

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.172/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15

Mr.Nandagopal Nandhakumar, Flat No.103, Smuka Eagles Nest Apartment, KPK Nagar, Kalapatti S.O. Vellanaipatty, Coimbatore – 641 048.	v.	The ACIT, NCC-2, Coimbatore.
[PAN: ABMPN 3044 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	03.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	21.08.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 18.01.2024 for the Assessment Year (hereinafter in short "AY") 2014-15.

2. Drawing our attention to Ground No.2, the Ld.AR of the assessee submitted that the Ld.CIT(A) erred in upholding the jurisdiction of the AO to re-open the assessment u/s.147 of the Income Tax Act, 1961



:: 2 ::

(hereinafter in short "the Act") for the relevant year under consideration. Since it is a legal issue, first we will adjudicate the same. In order to adjudicate the legal issue regarding assumption of jurisdiction u/s.147 of the Act, we note that the assessee is an individual engaged in business and offered income from business & capital gains and filed his return of income (RoI) for AY 2014-15 on 29.07.2015 declaring total income of Rs.55,46,260/- which was processed u/s.143(1) of the Act and later on, taken up for scrutiny under CASS (limited scrutiny) and the AO after gathering material/evidences regarding the issue for which the return of income was selected for scrutiny, after verifying the evidences and details furnished by the assessee, held as under:-

4. On verification of income tax computation of the assessee, it was seen that the assessee has sold a land used for agricultural purpose, on 29.05.2013 for a sale consideration of Rs.1,36,00,000/- and has claimed exemption u/s.54B and 54F for investment in agricultural land and house property. The details submitted by the assessee were perused and it was noticed that the assessee has made invested after the due date for filing of return u/s.143(1) of the Act and the assessee has not deposited the sale consideration in Capital Gains Account Scheme. The AR was asked to explain as to why the aforesaid claim should not be disallowed since the sale consideration was not deposited in the Capital Gains Account Scheme. The AR of the assessee has submitted his explanation vide letter dated 22.11.2016 and has relied on the judgments of RKP Elayaraja vs. DCIT, Fatima Bai vs ITO, Anilkumar Omkar Singh Aurora, CIT vs Rajesh Kumar Jalan and CIT vs Jagriti Aggarwal. The explanation submitted by the AR and the case laws relied upon was given due consideration. Respectfully following the judicial decisions as mentioned above, the explanation submitted by the AR was found to be acceptable and the claim of exemption u/s.54B and 54F was accepted.

3. Thereafter, the AO has re-opened the assessment by issuing impugned notice u/s.148 of the Act dated 19.03.2020 (after four years from the end of the relevant Assessment Year); and on the request of the



:: 3 ::

assessee, the *reasons recorded* for re-opening of assessment, were furnished to the assessee which reads as under:-

Issues as per reasons recorded for reopening:

The assessee transferred assets on 29.05.2013 for a consideration of Rs.1.36,00,000/- and claimed deductions u/s.54B (Rs.33,35,565) and 54F (Rs.45,29,940) in his return of income for the A.Y. 2014-15. The assessee even though transferred assets on 29.05.2013, he had not acquired a new house/agricultural land within the time limit of 2 years from the date of transfer of asset. Further, the assessee had invested only Rs.11,82,765/- u/s.54B of the Act within the due date for filing the return of income u/s.139(1) of the Act. Therefore, the claim of deduction made by the assessee u/s.54B and 54F in his return of income is incorrect to the extent of Rs.66,82,740/-. The assessee has lowered his taxable income by claiming unjustified amounts of deductions u/s.54B and 54F of the Act, leading to escapement of taxable income.

4. From a perusal of the reasons recorded, it is discerned that the AO noted that the assessee had transferred assets on 29.05.2013 for a consideration of Rs.1.36 Crs. and in his return of income for the year under consideration claimed deduction to the tune of Rs.33,35,565/- u/s.54B; and to the tune of Rs.45,29,940/- u/s.54F. According to the AO, even though, the assessee transferred assets on 29.05.2013, he didn't acquire any new house/agricultural land within the time limit of two years from the date of transfer of assets. Further, the assessee had invested only Rs.11,82,765/- u/s.54B of the Act within the due date for filing the return of income u/s.139(1) of the Act. Therefore, according to the AO, the claim of deduction made by the assessee u/s.54B & u/s.54F of the Act is incorrect to the extent of Rs.66,82,740/-. Thus, according to the AO, the assessee has lowered his taxable income by claiming unjustified



:: 4 ::

amount of deduction u/s.54B & u/s.54F of the Act, which led to escapement of taxable income. On the basis of these reasons recorded (supra), the AO has re-opened the original assessment passed by him originally u/s.143(3) of the Act on 23.12.2016.

5. The Ld.AR assailed the action of the AO to have re-opened the scrutiny assessment on an issue which has already been thoroughly examined/verified/adjudicated during the original assessment, which fact according to him is discernable from a reading of the Assessment Order (at Para No.4) which we have reproduced (supra). Therefore, according to the Ld.AR, the action of the AO to re-open the assessment is nothing but review of his own order or based on change of opinion, which can't be the ground to re-open the assessment.

6. Though, Ld DR opposes the aforesaid contention of Ld AR on the legal issue, we agree with the contention of the Ld.AR and note that the issue regarding exemption claimed u/s.54B & u/s.54F of the Act was before the AO during the original assessment; and that the AO has taken note of the fact that the assessee didn't deposit sale consideration in Capital Gains Accounts Scheme; And the AO had enquired about the claim of exemption u/s.54B & 54F of the Act and had even confronted the assessee regarding the non-deposit of sale consideration in Capital Gains Accounts Scheme and after hearing explanation given by the assessee



:: 5 ::

vide letter dated 22.11.2016 and relying on the judicial decisions cited by the assessee has accepted the claim of the assessee, which assessment framed u/s 143(3) of the Act on 23.12.2016, can't be re-opened after four years from the end of the relevant assessment year and the impugned action tantamounts to review/change of opinion, which is not permissible and therefore, the assessee succeeds on the legal issue raised by him on this score alone. Moreover, it is noted that reopening has been resorted to by AO after four years from the end of the relevant assessment year, and in such a scenario, the proviso to sec.147 of the Act comes into play and the AO had to satisfy one more condition precedent for validly re-open the assessment i.e. AO in the reasons recorded to reopen the assessment has to show that assessee failed to disclose fully and truly all the material facts necessary for assessment on the issues [which he intends to examine] for that assessment year. However, we find from perusal of the reasons recorded (supra) that the AO has not made any allegation that assessee failed to disclose fully and truly all the material facts necessary for assessment for that assessment year on both the issues for which he has reopened the assessment. Thus, we find that reasons recorded by the AO to re-open the assessment after '4' years, from the end of the relevant assessment year doesn't satisfy the requirement of law to validly re-open the assessment. Consequently we find that the AO didn't had the jurisdiction to re-open the assessment.



ITA No.172 /Chny/2024 (AY 2014-15)
Mr.Nandagopal Nandhakumar

:: 6 ::

Therefore, we hold that issuance of notice u/s.148 of the Act dated 19.03.2020 is null/non-est in the eyes of law. Consequently, the re-assessment order passed by the AO dated 24.09.2021 is held to be non-est in the eyes of law and therefore, quashed.

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

Order pronounced on the 21st day of August, 2024, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 21st August, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF