issue of 80G deduction was denied, we do not find any merit in the present appeal of the assessee. Accordingly, the appeal of the assessee is dismissed. We hold and direct accordingly.

15. In the result, appeal filed by the assessee for the A.Y 2008-09 is dismissed.

16. In the remaining appeals, the assessees have raised similar grounds of appeal for the A.Ys 2009-10 & 2010-11 respectively. Since identical issues are raised by both the assessees for the A.Ys 2009-10 and 2010-11, following our reasonings given in ITA No.1836/Hyd/2019 for the A.Y 2008-09, the grounds raised by the assessee for the A.Ys 2009-10 & 2010-11 are also dismissed.

17. To sum up, all the appeals filed by the respective assessees are dismissed.

Order pronounced in the Open Court on 27th March, 2024.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 27th March, 2024

Vinodan/SPS

Copy to:

S.No	Addresses
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3	Dy.CIT, Circle 16(2) Hyderabad
4	Pr. CIT -4, Hyderabad
5	DR, ITAT Hyderabad Benches
5	Guard File

By Order