

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.1056/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

Vandana Daga,
19-C, Nungambakkam High Road,
Nungambakkam, Chennai 600 034.
[PAN:ACLPV1469P]

Vs. The Income Tax Officer,
Non Corporate Ward 3(5),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri M. Karunakaran, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, CIT
सुनवाई की तारीख/ Date of hearing : 24.07.2024
घोषणा की तारीख /Date of Pronouncement : 26.07.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 27.03.2024 passed by the Id. Principal Commissioner of Income Tax, Chennai 4, Chennai under section 263 of the Income Tax Act, 1961 ["Act" in short] for the assessment year 2015-16.

2. Ground No. 13 raised in the appeal of the assessee is not pressed and accordingly dismissed as not pressed.

3. Ground Nos. 1 to 12 raised by the assessee concerning only issue questioning the validity of jurisdiction assumed by the Id. PCIT under section 263 of the Act.

4. The Id. AR Shri M. Karunakaran, Advocate submits that the Assessing Officer completed the original assessment under scrutiny under section 143(3) of the Act dated 26.12.2017, drew our attention to the said order and submits that the income returned was accepted without making any addition. Further, the same assessment was reopened under section 147 of the Act by issuing notice under section 148 of the Act and subsequently, notice under section 142(1) of the Act along with questionnaire. He submits that the assessee filed reply to the said notice under section 142(1) of the Act and referring to the said order on record, argued that the Assessing Officer made no addition on the issue of reopening relating to claims of excess cost of land, less long term capital gains and short term capital gains. The Id. AR drew our attention to the show-cause notice issued by the Id. PCIT and submits that the Id. PCIT issued show cause notice on the same issue of which, the original assessment was reopened and completed under section 147 of the Act. The Id. AR drew our attention to the impugned order at para 9 and argued that the Id. PCIT set aside the reassessment order as erroneous and prejudicial to the interest of Revenue and directing the Assessing Officer to make necessary enquiries as per the discussions relating to the claims of excess cost of acquisition in respect of claim of long term capital gains and short term capital gains. He argued that the assumption of jurisdiction

by the Id. PCIT is not maintainable as the Assessing Officer conducted detailed enquiry in respect of the same issues under original and reassessment proceedings by accepting the submissions and relating to the same issues, the Id. PCIT has showcased under section 263 of the Act. The Id. AR drew our attention to the decisions of Hon'ble Madras High Court in the case of Kumar Rajaram v. ITO in T.C.A. No. 415 of 2019 dated 05.08.2019 and in the case of M/s. Virtusa Consulting Services v. DCIT in T.C.A. No. 997 of 2018 dated 30.03.2021 and argued that the Hon'ble Madras High Court in both the cases, held that the Assessing Officer has taken a stand and passed order, cannot be said that the Assessing Officer did not apply his mind to the issue.

5. The Id. DR Shri R. Clement Ramesh Kumar, CIT submits there was no application of mind by the Assessing Officer and drew our attention to the original assessment order as well as reassessment order, wherein, he pointed out that there was no computation in the reassessment order as reflected in original assessment order which clearly establishes no application of mind by the Assessing Officer. He argued vehemently that the Id. PCIT rightly invoked the jurisdiction under section 263 of the Act by holding that the reassessment order is erroneous and prejudicial to the interest of Revenue for non-application of mind by the Assessing Officer.

6. Heard both the parties, perused the material available on record. We note that admittedly, the assessment as well as reassessment was completed without making any addition by accepting the returned income. The notice dated 28.10.2021 issued under section 142(1) of the Act is on record, wherein for the same issues as raised by the Id. PCIT under section 263 of the Act were raised in reopening of assessment, requiring verification. Further, the Assessing Officer also issued questionnaire on excess claim of cost of land acquisition for the purposes of long term capital gains as well as short term capital gains. The assessee filed reply dated 17.11.2021 to the said questionnaire during the course of reassessment proceedings. On perusal of the said reply, we note that the assessee furnished details and offered explanations in detail as per the questionnaire set out by the Assessing Officer. As discussed above, the Assessing Officer, considering and accepting the submissions of the assessee no addition was made against the issues raised in the notice under section 142(1) of the Act, which clearly shows that the Assessing Officer applied his mind and conducted enquiries thoroughly in respect of question raised with reference to the reply given by the assessee. Therefore, as found by the Id. PCIT that there was no proper enquiry and non-application of mind by the Assessing Officer is uncalled for.

7. The Hon'ble Madras High Court in the case of Kumar Rajaram v. ITO (supra) in similar set of facts held that when the Assessing Officer took a stand and passed order, it cannot be said that no application of mind on the issue by the Assessing Officer. Further, in the case of M/s. Virtusa Consulting Services v. DCIT (supra), the Hon'ble Madras High Court held that merely because the Id. CIT is not fully satisfied with the conclusion of the Assessing Officer, the order cannot be turned to be erroneous.

8. In the present case, admittedly, the assessee has shown long term capital gain and short term capital gain and development charges in the original return of income, which was accepted by the Assessing Officer. However, on the same issues, the Assessing Officer reopened the said assessment by issuing notice under section 148 of the Act as well as notice under section 142(1) of the Act about excess claim in long term capital gain and short term capital gain, but made no addition in this regard, which clearly establishes that the relevant document and evidences before the Assessing Officer in the original proceedings as well as in the reassessment proceedings and having been taken a decision in accepting the claim of the assessee, cannot be held to be passed the reassessment order without application of mind. Therefore, the order of

the Id. PCIT declaring the reassessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue for non-application of mind, is unwarranted. Therefore, the order of the Id. PCIT passed under section 263 of the Act is not justified. Thus, the grounds raised by the assessee are allowed.

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

Order pronounced on 26th July, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

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

Chennai, Dated, 26.07.2024

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.