

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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.557/Chny/2024
निर्धारण वर्ष /Assessment Years: 2014-15

Ramanathan Adaikalavan,
No.80, Ansari Street, Ram Nagar,
Coimbatore-641009.
[PAN: AANPA6846P]

Deputy Commissioner of Income Tax,
Non-Corporate Circle-2,
Coimbatore

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri P.M.Kathir, Advocate.

प्रत्यर्थी की ओर से /Revenue by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.11.2024

घोषणा की तारीख /Date of Pronouncement

: 06.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1059483472(1) dated 08.01.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2014-15. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 08.01.2024 passed by NFAC, Delhi.

2.0 The assessee is contesting the addition of Rs. 6.80 Crs by way of short term capital gains made by the Ld. Assessing Officer and its confirmation by the Ld.First Appellate Authority. The assessee has in all

raised 5 grounds of appeal out of which ground of appeal No.1 and 2 are legal grounds challenging the validity of reopening proceedings u/s 147 of the IT Act. Grounds of appeal No. 2 to 5 are in respect of merits of the addition.

3.0 Considering the complexity of the matter we deem it appropriate to adjudicate the legal grounds first. Explaining the brief factual matrix of the case, Ld. Counsel for the assessee informed that original return of income was filed by the assessee declaring income of Rs. 22,70,250/- which included long term capital gains of Rs.19,48,600/-. The original order u/s 143(3) was passed on 29.12.2016. The Ld. AO had made an addition of Rs.13,99,756/- on account of additional long term capital gains. The impugned additions have been discussed in para 2 to 7 of AO's order dated 29.12.2016 on page 2 to 4. The addition was in respect of a property being Hotel Meena at Rs.109, Kalinga Rayar Street, Ram Nagar, Coimbatore for a sale consideration of Rs.6.80 Crs upon which index costs of acquisition / improvement amounting to Rs. 6.60 Crs was applied so as to offer long term capital gains of Rs. 19.48 Lakhs. The assessee was relying upon the report of his registered valuer for claimed index costs of acquisition / improvement amounting to Rs. 6.60 Crs. In view of directions of Joint CIT the AO made a reference for ascertainment of FMV of property u/s 55A to the District valuation officer

(DVO). Meanwhile the assessee during assessment proceedings, further admitted long term capital gains of Rs. 33,48,356/- as against that of Rs.19,48,600/- qua its return of income. The additional long term capital gain of Rs.13,99,756/- was added by the Ld. AO with the disclaimer that DVO's report is pending receipt and that necessary action shall be taken in case of any deviations in accordance with law.

4.0 The Ld. Counsel informed that notice u/s 148 was issued to it on 16.03.2020 with the following reproduced reasons-

“..... 12. *Reasons for the belief the income has escaped assessment:

1. Brief Details of the assessee

The assessee filed his return of income for the AY-2014-15 on 30.03.2016 admitting a total income of Rs.22,70,250/-. The case was selected for scrutiny under CASS for the reasons (1) Cash deposits in SB account is more than the turnover (2) High interest expenditure against new capital added in work in progress or addition made to fixed assets (3) Substantial increase in capital in a year and (4) Low capital gain with respect to sale consideration. Scrutiny assessment u/s 143(3) was completed on 29.12.2016 determining the total income as 37,70,010/- by adding (i) unexplained investment Rs.1,00,000/- and (ii)Rs.13,99,756/0 towards additional capital gain as admitted by the assessee in his revised statement of computation of income.

2. Details of information received:

During the year relevant to AY – 2014-15, the assessee transferred (Vide document No.5366/2013 registered on 23 Sep 2013) a piece of land admeasuring 6450 Sqft together with commercial building known as Hotel Meena having ground + 3 floor for Rs. 6,80,00,000/- and offered a long term capital gain of Rs.19,48,600/-. Subsequently, the assessee offered Rs.33,48,355/- as long term capital gain during the assessment proceeding as detailed below:

Particulars	Amount in Rs.	Amount in Rs.	Remarks
Sale consideration		6,80,00,000	Value of the site Rs.6,80,00,000 (Rs.6000 per sq ft @ 6450 per sq ft)
Less: Indexed cost of Hotel	8,69,749		

:- 4 -:

Meena land (FY.1981-82 Rs.92,625 * 939/100			
Less: Indexed cost of building FY.1983-84 Rs.5797200*939/116	4,69,27,334		
Less: Indexed cost of building repair (F.Y 1991- 92 Rs. 12,10,150*939/199	57,10,205		
Less : Indexed cost of building Repairs (FY 1992- 93 Rs.2,20,650*939/223	9,29,105		
Less: Index cost of building repairs (FY 2012-13, Rs.28,95,250* 939/852	31,90,892		
Less : Indexed cost of building Repairs (FY 2013- 14 Rs.70,24,359*939/102	70,24,359	6,46,51,644	
Additional LTCG assessed		33,48,356	

However, it was noticed from the copies of ROI for AY 2007-08 of the assessee, profit and loss account for the year ended 31.03.2007 and fixed assets summary of Hotel Meena that the depreciated value of the hotel building as on 31.03.2007 was Rs.7,83,476 only. Further, WDV of the block asset buildings as on 31.03.2014, 31.03.2013 and as on 31.03.2012 was Rs. Nil, Rs.1,60,820 and Rs.1,78,689 respectively. It was also observed from the ledger account for Hotel Meena Building for FY-2012-13 that a sum of Rs.18,203 was booked as depreciation.

3. Analysis of Information received.

It was found from the copies of ROI for AY 2007-08 of the assessee profit and loss account for the year ended 31.03.2007 and fixed assets summary of Hotel Meena that the depreciated value of the hotel building as on 31.03.2007 was Rs.7,83,476 only. Further, WDV of the block asset buildings as on 31.03.2014, 31.03.2013 and as on 31.03.2012 was Rs. Nil, Rs.16,60,820 and Rs. 1,78,689 respectively. It was also observed from the ledger account for Hotel Meena Building for FY 2012-13 that a sum of Rs. 18, 203 was booked as depreciation. Therefore, the assessee was entitled to claim indexation benefit in respect of Non-depreciable asset of land only and in respect of the depreciable asset of the buildings, assessee had to offer short term capital gain as envisaged in section 50.

4. Enquiries made by the AO as sequel to information received:

NA

5. Findings of the assessing officer

If the facts mentioned in paras 2 and 3 are considered, then there would be an additional demand of Rs. 1,77, 18,004 besides interest u/s 234A and 234B as detailed below:-

S.No.	Particulars	Amount	Remarks
1.	LTCC in r/s land	3,78,30,251	Sale consideration for land : Rs.3,87,00,000 minus indexed cost of land Rs. 8,69,749
	Assessed LTCC	33,48,356	
	Short levy of Tax on LTCC	78,48,356	Rs.3,44,81,895 * 20% SC @ 10% EC @ 3%.
2.	STCC in r/s Hotel Building	2,91,39,180	Sale consideration of the building : Rs.2,93,00,000 minus WDV if buildings as on 31.03.2013 Rs/ 1,160,820.
3.	Short levy of tax on STCC	99,04,407	Rs.2,91,39,180* 30% C @ 10% and EC @3%.
	Total short levy of tax	1,77,18,004	Besides interest u/s 234A and 234B

Hence, I am satisfied that the assessee's case is fit case to be reopened u/s 147 of the act as I have reason to believe that the income chargeable to tax had escaped assessment within the meaning of the provisions of the said section.

7 Escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India: To be examined.

8. Applicability of provisions of Section 147 / 151 to the facts of the case:-

The above facts narrated clearly indicate that the assessee's income had escaped assessment. Even though the assessee's case was scrutinized u/s 143(3) of the Act, the above findings clearly indicate that the assessee's income had escaped assessment for the assessment year 2014-15 by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for the instant assessment year. Hence, the assessee's case is fit for reopening u/s 147 of the Act and accordingly, after due application of mind on the material available on record and the facts of the case, I am satisfied that this is a fit case for reopening of the assessment.

Since more than four years have elapsed from the end of the assessment year, but before 6 years from the end of the relevant assessment year, prior sanction as required u/s. 151(1) of the Act is solicited from the Principal Commissioner of Income Tax-1, Coimbatore....”

5.0 The Ld. Counsel submitted that consequently, in consideration of the above reasons, the Ld. AO added an amount of Rs.6.80 Crs app. as short term capital gains. While doing so, it was concluded that the asset sold was depreciable asset on which depreciation was claimed in earlier years. It is the case of the assessee that the reassessment of its case invoking provisions of section 147 / 148 are bad in law. The Ld. Counsel had contended that reassessment of any proceedings on the basis of change of opinion is not permissible in law. It has been submitted that as per extant statutory provisions covering the subject, reassessment u/s 148 is only permissible if either some new facts have come to the notice of the department post conclusions of original proceedings or the assessee is found guilty of concealing true particulars of its facts before the AO during the original assessment proceedings. The Ld. Counsel has argued that in its case no such circumstances exists. During the course of original assessment proceedings each and every information covering the impugned immovable property being Hotel Meena and the varied facts as to how long term capital gains arisen, was provided to the Ld. AO and that therefore there cannot be any case for reopening u/s 148. In support of its contentions, the Ld. Counsel placed reliance, inter-alia, upon following judgements:-

CIT Vs Kelvinator of India Limited 328 ITR 561 (SC)

DSC Limited Vs DD IT(E) 365 ITR 160 (Bombay)

Global Signal Cables India Pvt Ltd Vs DCIT 368 ITR 609 (Delhi)

CIT Vs CWC Corporation 371 ITR 81 (Delhi)

HCL Technologies Limited Vs DCIT 397 ITR 469 (Delhi)

Oracle India (P) Limited Vs ACIT 397 ITR 480(Delhi)

Rajbhushan Omprakash Dixit Vs DCIT 416 ITR 89 (Bombay)

Anand Developers Vs ACIT 425 ITR 261 (Bombay)

BPTP Limited Vs PCIT 421 ITR 59 (Delhi)

Dell India (P) Limited Vs JCIT 432 ITR 212 (Karnataka)

ITO Vs Ramachandra Raman – Co > No. 58/Chny/2018 (ITA No.124/Ch ny/2018)

M/s. Star Plastics Vs DCIT – ITA No. 707/Chny/2023.

6.0 The central theme thus emanating from the all the above judicial pronouncements, principally led by Hon'ble Apex Court in its decision of Kelvinator of India is that no action u/s 148 can be taken on the basis of change of opinion. Income Tax Authorities cannot revisit their decisions merely by having a change of mind. The latter is permissible only in existence of certain facts and circumstances and cannot be an arbitrary or adhoc decision. Hon'ble Apex Court in its decision of Kelvinator of India postulated that there is a conceptual difference between "power to review" and "power to reassess". Whereas Direct tax statute empowers

an assessing authority the power to reassess, it nowhere provides any power to review. In the cases referred above it has been laid down that 148 proceedings after four years would be only justified if some new material comes to the fore or else there was a definite failure on part of the assessee to have disclosed true material facts during the course of original assessment. Thus, once an assessing officer has applied his mind to certain material, during an assessment proceedings, and drawn his conclusions, it is not permissible to reappraise the same material and take a different decision by taking recourse to 148 proceedings. Thus as vividly pronounced by Hon'ble Apex Court in the Kelvinator of India Limited that the "reason to believe" on which a reassessment can be validly ordered should necessarily be based on "tangible material" which an assessing officer comes by after the assessment.

7.0 The facts of the present case, when viewed in the light of above mentioned judicial pronouncements, clearly indicate that the case of revenue qua reopening u/s 148 rests upon a very weak rather negligible foundation. The original order u/s 143(3) dated 29.12.2016, clearly shows that the issue of long term capital gains arising from property named Hotel Meena was comprehensively analyzed by the Ld. AO. Para 3 & para-5 on page-2, para-5.1, para 7 on page 3 and 4 of the order of Ld. AO clearly shows that he had deliberated upon the issue even in

consultation with his supervisory Joint Commissioner of Income Tax. It is also apparent therein that the property was referred for valuation to the District Valuation Officer and that the assessment was conditionally made subject to report from the DVO. Thus it is crystal clear that full application of mind was made to the facts of the case surrounding earning of capital gains by the assessee from the property named Hotel Meena. In view of the elaborate enquiries and discussions made in the assessment order in respect of impugned transactions the AO is precluded from changing his opinion subsequently and reopening the case u/s 148.

8.0 The reasons recorded by the Ld. AO and as approved by his supervisory authorities, reproduced herein above do not in any way demonstrate that there was any failure on part of the assessee to have not fully and truly disclosed true facts of the case governing the issue of capital gains from the property named Hotel Meena. The action of the AO in initiating proceedings u/s 148 is thus hit by the concept of "change of opinion" or a case of "review of the assessment order" and the same cannot be approved. A perusal of reasons recorded dated 27/02/2020 extracted herein above, alludes that the referred "details of information received "in para 2 of the same is not an information which was not before the AO. The original assessment shows that the impugned

information was extensively analyzed qua LTCG disclosure made by the assessee in its return of income as well as during the assessment proceedings. Besides there is no mention as to source of information except a vague assertion of "details of information received" in para 2. We have noted that all the documents comprising Balance sheet and P&L account of assessee discussed by the Ld AO in the impugned reasons were very much before him during original assessment proceedings. Thus, no case of any valid escapement of income falling within the tenets of section 147 rws 148 is made out against the assessee. As the reasons u/s 147 / 148 themselves are not supported by valid legal authority, consequent reassessment order arising therefrom would be a case of nullity and an order being void ab initio. Accordingly, we are of the view that the proceedings u/s 148 are bad in law and deserves to be quashed. **We therefore quash the proceedings u/s 148 being bad in law and allow the grounds of appeal No.1 & 2 raised by the assessee.**

9.0 As the legal grounds qua validity of notice u/s 148 has been allowed in favour of the assessee and the impugned notice declared bad in law , therefore the **grounds of appeal No 3 to 5 raised by the assessee qua merits of addition have become academic in nature and do not require any specific adjudication.**

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

Order pronounced on 6th, December-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 6th, December-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF