

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 345/Kol/2024
Assessment Year: 2012-13

Nikunj Dhanuka 7 th Floor 113, Poddar Point Park Street Kolkata - 700016 [PAN: ADNPD6220D]	Vs	Deputy Commissioner of Income Tax, Circle -32, Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Anil Kochar & Aryan Kochar, A.R.
Revenue by :	Shri Arjun Kumar Meena, Addl. CIT, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 02/05/2024
घोषणा की तारीख/**Date of Pronouncement** : 24/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter the "Ld. CIT(A)"] dt. 22/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in passing an ex-parte order on the ground of alleged non-compliance to the terms of the Notices issued u/s 250(1) of the Income Tax Act, 1961.

3. For that the Ld. CIT (A) erred in not providing sufficient and reasonable opportunity to the appellant and thereby passing an exparte order.

4. For that the Ld. CIT (A) erred in not properly serving the Notice fixing the date of hearing on the appellant as is provided u/s 282 of the Act.

5. For that the Ld. CIT (A) erred in confirming the reopening proceeding u/s 147 r.w.s. 148 of the Act without properly appreciating the facts of the case.

6. For that the Ld. CIT (A) ought to have held that the proceeding initiated u/s 147 of the Act after the expiry of four years from the end of relevant assessment year and the appellant having disclosed fully and truly all material facts necessary for assessment the reopening u/s 147 r.w. first proviso is bad-in-law.

7. For that the Ld. CIT (A) fell into an error in not stating the points for determination and adjudication of the Grounds of Appeal vis-a-vis the decision thereon and reasons for such decision.

8. For that the Ld. CIT (A) grossly erred in not adjudicating the Grounds of Appeal of the appellant in a perspective manner rather passed an *ex parte* order dismissing the appeal without dwelling upon the grounds taken by the appellant as is required u/s 250(6) of the Act.

9. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."

3. At the outset, the ld. Counsel for the assessee stated that though the impugned order is *ex-parte* but it first wants to argued on the legal issue challenging the reopening proceedings u/s 147/148 of the Act on the ground that even after the expiry of four years from the end of the relevant Assessment Year and the appellant having disclosed all material truly and fully necessary for assessment, re-assessment proceedings have been carried out without recording proper reasons to believe and, therefore, the reopening proceedings are bad in law, illegal and liable to be quashed.

On the other hand, the ld. D/R stated that the assessee failed to appear before the ld. CIT(A) and, therefore, the matter needs to be restored back to the file of the ld. CIT(A) for necessary adjudication.

4. We have heard rival contentions and perused the material placed before us. We notice that the assessee is an individual earning income from salary and capital gain. Income of Rs.1,03,32,160/- declared in the original return for Assessment Year 2012-13 furnished on 09/10/2012. The income declared in the original return includes short term capital gain from sale of shares at Rs. 57,46,787/- and exempt income u/s 10(38) of the Act at Rs.41,98,896/-. The return was processed u/s 143(3) of the Act and subsequently, scrutiny proceedings were carried out and assessment order u/s 143(3) of the Act was passed on 28/11/2018. So, admittedly, the original return filed on 09/10/2012 was selected for scrutiny and the income declared therein has been scrutinised by the Id. Assessing Officer in the assessment proceedings carried out u/s 143() of the Act. Now, after the lapse of four years from the end of Assessment Year, the Id. Assessing Officer based on specific information received from the office of Pr. DIT(Inv.), Mumbai, dated 28/03/2019 came to know that the assessee has claimed an amount of Rs.90,95,000/- as exempt income u/s 10(38) of the Act which have arisen from sale of scrip called VMS Industries Ltd.. This is the only reasons on which the Id. Assessing Officer has initiated the re-assessment proceedings u/s 147 of the Act and issued the notice u/s 148 of the Act.

4.1. Now, as per Section 147, the first condition is that the Assessing Officer ought to have reason to believe that any income chargeable to tax has escaped assessment, for any assessment year then, he may subject to the provisions of Section 148 to 153 of the Act, assess or re-assess such income and also other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course

assessment proceedings. Now, the first provision to Section 147 of the Act specifically deals with the case where assessment u/s 143(3) of the Act has already been carried out and it provides that no action shall be taken in the case after expiry of four years from the end of the relevant Assessment Year unless any income chargeable to tax has escaped assessment for such Assessment Year by reasons of failure on the part of the assessee to make a return u/s 139 of the Act or in response to a notice issued u/s 142(1) or 148 of the Act or to disclose truly and fully all material facts necessary for that Assessment Year.

5. Now, in the instant case assessment proceedings have been carried out u/s 143(3) of the Act and reopening proceedings have been initiated after the end of four years. Now, whether such re-assessment proceedings is valid, firstly it is to be examined whether the Id. Assessing Officer had a reasons to believe and not merely reason to suspect that any income chargeable to tax has escaped from levy of tax for the reasons of failure on the part of the assessee. The only source of information with Id. AO for alleged reopening is that the assessee has claimed long term capital gain from sale of a scrip, namely, VMS Industries Ltd. at Rs.90,95,000/- and claimed exemption u/s 10(38) of the Act. Now, to verify the said information, we have to first look into the original return of income filed by the assessee and the computation attached thereto. The same is available at page 1 to 4 of the paper book. Under the head capital gain, the assessee had declared short term capital gain of Rs. 57,46,787/- and long term capital gain exempt under u/s 10(38) of the Act at Rs.41,98,896/-. On the face of the computation, there is no exemption u/s 10(38) of the Act at Rs.90,95,000/- claimed by the

assessee. The Id. Counsel for the assessee brought to our attentions the details of capital gain from purchase of sale of shares and the sheet is available at page 5 of the paper book which indicates that the assessee had earned capital gain from sale of shares of VMS Industries Ltd., but has not earned any long term capital gain. Rather the assessee had earned short term capital gain of Rs. 57,46,787/- and has paid income tax thereon @ 15% which is applicable for such type of income u/s 112 of the Act. Further we notice that this short term capital gain has arisen by reducing the purchase cost of shares of VMS Industries at Rs. 2,27,038/- against the sale consideration of Rs.90,81,515/-. It thus indicates that there is some information about the sale of VMS Industries Ltd. but the assessee has not claimed any exemption u/s 10(38) of the Act of Rs.90,95,000/-. The records reveal that the assessee had already declared the transactions of purchase and sale of equity shares of VMS Industries Ltd., in its original return, it had earned short term capital gain of Rs.57,46,787/- and duly offered tax u/s 112 of the Act. Further this return has already been scrutinised by the Id. Assessing Officer and all the details were available before him during the course of scrutiny proceedings.

6. Now, examining these facts we find that firstly Id. Assessing Officer failed to record proper reasons to reopen the case as Id. Assessing Officer has not made any application of mind before issuing the notice and he ought to have examined the original return filed by the assessee before issuing the notice for reopening. No such exercise has been done at the end of the Id. Assessing Officer. Further the reasons to believe are not proper and it merely is a case of reason to support or

merely change of opinion. Above all, the main allegation against the assessee as per the information received from the investigation wing that the assessee had claimed exemption u/s 10(38) of the Act is also incorrect.

7. Under these given facts and circumstances of the case, since the ld. Assessing Officer failed to adhere to the conditions laid down u/s 147 of the Act for reopening of the proceedings, the assessment order in question is held to be *void ab initio*, illegal and, is hereby quashed. Accordingly, the re-opening proceedings carried out in the case of the assessee are quashed. Since the assessee gets relief on this legal ground itself, there is no reason to deal with the other grounds dealing with which will be merely academic in nature.

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

Order pronounced in the Court on 24th June, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 24/06/2024

SC S/P

7

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata