

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 5504/Mum/2024
Assessment Year: 2017-18

Income Tax Officer - 8(2)(1), Mumbai	Vs	Supremus Lower Parel Premises Pvt. Ltd. Lodha Supremus Senapati Bapat Marg Delisle Road S.O. Mumbai - 400013 [PAN: AABCK0790M]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Niraj Sheth, A/R
Revenue by :	Ms. Monika H. Pande, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 03/12/2024
घोषणा की तारीख /Date of Pronouncement: 05/12/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the NFAC, Delhi, [hereinafter 'the Id. CIT(A)] dated 27/08/2024, pertaining to AY 2017-18.

2. The grievance of the revenue reads as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in allowing the appeal by quashing Notice dated 31.03.2021 issued under section 148 without appreciating that the AO's action to issue notice u/s.148 was on the basis of tangible information?

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to delete the addition of Rs. 2,59,80,800/-, 20% of Rs. 12,99,04,000/- the total sale value of unit of Lodha Supremus Building without appreciating the facts that AO made this adjustment on the information available with the department.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to delete the addition without appreciating that the assessee has not offered any income for taxation on the sale of unit of Lodha Supremus Building in his ITR."

3. At the very outset, the ld. Counsel for the assessee stated that the issues raised by the revenue have been decided by the Tribunal in earlier years in assessee's own case in favour of the assessee and against the revenue. The ld. Counsel further stated that even the reopening of the assessment has been dealt by the Hon'ble Jurisdictional High Court and the ld. CIT(A) has rightly followed the precedence.

4. Per contra, the ld. D/R could not bring any distinguishing decision in favour of the revenue.

5. We have carefully perused the orders of the authorities below.

6. Briefly stated the facts of the case are that the assessee is engaged in land development and construction of real estate properties and is a wholly owned subsidiary of Shreeniwas Cotton Mills Ltd. (SNCML), which in turn is a wholly owned subsidiary of Adinath Builders Ltd.. The assessee filed its return of income declaring total income at Rs. Nil and the same was processed as such. Thereafter, the case was re-opened on the ground of sale of immovable property by the assessee for a sum of Rs. 2,59,80,800/-. The assessee had not offered any income from sale of property to tax. This addition was challenged before the ld. CIT(A) and the ld. CIT(A) while quashing the reopening of the assessment itself, held as under:-

"4.1 I have considered the AO's order, submissions made by the appellant and the details filed. I find that the AO has made the addition on account of profit from the project 'Lodha Supremus', taxable in the hands of the appellant, at Rs.83,87,47,200/- entirely based on the facts and discussion in this regard in the assessment order passed for A.Y. 2012-13.

I find that the said addition in A.Y. 2012-13 has been deleted by order of CIT(A)-2, Mumbai dated 30.10.2015 in Appeal No. CIT(A)-2/T/114/2015-16....

I have gone through the grounds of appeal, additional grounds taken, and submissions made on different dates by the appellant and other details on record. The appellant had preferred a **Writ Petition Number No.2395 OF 2022** before Hon'ble Bombay High Court. The same has been decided by the Hon'ble High Court on 12/04/2024 in appellant's favour. The present appeal is being decided in the light of directions issued by Hon'ble High Court.

The grounds raised by the appellant in the present appeal are as follows-

1. On the facts and circumstances of the case and in law, the learned Assessing Officer (hereinafter referred as AO) erred in assuming jurisdiction to re-open the assessment u/s 147, on the basis of reasons noted that are full of assumptions, presumptions and false conclusions.

and no tangible information for formation "of belief. that income had escaped assessment.

The AO in his order w/s 147/144 dated 28/02/2022 has stated the following reason for re-opening of the case-

The return of income declaring income of Rs. NIL was filed by the assessee on 04.10.2017. Subsequently, information was received from Sub- Registrar 2, Mumbai showing that there is a sale of immovable property by the assessee for a sum of Rs. 12,99,04,000/-. The assessee has not offered any income from sale of property as well as not shown any such transaction in the return of income filed. So, there is an escapement of income to the extent of sale proceeds of Rs. 12,99,04,000/-. In view of these facts, the proceedings u/s 147 of the Act was initiated in this case after recording

2. The notice u/s 148 of the Act was issued to the assessee on 31.03.2021. The assessee filed the response and the ITR in response to notice u/s 148 on 26.04.2021 declaring income of Rs. NIL. Notice u/s 143(2) of the Act along with reasons to issue notice u/s 148 was issued to the assessee on 29.06.2021. The assessee filed response to reasons for reopening of assessment vide letter dated 14.07.2021. The various contentions raised by the assessee were considered and the objections raised by the assessee against the reopening of the assessment proceedings were disposed of by this office as under:

"On perusal of the assessee's letter dated 12.07.2021, it is noticed that the objection against reopening u/s 147 raised by the assessee is that the issue is already decided by the CIT (A) & ITAT in favour of assessee in earlier financial years.

In this regard, it is worthwhile to mention that the revenue is in appeal before the Hon'ble High Court for the A.Y. 2011-12 against the order of Hon'ble ITAT. Since, the issue under consideration is subjudice for the earlier assessment years, therefore, the reassessment proceedings have been rightly initiated in 2.1 Further, objection that is raised by the assessee is that the reasons for reopening should be based on new and tangible material and not merely Change of opinion. In this regard, it is stated that the issue under consideration in the reassessment proceedings has not been considered by the AO before as no regular assessment has been made in this case. The proceedings for the assessment year under consideration are independent from the proceedings of any other assessment year. The material filed by the assessee during

proceedings of any other assessment years will not tantamount to true and full disclosure for the year under consideration. Thus, it is not a case of change of opinion."

The assessee has not filed any further response. After considering the facts of the case and submissions of the assessee, the assessment in this case is completed as under: -

The appellant has preferred a WRIT PETITION: NO.2395 OF 2022 before Hon'ble Bombay High Court. The same has been decided in the appellant's favour by the Hon'ble High Court on 12/04/2024. Hon'ble High Court in its order in para no. 9 has observed that-

"We have considered the reasons to believe which was made available to petitioner vide letter dated 30th September 2019. We are satisfied that not only does the reason not specifically state that there was any failure on the part of assessee to disclose fully and truly all material facts, reading the entire reasons there is no cogent and clear indication that in fact here was failure on the part of assessee to disclose fully and truly all material facts necessary for its assessment".

Further, Hon'ble High Court in para number 12-16 has stated that-Para 12. Moreover, the entire basis for reopening the assessment was that assessment orders under Section 143(3) read with Section 147 of the Act were passed for Assessment Years 2011-2012 and 2013-2014 and the order under Section 143(3) of the Act for Assessment Year 2014-15 was passed by making the following additions:

- (1) 8% profit treating contractor.*
- (2) Addition as per A.Y. 2012-13.*
- (3) Proportionate income.*
- (4) Loss claimed.*
- (5) Capital gain*

Assessee preferred an appeal before the CIT(A) and the CIT(A) deleted the following additions-

- (1) 8% profit treating contractor.*
- (2) Addition as per A. Y. 2012-13.*
- (3) Proportionate income.*
- (4) Capital gain*

The Revenue preferred an appeal for Assessment Years 2011-2012, 2013-2014 and 2014-2015 before the ITAT and the same were pending. Since the issues were involved in this year also, i.e., Assessment Year 2012-2013, and the case was getting barred by limitation for reopening under Section 147 of the Act, to safeguard the interest of Revenue, this case is being proposed for reopening on the following issues

- (1) 8% profit treating contractor.*
- (2) Proportionate income.*

(3) Capital gain

Para 13 -Admittedly, the ITAT has now held against the Revenue. Therefore, the entire basis for reopening has collapsed. The Revenue's case that an appeal has been filed in this Court challenging the orders passed by the ITAT for Assessment Years 2011-2012, 2013-2014 and 2014-2015 will not be of any help because admittedly there is no stay. As held by the Hon'ble Apex Court in Union of India v/s. Kamlakshi Finance Corporation Ltd.³, the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities and the order is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. Admittedly, the order of the ITAT, which is challenged in appeal in this Court, has not been suspended. Therefore, the order of the ITAT is certainly binding on the Revenue.

