IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.1740/Mum/2024
Assessment Year : 2009-10

Abbas Yahyabhai Jasdanwalla, B1-101, NCCCL, Marathon Innova, G.K.Road, Lower Parel West, Mumbai PAN : AABPJ4685P	vs.	Asst. Commissioner of Income Tax, Circle–2(2)(2), 545, 5th Floor, Aayakar Bhavan, M.K.Road, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Madhur Agrawal &
Shri Ishraq M. Contractor

Revenue by : Shri Sunil Shinde, Sr. DR

Date of Hearing : 13/11/2024
Date of Pronouncement : 21/11/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.15-02-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'] and it relates to AY. 2009-10. The assessee *inter alia* is challenging the validity of re-opening of the assessment.

2. The Ld.ARsubmitted that the assessee is a proprietor of M/s. Mid Town Motors and Director in M/s. New Consolidated Construction P. Ltd. He derives income from salary, house property, business, capital gains and income from other sources. The assessee filed its return of

income on 25-09-2009 declaring total income of Rs.1.43 crores. The original assessment was completed u/s.143(3)of the Income Tax Act, 1961 ('the Act') on 17-10-2011.

2.1. Subsequently, the AO re-opened the assessment u/s. 147 of the Actby issuing notice dt. 30-03-2016, which was served on the assessee on 18-04-2016. He submitted that the AO re-opened the assessment after the expiry of four years from the end of the AY. 2009-10. He submitted that the AO has recorded the following reasons for reopening of assessment:

Reasons for reopening
Abbas Y Jasdanwala AY 2009-10

Assessment Order u/s 143(3) was passed on 17.10.2011 assessing total income of Rs. 1,43,30,260/-. ***From the verification of records*** *it is seen that The assessee bartered a G-3 with another flat G-4 admeasuring 1947 Sq feet by paying Rs. 1.15 Crores for the additional area in FY 95-96.*

During the current year assessee bought a flat M-3 in the same building from a person by paying Rs. 9.05 Crores as purchase price at the rate of Rs. 81140.35 per Sq feet (Rs. 9,25,00,000/1140).

Also during the current year assessee exchanged his flat G-4 in the same building with flat M-4 with the same individual (from whom he purchased M-3) on the same date and claimed Long term loss of Rs. 3,59,00,056/-on the transaction by taking the sale price at the rate of 16,226.81 per sq feet as per stamp duty valuation.

The sale value of G-4 should be adopted at the rate of the purchase value of M-4 as they are in the same building and on same date and between the same two parties and not the stamp duty valuation. If the sale value per sq feet as per the sale transaction is adopted there will be LTCG of Rs. 9,10,10,528/-, instead of LTCL of Rs. 3,59,00,056/- Further the said LTCL has been allowed to be carried forward in the said assessment order.

In the year assessee has also sold another commercial property and has earned LTCG of Rs. 1,84,88,947/- on the same, which has been adjusted against the said LTCL computed by the assessee on the above exchange of Flat G-4. Thus there is underassessment/escapement of LTCG of Rs. 4,84,88,947/- on this transaction.

Thus there is total underassessment of LTCG of Rs. 14,53,99,531/-

In view of the above I have reason to believe that the income of the assessee to the tune of Rs. 14,53,99,531/-has escaped assessment within the meaning of section 147 of the I.T. Act and the same is required to be brought to tax as well as any other income which may be found to have escaped assessment as per the explanation 3 to section 147 of the Income Tax act, 1961.

Notice u/s 148 is issued after obtaining prior approval from Pr CIT-2 vide No Pr CIT -2/U/s 148/15-16 dated 28.03.2016.

Date 29.03.2016

Sd/-
(ARVIND DESAI)
Dy, Commissioner of Income tax Circle 2(2)(2) (2)(2)

Inviting our attention to the above said reasons recorded by the AO for re-opening,the Ld.AR submitted that the AO has re-opened the assessment on the basis of information already furnished by the assessee i.e., no new material has brought on record by the AO to support his view that there was escapement of income. The Ld.AR submitted thatthe assessee has furnished all material facts fully and truly before the AO during the course of original assessment proceedings and the original assessment was completed by the AO after considering those details. Accordingly, he submitted that the present re-opening has been done by the AO only to modify the total incomeon account of change in his opinion. The Ld.AR submitted that that the AO has specifically recorded in paragraph 1 of the reasons for reopening as “on verification of records”…, which would also prove that the assessee had furnished all the relevant details during the course of assessment proceedings and hence, it cannot be said that there was failure on the part of the assessee to disclose fully and truly all the material facts.

2.2. Taking shelter under the first proviso to section 147 of the Act, the Ld.AR submitted that the AO could not have re-opened the assessment after the expiry of four years from the end of the assessment year, as there is no failure on the part of the assessee to disclose fully and truly

all the material facts. The Ld.AR further submitted that the AO has not specifically stated in the reasons for reopening that there was failure on the part of the assessee to fully and truly disclose fully and truly all the material facts. Accordingly, the Ld.AR submitted that the re-opening of assessment is not valid in the eyes of law on multiple reasons.

2.3. The Ld.AR further submitted that the AO had also initiated proceedings u/s. 154 of the Act by issuing notice on 28-11-2014 on the very same issue on which the re-opening was done. However, it is not known as to whether the AO has dropped the proceedings initiated u/s. 154 of the Act or not. He submitted that there are decisions to the effect that the AO could not re-open the assessment u/s. 147 of the Act, when the proceedings u/s. 154 of the Act is pending on the very same issue.

2.4. In support of various legal contentions urged, the Ld.AR placed his reliance on the following decisions:-

a) Castrol India Ltd., vs. DCIT [2024] 162 taxmann.com 67 (Bombay);
b) Aroni Commercials Ltd., vs. DCIT [2014] 44 taxmann.com 304 (Bombay);
c) Hindustan Lever Ltd., vs. R.B. Wadkar [2004] 137 TAXMAN 479 (Bom.)

3. On the contrary,the Ld.DR submitted thatthe AO has re-opened the assessment by recording proper reasons and the same has been held to be valid by the Ld.CIT(A). Accordingly, he supported the order passed by the Ld.CIT(A) on this issue.

4. We heard the parties and perused the record.Since the original assessment has been completed u/s 143(3) of the Act and since the reopening is done after expiry of four years from the end of the relevant assessment year, the AO is required to satisfy the first proviso to sec.147 of the Act (then existing) before reopening the assessment. The said proviso reads as under:-

> *"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no actin shall be taken under this section 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 reason of the failure on the part of the assessee to make a return under section 139 or in response to notice issued under sub-section (1) of sec. 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."*

4.1. On a careful perusal of the reasons recorded by the AO, we notice that the AOhimself has stated that the reopening is being done on verification of the records. The above said observations would show that the assessee had furnished all the relevant details during the course of original assessmentproceedings, meaning thereby there was no failure on the part of the assessee to disclose fully and truly all the material facts.We derive support for the above said view from the following observations made byHon'bleBombay High Courtin the case of Castrol India Ltd., vs. DCIT [2024] 162 taxmann.com 67 (Bom): -

> *"15. From the reasons itself, it is clear that the reasons to believe are based on information and details which available to the AO at the time of the original assessment proceedings, i.e., assessment Shivgan records. as "On verification of assessment records, i.e., computation of income, P&L account etc……On verification of other income in the P&L A/c,……. claimed deduction in computation of income ……credited to the P&L A/c……..computation of income……at the time of computation of LTCG."……. The said details admittedly, were made available to the AO by petitioner itself. It is thus clear that there is no failure on the part of Petitioner to disclose fully and truly the necessary information."*

When there is no failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment in the original assessment proceedings, the AO is precluded from reopening of assessment after four years from the end of relevant assessment year. Hence, on this ground, the reopening made by the AO for this assessment year is liable to be quashed.

5. A perusal of the reasons recorded by the AO would show that the AO has not stated in the reasons that there was failure on the part of the assessee to disclose fully and truly all the material factsnecessary for the assessment of that particular assessment year. When there is failure on the part of the AO to specifically recordso, when re-opening is done after the expiry of the four years from the end of the assessment year, the said re-assessment is held to be invalid as held by the Hon'bleBombay High Courtin the case of Hindustan Lever Ltd., vs. R.B. Wadkar [2004] 137 TAXMAN 479 (Bom.). The relevant observation of the Hon'bleBombay High Court is as under:-

> *"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assesseedisclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to son that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whetherthere was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the s on material available on record. He must disclose in the reasons as to which fact or*

material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented,by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside."

Hence, on this count also, the reopening of assessment is liable to be held as invalid.

6. In view of the foregoing discussions, we are of the view that there is merit in the contentions of the assessee that the re-opening of assessment of the year under consideration is not valid.Accordingly, we set aside the order passed by the Ld.CIT(A) and quash the impugned assessment order, holding that the re-opening is bad in law.

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

Order pronounced in the open court on 21-11-2024

Sd/-	Sd/-
[RAJ KUMAR CHAUHAN]	[B.R. BASKARAN]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 21-11-2024

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, "A" Bench, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai