आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member and

आ.अपी.सं /**ITA No.876/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2014-15)

Shri Ashok Kumar Kolla Hyderabad PAN:AFWPK8481L	Vs.	Dy. Commissioner of Income Tax, Circle 6(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri A.V.Raghuram, Advocate	
राजस्व द्वारा/Revenue by::	Shri K.N. Suresh Babu, DR	
सुनवाई की तारीख/Date of hearing:	07/11/2024	
घोषणा की तारीख/Pronouncement:	14/11/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order, dated 01/08/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2014-15.

2. The brief facts of the case are that, the assessee, an individual, filed his return of income for the A.Y 2014-15 on 31/03/2015 declaring total income of Rs.8,33,89,200/-. The case has been selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T. Act, 1961 on 27/12/2016 and

determined the total income at Rs.9,24,90,798/-. The case has been subsequently reopened u/s 147 of the I.T. Act, 1961, for the reasons recorded as per which, income chargeable to tax had been escaped assessment on account of under assessment of Long-Term Capital Gain represents excess indexed cost allowed while computing capital gain from sale of property. Accordingly, notice u/s 148 of the Act, dated 31/03/2021 was issued and served on the assessee. In response to notice u/s 148 of the Act, the assessee furnished his return of income dated 31/05/2021 declaring total income at Rs.9,20,04,570/-. The case was selected for scrutiny and during the course of assessement proceedings, the Assessing Officer called upon the assessee to explain as to why Long-Term Capital Gain from sale of property cannot be recomputed on account of excess claim of deduction towards indexed cost of acquisition. The Assessing Officer noted that, although, the assessee has incurred expenditure of Rs.96,18,402/- towards cost of improvement of asset, but while disallowing 30% of expenditure, for want of expenditure, it has been considered sum of Rs.1,52,00,000/- thereby allowing excess deduction to the extent of Rs.55,40,947/- and hence called upon the assessee to explain with relevant evidences. In response, the assessee submitted that, the assessee has incurred sum of Rs.1,51,59,350/- and out of it, sum of Rs.96,18,402/- was shown in capital account and balance amount of Rs.55,40,947/- was shown in advances & deposits in the balance sheet. The Assessing Officer after considering the relevant evidences filed by the assessee including the financial statement for those years, for want of bills & vouchers made 30% adhoc disallowances and re-

computed the indexed cost of acquisition. Therefore, it cannot be said that there is under assessment of capital gain on account of excess deduction allowed towards indexed cost of acquisition. The Assessing Officer however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, while making disallowance of 30% of expenses towards improvement, an amount of Rs.1,52,00,000/- has been considered as against the actual amount incurred by the assessee for Rs.96,18,402/-. Therefore, opined that the assessee could not be established the amount of Rs.55,40,947/-, has of course, being incurred for the improvement of the asset, thus, recomputed indexed cost of acquisition while computing Long-Term Capital Gain from sale of property by considering amount of expenditure incurred for improvement of Rs.96,18,402/- and disallowed 30% of said amount for want of bills & vouchers and has recalculated improvement at Rs.67,32,881/-. Finally, the Assessing Officer has computed the Long-Term Capital Gain at Rs.9,79,61,188/- and made additions towards difference to the total income of the assessee.

3. Being aggrieved, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee challenged the reopening of the assessment on the ground that the reopening of the assessment is erroneous in law, void ab initio because, the Assessing Officer had reopened the assessment, merely on 'change of opinion', without there being any fresh tangible material, which come to the possession of the Assessing Officer, subsequent to the completion of the original assessment

u/s 143(3) of the Act. The learned CIT (A), after considering the relevant submissions of the assessee and also taken note of various facts gathered during the assessement proceedings, observed that, during the course of original assessement proceedings u/s 143(3), the appellant assessee could not produce evidence to substantiate claim for development expenditure leading to 30% disallowance and in absence of proper satisfactory evidences, nor has appellant assessee has challenged the disallowances and preferred an appeal. Even during the course of assessement proceedings, corroborative evidences to substantiate expenditure has not been produced. Therefore, observed that, there is no merit in legal ground taken by the assessee, challenging the reopening of the assessment because, the reasons recorded by the Assessing Officer for forming a reasonable belief of escapement of income has nexus with material which suggest escapement of income on account of excess deduction towards indexed cost of acquisition. The learned CIT (A) had also upheld the computation of indexed cost of acquisition by considering an amount of Rs.96,18,402/- by the Assessing Officer, on the basis of amount debited into capital account towards improvement to asset and held that, as per the financial statement of the assessee, the assessee has only incurred an amount of Rs.96,18,402/- towards improvement to the asset and thus, the Assessing Officer has rightly considered disallowance for the purpose of improvement to asset and further indexed cost of acquisition of an asset, for the purpose of computing Long-Term Capital Gain. Thus, rejected the explanation of the assessee and upheld the additions made by the Assessing Officer.

4. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned Counsel for the assessee submitted that, the learned CIT (A) erred in upholding the reopening of the assessment u/s 147 of the I.T. Act, 1961, without appreciating the fact that, the assessment for the impugned A.Y has been reopened beyond 4 years from the end of the relevant A.Ys and in such cases, unless there is a failure on the part of the assessee, to disclose fully and truly all material facts necessary for his assessment, the assessment cannot be reopened. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of Calcutta Discount Company Limited vs Income-Tax Officer (1961) 412 ITR 191 (S.C). The learned Counsel for the assessee further submitted that, the original assessment was u/s 143(3) of the Act and during the course of assessement proceedings, the Assessing Officer has considered the issue of computation of Long-Term Capital Gain and consequent deduction towards indexed cost of acquisition. The assessee has filed all evidences and also explained how the indexed cost of acquisition has been computed. The Assessing Officer, after considering the relevant facts has accepted the claim of the assessee towards indexed cost of acquisition. Further, on very same issue, the Assessing Officer issued notice u/s 154 for rectification of mistake on computation of indexed cost of acquisition and there is no idea what happened to the rectification proceedings. Therefore, when rectification proceedings are pending, the Assessing Officer cannot reopen the

assessment u/s 147 of the Act, on the very same issue. The learned Counsel for the assessee further submitted that, the Assessing Officer has reopened the assessment, on mere change of opinion, which is evident from the assessment order passed by the Assessing Officer where the indexed cost of acquisition has been considered, on the basis of details submitted by the assessee. If we go by the reasons recorded for reopening of the assessment, the Assessing Officer has considered very same material and formed reasonable belief of escapement. From the above, it is undisputedly clear that the Assessing Officer does not have any fresh tangible material in his possession and thus, it can be said that, it is a case of change of opinion, which is not permissible under the law. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd (2010) 320 ITR 561 (S.C).

6. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that, if we go by the reasons recorded for reopening the assessment, it is abundantly clear that, there is fresh tangible material for the Assessing Officer to form reasonable belief of escapement of income and therefore, there is no merit in the argument of the assessee that, it is a case of change of opinion. Further, as per the Explanation to section 147 of the I.T. Act, 1961, mere production of books of account before the Assessing Officer, will not necessarily amount to disclosure within the meaning of proviso to section 147 of the Act. Therefore, the argument of the assessee that, as per the proviso to section 147 of the Act, the assessment cannot be reopened,

unless there is an allegation from the Assessing Officer, on the part of the assessee to disclose fully and truly all material facts necessary for his assessment is devoid of any merit and hence the learned CIT (A) has rightly rejected the contentions of the assessee. In this regard, he relied upon the decision of the Hon'ble Allahabad High Court in the case of Gyan Prakash Rastogi vs. Union of India, dated 26th July, 2024.

7. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered the relevant case laws cited by both the sides in support of their contention. There is no dispute with regard to the fact that, the original assessment has been completed u/s 143(3) of the I.T. Act, 1961. Further, the Assessing Officer has reopened the assessment u/s 147 of the Act, beyond 4 years from the end of the relevant A.Y which is evident from 148 notice issued on 31/03/2021. Therefore, the validity of reopening of the assessment u/s 147 of the Act, needs to be tested in light of proviso to section 147 of the Act. Proviso to section 147 of the I.T. Act, 1961, deals with the reopening of the assessment, when the original assessment has been completed u/s 143(3) of the Act and, as per the said proviso, where an assessment u/s 143(3) has been made for the relevant A.Y, no action shall be taken under this section, after expiry of 4 years from the end of the relevant A.Y, unless any income chargeable to tax has escaped assessment for such A.Y, by reason of the failure, on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that A.Y.

At the same time, it is also relevant to keep in mind, Explanation 1 to section 147 of the Act, and as per said Explanation, production before the Assessing Officer of accounts books or other evidences, from which material evidence with due diligence has been discovered by the Assessing Officer, will not necessarily amount to disclosure within the meaning of the foregoing proviso. From a combined reading of proviso to section 147 of the Act, and (Explanation-1) provided therein, it is abundantly clear that, mere production of books of account, would not suffice to hold that, there is a disclosure of material facts necessary for assessment.

8. In the present case, going by the facts on record and reasons recorded by the Assessing Officer for reopening of the assessment, we find that the Assessing Officer refers to very same material which has been furnished to the Assessing Officer, during the assessement proceedings u/s 143(3) of the Act. The Assessing Officer formed reasonable belief of escapement of income on the basis of financial statements submitted by the assessee to allege that, there is excess deduction towards indexed cost of acquisition, while computing Long-Term Capital Gain and said belief has been formed, on the basis of details submitted by the assessee which includes relevant financial statements where the assessee has claimed improvement to asset by debiting to capital account and also to advances and deposits account. The Assessing Officer refers to the cost of improvement claimed by the assessee at Rs.1.52 crores and observed that as per capital account, improvement to asset was only at Rs.96,18,402/. The Assessing Officer, ignored the other part of cost of improvement to

asset, which was deposited in balance sheet amounting to Rs. 55,40,947/- to allege that, while completing the original assessment u/s 143(3) of the Act, the Assessing Officer has considered amount of Rs.1.52 crores, whereas actually the amount incurred towards improvement to asset was only at Rs.96,18,402/-. In our considered view, going by the reasons recorded by the Assessing Officer, and the basis for such reasons, the Assessing Officer refers to only evidences filed by the assessee during the course of original assessement proceedings, which was held on record before the Assessing Officer, when the assessment order has been passed u/s 143(3) of the Act. Therefore, in our considered view, the assessee has made disclosure of all necessary facts for completion of his assessment, for that A.Y and thus, unless the Assessing Officer allege that, the assessee has failed to disclose fully and truly all material facts necessary for his assessment, the assessment cannot be re-opened beyond 4 years from the end of the relevant A.Y, and this legal principle is supported by the decision of the Hon'ble Supreme Court in the case of Calcutta Discount Company Limited vs Income-Tax Officer (Supra) where it has been held as under:

> *"This means quite clearly that the mere production of evidence is not enough, and that there may be an omission or failure to make a full and true disclosure if some material fact necessary for the assessment lies embedded in that evidence which the assessee can uncover but does not. If there is such a fact, it is the duty of the assessee to disclose it. The evidence which is produced by the assessee discloses only primary facts, but to interpret the evidence, certain other facts may be necessary. Thus, questions of status, agency, benami nature of transactions, the nature of trading and like matters may not appear from the evidence produced, unless disclosed. If it be merely a question of interpretation of*

> *evidence by an Income-tax Officer from whom nothing has been hidden and to whom everything has been fully disclosed, then the assessee cannot be subjected to section 34, merely because the Income-tax Officer miscarried in his interpretation of evidence. But it is otherwise, if a contention which is contrary to fact, is raised and the Income-tax Officer is set to discover the hidden truth for himself In the latter case, there is suppression of material fact, or, in other words, that lack of full and true disclosure which would entitle action under section 34 of the Act."*

9. Therefore, we are of the considered view that, the reopening of the assessment in the facts of the present case is bad in law, because the Assessing Officer has reopened the assessment beyond 4 years from the end of the relevant A.Y without any allegation, on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The learned CIT (A) without considering the relevant facts, simply upheld the reopening of the assessment. Thus, we set aside the order of the learned CIT (A) and quash the re-assessment and passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act, 1961.

10. The assessee has challenged the additions made by the Assessing Officer towards the computation of Long-Term Capital Gain by reworking indexed cost of acquisition. Since we have already quashed the re-assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147 of the I.T. Act, 1961, the other grounds taken by the assessee challenging the addition made towards Long-Term Capital Gain on account of re-working of the indexed cost of acquisition becomes academic in nature and thus, not adjudicated.

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

Order pronounced in the Open Court on 14th November, 2024.

Sd/-	Sd/-
(VIJAY PAL RAO) **VICE-PRESIDENT**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 14th November, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Ashok Kumar Kolla, G-1 Plot No.84 Road No.11, Film Nagar, Jubilee Hills, Hyderabad 500033
2	Dy.CIT, Circle 6(1) IT Towers, AC Guards, Masab Tank, Hyderabad-04
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order