

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 307/CHNY/2023

निर्धारण वर्ष/Assessment Year: 2013-14

**Shri Kalyanasundaram  
Bharath Hari,**  
Flat No.108, Parsn Aahana,  
Mambakkam Main Road,  
Chittlapakkam,  
Chennai – 600 126.

**The Income Tax Officer,**  
Vs. International Taxation Ward  
1(1),  
Chennai.

**PAN: AACPB 6441N**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Arjun Raj, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing : 16.04.2024

घोषणा की तारीख/Date of Pronouncement : 18.04.2024

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the final assessment order passed in pursuant to the directions of the Dispute Resolution Panel-2, Bengaluru dated 14.12.2022 by the Income Tax Officer, International Taxation Ward 1(1), Chennai for the

assessment year 2013-14 u/s.147 r.ws. 144C(13) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 11.01.2023.

2. The first issue in this appeal of assessee is as regards to the order of AO i.e., Income Tax Officer, International Taxation, Ward 1(1), Chennai assuming jurisdiction u/s.147 of the Act for reopening of assessment without sanction of law and reopening as bad in law.

For this, assessee has raised the following ground Nos. 8 to 10:-

*8. The ITO, Int. Taxn Ward 1(1), Chennai / DRP failed to appreciate that the assumption of jurisdiction u/s 147 of the Act was without sanction of law and ought to have appreciated that the consequential re-assessment order accordingly should be reckoned as bad in law.*

*9. The ITO, Int. Taxn Ward 1(1), Chennai / DRP failed to appreciate that in the absence of fresh and tangible materials, the re-opening of assessment to verify transaction of sale would amount of change of opinion which should be considered as nullity in law.*

*10. The ITO, Int. Taxn Ward 1(1), Chennai / DRP failed to appreciate that the procedure for conducting reassessment as laid down by the Apex Court in the case reported in 259 ITR 19 were not followed on the facts off the present case thus vitiating the impugned order in its entirety.*

3. Brief facts are that the assessee is an individual and an NRI. During the relevant assessment year 2013-14, he sold an immovable property at Maxworth Nagar, Sunnambu Kolathur, Madipakkam for a sum of Rs.85,00,000/- consisting of land valued at Rs.62,00,000/- and building valued at Rs.23,00,000/-. The assessee computed capital gains and admitted in his return of income and claimed exemption u/s.54 of the Act on long term capital gains. The

assessment was completed u/s.143(3) of the Act and the return of income was accepted. Subsequently, the AO noticed from the TNREGINET website that guideline value for the property sold by assessee as on 01.04.2012 was Rs.4,000/- per sq.ft., and accordingly, the value for the extent of site sold was Rs.1,14,20,000/- (including building value) but assessee admitted lesser value in the return of income to the extent of Rs.29,20,000/-. Accordingly, notice u/s.148 of the Act was issued and assessment was reopened. The AO passed draft assessment order u/s.144C r.w.s. 147 of the Act dated 21.03.2022 wherein, he noted that the assessee should have admitted the value as per guideline value provided in TNREGINET as per Section 50C of the Act. Hence, accordingly he added additional income on account of capital gains u/s.50C of the Act to the extent of Rs.29.20 lakhs. Aggrieved against draft assessment order, assessee moved to Dispute Resolution Panel. The assessee raised objection before DRP for issuance of notice u/s.148 of the Act and DRP vide order dated 14.12.2022 upheld the action of the AO in reopening of assessment u/s.147 of the Act and approved the draft order of AO. For this, the DRP recorded as under:-

*2.0 Grounds of Objection No.1: The Assessing Officer has grossly erred in Issuing the notice us 148 of the Income Tax Act 1961 dated 13-04-2021*

bearing DIN ITBA/AST/S/148/2020-21/1031619292 (2) for the assessment year 2013-14 as it does not comply with the provisions, procedures and limitations prescribed under sections 147,148, 148A and 149 of the Income Tax Act of 1961.

2.1 Panel: Having considered and perused the submissions of the assessee, the panel is of the considered opinion that the notice issued u/s 148 of the Income Tax Act, 1961, was issued within the stipulated time limits as laid down u/s 149(1)(b) of the Income Tax Act. The same is reproduced below:

*Time limit for notice.*

149. (1) No notice under section 148 shall be issued for the relevant assessment year,

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c):

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if for years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

2.2 Thus, based on the above, the Panel finds no infirmity in the action of the AO and hence the objection of the assessee is rejected.

Aggrieved, now assessee is in appeal before the Tribunal.

4. Before us, the Id.counsel for the assessee Shri Arjun Raj, Advocate appeared and drew our attention to assessee's paper-book consisting of 24 pages. The Id.counsel for the assessee first of all drew our attention to page 1 of screenshot of notice claimed to have been issued u/s.148 of the Act dated 19.03.2021 by the Revenue as reflecting in ITBA portal. He drew our attention to page 1 but stated

that there is no notice available in the above portal as an attachment. The Id.counsel then took us through the notice issued by the AO dated 13.04.2021, which is enclosed at page 3 of assessee's paper-book and drew our attention to page 2 of assessee's paper-book wherein this notice issued on 13.04.2021 is available on ITBA portal as download. According to Id.counsel, only one notice u/s.148 of the Act dated 13.04.2021 is available and not that of 19.03.2021. The Id.counsel then took us through the assessment order and stated that the AO has framed assessment in response to notice issued u/s.148 of the Act dated 19.03.2021 and he drew our attention to page 2 of assessment order passed in response to DRP direction u/s.147 r.w.s. 144C(13) of the Act dated 11.01.2023 and the relevant para reads as under:-

*“In this regard, based upon the information it was ascertained that income from capital gains has been under-assessed within the provision of section 50C and within the meaning of section 147 of the Income Tax Act, for a sum Rs.29,20,000/-.*

*Therefore, for the year under consideration, the assessee had undervalued his inform from long term capital gains out of the above said transactions and provisions of clause (c) of explanation 2 to sec.147 are applicable to facts of this case and a notice u/s.148 was issued on 19-03-2021 requiring the assessee to file the return in response to section 148. The notice was duly complied and a return was submitted on 05-05-2021. However no additional income was offered.”*

In view of the above, the Id.counsel stated that the assessee's case i.e., issuance of notice either on 19.03.2021 or 13.04.2021 are

covered by new regime of taxation for reopening of assessment u/s.148 of the Act. The Id.counsel stated that this issue is no *res-integra* now because the CBDT in its instruction i.e., Instruction No.1/2022 [F.No.279/Misc/M-51/2022-ITJ] has issued clarification for implementation of decision of Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal reported in [2022] 138 taxmann.com 64. The Id.counsel for the assessee stated that the issue before Hon'ble Supreme Court was of extended reassessment notice extended in term of Notification No.20/2021/F.No.370142/35/2020-TPL dated 31.03.2021. He stated that there is no quarrel over the notification issued by CBDT but CBDT in its subsequent notification, issued clarification for implementation of judgment of Hon'ble Supreme Court in the case of Ashish Agarwal, *supra* and clarified the limitation provided in section 149 and the following clarification was issued and the relevant para 6 of said instruction reads as under:-

*“6. Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:*

*6.1 With respect of operation of new section 149 of the Act, the following may be seen:*

- Hon'ble Supreme Court has held that the new law shall operate and all the defences available to the assessee under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*

- *Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-*

*149(1) No notice under section 148 shall be issued for the relevant assessment year –*

*(a) if three years have elapsed from the end of the relevant assessment year unless the case falls under clause (b)*

*(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year.*

Further, the Id.counsel also drew our attention to para 7.1 of aforesaid instruction and the relevant reads as under:-

*“7.1 Hon’ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assesseees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.”*

In view of the above, the Id.counsel stated that the assessee’s case squarely fall in the aforesaid instruction issued by CBDT and the Hon’ble Supreme Court has already considered the issue where the escaped income is less than Rs.50 lakhs. He stated that in the present case before the Bench, the escaped income is

Rs.29,20,000/- only. Hence, according to Id.counsel, the issue is fully covered and the AO cannot assume jurisdiction for reopening of assessment under the new regime of taxation u/s.148/148A of the Act.

5. On the other hand, the Id. CIT-DR relied on CBDT notification No.20/2021/F.No.370142/35/2020-TPL dated 31.03.2021 and he has produced one chart depicting dates and issue, which read as under:-

<i>Sl.No.</i>		<i>Date</i>	<i>Remark</i>
<i>1</i>	<i>Proposal for reopening</i>	<i>08.03.2021</i>	<i>The case was reopened beyond 6 year. Hence approval was taken from CIT, Intl.Taxn. (approved on 15.03.2021)</i>
<i>2</i>	<i>Notice u/s 148 vide DIN No.1031619292 (1)</i>	<i>19.03.2021</i>	<i>Despatched by post on 22.03.2021</i>
<i>3</i>	<i>Notice u/s149 vide DIN No.1031619292(2)</i>	<i>13.04.2021</i>	<i>The notice u/s.148 for the AY 2013-14 is to be served on or before 31.03.2021. the notice u/s 148 was issued on 19.03.2021 through e mail and a copy was through post. Subsequently the time limit for the issuance of notice u/s148 was extended upto 30.04.2021. Since it was showing in the ITBA as pending once again a notice u/s 148 was issued on 13.04.2021 in the same DIN No.1031619292</i>
<i>4</i>	<i>Assessee filed ROI</i>	<i>05.05.2021</i>	

Apart from this, he could not contest the issue or could not controvert the later instruction issued by CBDT clarifying the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal, *supra* for implementation by lower authorities.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that admittedly the notice issued u/s.148 of the Act either on 19.03.2021 or 13.04.2021, whether these are issued on 19.03.2021 i.e., extended, that falls in extended period or fresh notice issued on 13.04.2021 is of no relevance for adjudication on this issue. In either of the notice, the assessment was framed and Revenue's contention is that the notices u/s.148 of the Act is valid under the new regime of reopening of assessment after introduction of provisions of section 148/148A of the Act. We have gone through the assessee's paper-book and examined the facts and noted that admittedly escaped income is Rs.29,20,000/- only. Now this issue has been clarified by CBDT explaining the judgment of Hon'ble Supreme Court for implementation of by lower authorities and accepted the position that notices cannot be issued for assessment years 2013-14 to 2015-16, wherever income escaping assessment in that year, amounts to or is likely to amount to less than fifty lakh rupees. In

the present case before us, the amount is Rs.29,20,000/-. This issue is squarely covered by the decision of Hon'ble Supreme Court in Ashish Agarwal, *supra*, in favour of assessee and subsequently, issued instruction by CBDT and hence, we quash the notice issued u/s.148 of the Act dated 13.04.2021 or 19.03.2021 as without jurisdiction.

7. Since, we have adjudicated the issue of reopening and quashed the reassessment as well as notice u/s.148/148A of the Act, we need not to go into the other grounds on merits. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 18<sup>th</sup> April, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

**(S.R. RAGHUNATHA)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 18<sup>th</sup> April, 2024

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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