Para 14 Mr. Chhotaray also submitted that assessment can be opened on the basis of order passed in another assessment year which is a settled position in law. Though we will not enter into a debate with Mr. Chhotaray on this aspect, still to issue notice itself the Revenue has to, in the facts of the case, cross the first hurdle of the proviso under Section 147 of the Act and if they do not, as we have observed above, the reopening will be bad in law.

Para 15 In the circumstances, we hereby quash and set aside the impugned notice dated 29th March 2019. Consequently, the order on objections dated 22nd March 2022 also is hereby quashed and set aside.

Para 16 At the same time, should Revenue succeed in its appeal filed impugning the order of the ITAT for Assessment Years 2011-2012, 2013-2014 and 2014-2015, Revenue may issue fresh notice under Section 148 of the Act and assessee may take such steps to oppose the fresh reopening.

All rights and contentions are kept open.

Para 17 Petition disposed".

The decision of Hon'ble High Court is very clear. The AO issued reopening notice on ground that issues involved in relevant assessment year were also subject matter for other assessment years which were still pending before Tribunal and as case was getting time barred, assessment was to be reopened to safeguard interest of revenue, since Tribunal had decided issue in other assessment years against revenue, entire basis for reopening had collapsed and, thus, reassessment notice was to be quashed.

Hon'ble High Court has quashed and set aside the impugned notice. Consequently, the order on objections was also quashed and was set aside.

Further, it has been held that if Revenue succeed in its appeal filed impugning the order of the ITAT for Assessment Years 2011-2012, 2013- 2014 and 2014-2015, Revenue may issue fresh notice under Section 148 of the Act and assessee may take such steps to oppose the fresh reopening.

As such, the Assessment order u/s 147/144B dated 28/03/2022 and consequently demand notice u/s 156 dated 28/03/2022 have been quashed. The addition made is u/s 147/144B dated 28/03/2022 is deleted: This ground of the appellant is allowed.

Other grounds of appeal raised in sl. 2 to 9 have become inconsequential, as the assessment order has been quashed. These grounds need no adjudication. However, these grounds in sl 2-9 are treated as allowed statistically."

7. It can be seen that, the Id. CIT(A) has followed the precedence. Therefore, we do not find any reason to interfere with the findings of the Id. CIT(A) and accordingly, Ground No. 1 is dismissed.

8. For the sake of completeness, even on merit of the case, the additions deleted by the Id. CIT(A) deserve to be upheld inasmuch as this Tribunal for AY 2012-13 in ITA No. 377/Mum/2016, has considered the additions on merits of the case and concluded as under:-

"After having gone through the orders passed by revenue authorities, we find that Ld. CIT(A) while deciding these issues has taken into consideration the facts of the present case that the income taxed by the AO in the assessee's hand has already assessed and taxed in the hand of SNCML, therefore taxing the same again in the hand of the assessee will result into double taxation of the said income. While reaching to the conclusion, Ld. CIT(A) appreciated the facts from the audited financial statements and orders passed by Income Tax Settlement Commission (ITSC u/s 245 D(4) of the I.T. Act. We have also gone through the elaborated findings recorded to the effect that assessee was used as a SPV (Special Purpose Vehicle) by SNCML for the construction of 'Lodha Supremus', which is more likely a Cooperative Society carrying out work for and on behalf of its members out of the cost met by them and no profit could arise in the hands of SPV. Thus, the additions were rightly deleted by Ld. CIT(A)

*Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings so recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these grounds raised by the revenue stands **dismissed.**"*

9. In light of the above, considering the issues raised by the revenue from all possible angles, we could not find any reason to interfere with the findings of the Id. CIT(A).

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 5th December, 2024 at Mumbai.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 05/12/2024

Sd/-

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, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai