

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./I.T.A. No.11/Chny/2020
निर्धारण वर्ष/Assessment Year: 2009-10

The Assistant Commissioner of
Income Tax, Non Corporate Circle 7,
Room No. 608, 6th Floor, 121,
N.H. Road, Chennai 600 034.

Vs. Shri Karuppusamy Pandiarajan,
No. 61, TAS Enclave, C3, Golden Kings
Court, 10th Main Road, Santhi Colony,
Anna Nagar West Extn., Chennai 40.
[PAN: AADPP4895M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.492 & 493/Chny/2020
निर्धारण वर्ष/Assessment Year: 2009-10

The Deputy Commissioner of
Income Tax, Corporate Circle 3(2),
Chennai 600 034.

Vs. Smt. Hemalatha Rajan,
3rd Floor, Golden Kings Court,
No. 61, TAS Enclave, Santhi Colony,
10th Main Road, Anna Nagar West
Extn., Chennai 40.
[PAN: AATPH2012G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 28.05.2024
घोषणा की तारीख /Date of Pronouncement : 05.06.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

The appeal in ITA No. 11/Chny/2020 filed by the Revenue is directed against the order dated 16.10.2019 passed by the Id. CIT(A)-8,

Chennai for the assessment year 2009-10 in the case of Shri Karuppasamy Pandiarajan. The appeals in ITA Nos. 492 & 493/Chny/20 filed by the Revenue are directed against the orders dated 16.10.2019 and 27.11.2019 passed by the Id. CIT(A) for the assessment year 2009-10 in the case of Smt. Hemalatha Rajan towards quantum addition as well as penalty under section 271(1)(c) of the Income Tax Act, 1961 ["Act" in short] respectively.

2. Since issues raised in both the quantum appeals are similar and based on same identical facts, with the consent of both the parties, we proceed to hear both the appeals together and pass consolidated order for convenience.

3. **Firstly, we shall take up appeal in ITA No. 492/Chny/2020 AY 2009-10 in the case of Smt. Hemalatha Rajan.**

4. Ground Nos. 1 and 2 are general in nature and requires no adjudication.

5. Ground Nos. 3 to 8 are relating to only one issue challenging the action of the Id. CIT(A) in declaring the reassessment invalid on account of change of opinion.

6. The Id. DR Shri AR V Sreenivasan, Addl. CIT submits that the base for initiating reassessment is the conditions concerning the payment between the Indian promoters and M/s. Randstad as per agreement. The Id. DR drew our attention to page No. 2 of the reassessment order and submits that the Assessing Officer, taking into account payments listed in Sl. No. 2 to 5, is in the nature of bench marking expenditure and validly brought to tax under 147 proceedings. The Id. DR relied on the decision of Hon'ble Supreme Court in the case of M/s. Larsen & Toubro Ltd. v. State of Jharkhand and Ors in Civil Appeal No. 5390 of 2007 dated 21.03.2017. He referred to para 25 of the said decision and argued that the Assessing Officer may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. He argued that the Hon'ble Supreme Court in such situations, held it is not a case of mere change of opinion or drawing of a different inference from the same facts as were earlier available but acting on fresh information. He submits that the Id. CIT(A) fell in error in holding that the reassessment order passed by the Assessing Officer under section 147 of the Act is mere change of opinion and prayed to allow the ground of appeal.

7. The Id. AR Shri S.P. Chidambaram, Advocate submits that there was no new information or new set of facts in possession of the Assessing Officer to reopen the assessment and without there being any information, the reassessment made therein is not justified. The Id. AR drew our attention to the reasons recorded at page 79 of the paper book and argued that the Assessing Officer, by placing reliance on the same agreement, which was part of original reassessment, reopened the reassessment, is only a mere change of opinion as there is no reference to new material came to the possession of the Assessing Officer, except the same agreement which was forming part of original assessment. He submits that the Id. CIT(A) passed well considered order and supported the same.

8. Heard both the sides, perused the material available on record and gone through the orders of authorities below. Brief facts as emanating from the record relating to the case are that, the assessee filed his return of income for the assessment year 2009-10 on 31.03.2010 declaring a total income of ₹.1,93,15,945/- and the same was selected for scrutiny and assessment under section 143(3) of the Act was completed on 27.12.2011. The case was reopened and reassessment was completed under section 144 r.w.s. 147 of the Act on 31.03.2015. Further, the

Assessing Officer again noticed that there is an escapement of income from being charged to tax in terms of the provisions of section 147 of the Act, a notice under section 148 of the Act was issued to the assessee on 31.03.2016 and completed the assessment under section 143(3) r.w.s. 147 of the Act dated 30.12.2017 by making an addition of ₹.3,06,70,000/-. The Id. CIT(A) held the 2nd reassessment order dated 30.12.2017 is invalid. Aggrieved, the Revenue is in appeal before us.

9. The main contention of the Id. DR is that the Assessing Officer did not look into items 2 to 5 in the agreement, which are reproduced in page 2 of the assessment order, as they were bench marking expenses which clearly establishes that the Assessing Officer did not have any new materials to reopen the original reassessment. Admittedly, there is no dispute that the Assessing Officer, by verifying the same agreement, which were referred by the Id. CIT(A) in the impugned order, were part and parcel of the 1st reassessment proceedings, again reopened and completed the reassessment under section 147 of the Act.

10. On perusal of the reassessment order as well as approval letter granted by the Id. PCIT and also reasons recorded, we find no reference to new material that has come into the possession of the Assessing Officer. On an examination of the reasons recorded also, the Assessing

Officer mentioned the same items which were part of same agreement of 1st reassessment. The Id. CIT(A) discussed the issue in detail from para 5 to 8 of the impugned order, wherein, considering the submissions of the assessee as well as material available on record, he held that on mere change of opinion, the Assessing Officer reopened the earlier reassessment, which is not maintainable. The relevant part of the order of the Id. CIT(A) is reproduced hereunder for ready reference:

“5. The submission of the assessee is considered. The assessee has strongly contended that the amount of Rs.1.19 crores being donation received by M/s. Ma foi Foundations and Rs.7.53 crores being income received by Sornammal Educational Trust were infact not received at all. These were supposed to be third, fourth and fifth installments of the agreement dated 20.08.2008 by the assessee with M/s Randstad. To this extent, the Assessing Officer has brought to taxation amounts which were not received at all and which were receivable in future years. Assessee has objected to the merits of this addition made on broad presumptions.

6. The assessee has filed detailed objections to the initiation of re assessment proceeding itself. The entire additions brought to taxations were on the basis of MOU/settlement deed dt. 20.08.2008 between assessee and M/s. Randstad. This agreement as well as the amounts liable for taxation from the agreement had been subject matter of detailed analysis in the first re-assessment order. All the facts and circumstances of the possible taxation of amounts emanating from the settlement deed dated 20.08.2008 had already been examined by the Assessing Officer in detail. The Assessing Officer cannot claim that any new facts have come into his knowledge. The same facts and agreement were in the knowledge of the Assessing Officer to this extent, any reopening of assessment based on the same facts and agreement would definitely amount to a change of opinion by the Assessing Officer.

7. It is also relevant to state on record here that the undersigned had passed appeal order in the case of the first re-assessment order. The additions brought to tax as per the said order had been confirmed

by the undersigned as per the appeal order dated 28.01.2019 in the case of the assessee for AY 2009-10 itself.

8. The assessee has been able to effectively counter the merits of the addition in this second re-assessment order. However, it is noted that the initiation of the second re-assessment proceedings suffers from the infirmity of change of opinion. The re-assessment proceedings are based on the same agreement and same set of facts which were in the knowledge of the Assessing Officer during first re-assessment proceedings. Considering the same, I am of the considered opinion that the initiation of re-assessment proceeding is vitiated. This second re-assessment proceeding stands quashed. The grounds of appeal of the assessee on this issue are allowed.”

11. On examination of the above, in order to avoid repetition, we agree with the reasons recorded by the Id. CIT(A) i.e., no new fresh information or tangible material brought on record by the Assessing Officer to reopen already concluded reassessment. Admittedly, the agreement dated 20.08.2008 was before the Assessing Officer in the 1st reassessment proceedings and basing on which, the Assessing Officer again reopened the said reassessment. Therefore, the second reassessment order passed under section 143(3) r.w.s. 147 of the Act dated 30.12.2017 is not maintainable and we find no infirmity in the order of the Id. CIT(A) and it is justified . Thus, grounds Nos. 3 to 8 are dismissed.

12. Now we shall take up appeal in ITA No. 11/Chny/2020 in the case of Shri Karuppasamy Pandiarajan for AY 2009-10:

13. Ground No. 1 is general in nature and requires no adjudication.

14. Ground Nos. 2 to 4 raised by the Revenue are similar to the grounds No. 3 to 8 in I.T.A. No. 492/Chny/2020 for assessment year 2009-10, wherein, we took a view that the second reassessment order passed under section 143(3) r.w.s. 147 of the Act dated 30.12.2017 is not maintainable and the same is equally applicable to ground Nos. 2 to 4 of this appeal. Thus, the grounds raised by the Revenue are dismissed.

15. I.T.A. No. 493/Chny/2020 for AY 2009-10 in the case of Smt. Hemalatha Rajan passed under section 271(1)(c) of the Act.

16. Ground Nos. 1 & 2 are general in nature and requires no adjudication.

17. Ground Nos. 3 & 4 raised by the Revenue relates to deletion of penalty levied under section 271(1)(c) of the Act. Since we have confirmed the order of the Id. CIT(A) in quashing the second reassessment order passed under section 143(3) r.w.s. 147 of the Act dated 30.12.2017, neither the quantum addition made by the Assessing Officer nor levy of penalty will survive. Accordingly, the grounds raised by the Revenue are dismissed.

18. In the result, all three appeals filed by the Revenue are dismissed.

Order pronounced on 05th June, 2024 at Chennai.

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 05.06.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.