

आयकर अपीलिय 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.2347/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2015-16

Mr. Murali Krishna Yenugula, 6/376, Ram Nagar, Thalambur, Kelambakkam, Chennai-603 103.	v.	The ITO, NCW-22(1), Tambaram Range, West Tambaram, Chennai.
[PAN: ABQPV 5688 R]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. D. Anand, Advocate & Mr. Babu Prem, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr. Keerthi Narayanan, JCIT
सुनवाईकीतारीख/Date of Hearing	:	24.12.2024
घोषणाकीतारीख /Date of Pronouncement	:	15.01.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee an individual against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 23.08.2024 for the Assessment Year (hereinafter in short 'AY') 2015-16.

2. Briefly stated the facts are that for AY 2015-16, the assessee had filed his return of income (RoI) declaring total income of Rs.13,19,430/-.



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During the relevant FY 2014-15, the assessee received consideration of Rs.1.45 crores in lieu of relinquishment of rights, title and interest in respect of an immovable property (hereinafter referred to as 'scheduled property'). The RoI was originally processed by the CPC u/s.143(1) of the Income Tax Act, 1961 (hereinafter in short 'the Act') on 12.11.2015 at the same returned income. Later, the case of the assessee was selected for scrutiny through CASS for the reason 'large deduction claimed u/s.54, 54B, 54C, 54D, 54F, 54G & 54GA". In response to statutory notices u/s.143(2)/142(1) of the Act, the assessee filed relevant documents like copies of Sale/Purchase agreement of the scheduled property, Court decree, MoU dated 13.12.2014, bank statement showing receipt of consideration, proof of investment in new property like Sale Deed, construction agreement, bank statement copies, agreement copies for claim of deduction u/s.54F of the Act etc.; and brought to the notice of the AO that he had entered into a sale/purchase agreement with one Mr.Renganatha Naidu on 15.06.2005/30.07.2005 for purchase of an immovable property [scheduled property] for a consideration of Rs.13,37,700/- which consideration was enhanced to Rs.14,21,000/-; and that as per the terms of the purchase agreements paid an advance of Rs.4 lakhs, and the balance consideration had to be paid within '90' days meaning the essence of the contract was to execute the Sale-Deed within '90' days from the date of agreement; and despite assessee's willingness



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to perform his part of the obligation [i.e. to pay the balance amount of sale consideration], the seller/vendor backed out and refused to execute the Sale- Deed. Pursuant to which, the assessee filed a Suit for specific performance before the District Court [Addl. District/Fast Track Court-1, Chengalpattu] which was decreed ex parte on 10.06.2009 in favour of the assessee, which decree was recalled being an ex parte order; and the Suit was restored back to the file of the District Court. Meanwhile, the vendor/seller came up with a proposal for compromise, by virtue of which a Memorandum of Understanding (MoU) was drawn on 13.12.2014, and as a result of it, the assessee received Rs.1.45 Crores as consideration/compensation in lieu of relinquishment of rights, title and interest in respect of immovable/scheduled property; and pursuant thereto, the assessee admitted in his RoI, the income from the transaction as Long Term Capital Gain (LTCG) and claimed deduction of the investment in residential house property as per sec.54F of the Act. The AO upon verification of the relevant materials in his original scrutiny order passed u/s.143(3) of the Act on 22.12.2017 observed "after verification of details filed and as per the submissions filed by the assessee, the assessment is completed accepting the RoI filed". Thereafter, the case of the assessee was re-opened after expiry of four years by issue of impugned notice u/s.148 of the Act dated 30.03.2021. In response, the assessee filed RoI on 24.04.2021 and the AO supplied



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the reasons recorded prior to the re-opening of assessment vide letter dated 20.12.2021 which reads as follows:

You have E-filed return of income for assessment year 2015-16 on 31.08.2015 admitting total income of Rs. 13,19,430/-. The return was processed u/s. 143(1) one on 12/11/2015. The case was selected for scrutiny under CASS to examine "large deduction claimed u/s 54/54F." The scrutiny assessment was completed u/s. 143 (3) on 22.12.2017 by accepting income return by the assessee.

2. On perusal of assessment record, it is found that you have received a sum of Rs. 1,45,00,000/- as per MoU dated 13.12.2014 as an out of court settlement to honor the agreement entered by assessee with the landowner, Shri S.Renganathan on 15.06.2005 by giving an advance of Rs.4,00,000/-. The agreement is not registered and legal title / ownership cannot be transferred by making small advance of Rs.4,00,000/-. Moreover, the guideline value of the property of the property is Rs. 1,71,06,800 as on 1/4/2014 as per website of Tamil Nadu Registration Department. Hence the compensation of Rs.1,45,00,000 received through out of court settlement cannot be considered as there is profits or gains arising from transfer of capital asset held by the assessee.

3. In view of the above facts, I have reason to believe that an income of Rs.1,45,00,000/- has escaped from assessment due to failure on the part of you to declare fully and truly all material facts necessary for the assessment for AY 2015-16"

**3.** Objections raised by the assessee that the impugned issue cited by the AO in the 'reasons recorded' (supra) has already undergone scrutiny and there was no tangible material in the possession of the AO to re-open the assessment after four years from the relevant AY, without satisfaction of proviso to sec.147 of the Act, was brushed aside by the AO while disposing of the objections. And during the re-assessment proceedings, the AO called for relevant details in connection with the consideration/compensation of Rs.1.45 Crs. received by the assessee on 13.12.2014 for relinquishing the rights, title and interest in respect of immovable property (scheduled property). The AO acknowledged that the assessee had furnished his reply on 03.01.2022 and reiterated his



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stand taken during the original assessment in respect of claim of Long Term Capital Gain [LTCG] in respect of Rs.1.45 Crs. received by him; and also justified the deduction claimed u/s.54F of the Act, etc. However, the AO didn't agree with the action of his predecessor accepting the claim of assessee [*treating the consideration of Rs.1.45 Crs. as 'Long Term Capital Gain' and allowing the claim of deduction u/s.54F of the Act of Rs.1.45 Crs. including investment in Capital Gains Scheme of Rs.40 lakhs*]. Instead, the present AO was of the opinion that the amount received by the assessee to the tune of Rs 1.45 Crores was compensation from Court-settlement; and hence, it can't be considered as 'Long Term Capital Gain' because the consideration received was not for transfer of a capital asset held by the assessee; and therefore, according to him, it is assessable as 'income from other source' and consequently rejected the deduction claimed u/s.54 of the Act, and added Rs.1.45 Crs. as 'income from other source'. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the Ld.CIT(A) who dismissed the appeal both on merits as well as against the re-opening (legal issue).

**4.** Being aggrieved, the assessee is now in appeal before this Tribunal and has raised various grounds against the impugned action of the Ld.CIT(A) both on merits as well as raised legal issues challenging the jurisdiction of AO reopening the scrutinized assessment and that after four years from the end of the relevant AY 2015-16. Since assessee has



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raised legal issue challenging the jurisdiction of the AO to re-open the assessment, we will deal with it first.

**5.** Assailing the action of the Ld.CIT(A), the Ld. AR submitted that the Ld. CIT(A) didn't appreciate the contentions raised objecting to reopening of the regular/original assessment under Section 147 of the Act. He submitted that in the present case the original assessment was passed u/s 143(3) and the proceedings u/s.147 were initiated after the expiry of four years from the end of the relevant assessment year. The Ld.AR therefore argued that for valid initiation of proceedings u/s.147 it was necessary for the AO to show that while recording the reasons u/s 148 he was prima facie satisfied that the escapement of the income chargeable to tax for the relevant assessment year was as a result of the failure on the part of the assessee to disclose truly and fully and truly all material facts necessary for assessment. He submitted that from the recorded reasons itself such satisfaction should have been discernible. Drawing attention to the reasons recorded which has been reproduced at Page No.4 of the impugned order, the Ld.AR submitted that nowhere it was even prima facie apparent that in AO's opinion escapement of income had resulted because of assessee's failure to disclose truly & fully all material facts for its assessment. The Ld.AR therefore submitted that the twin conditions embedded in Section 147 & proviso to it were not fulfilled. The Ld.AR submitted that initiation of reassessment would have been permissible



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only if the AO was having in his possession fresh and tangible material which came in his possession subsequent to passing of the order u/s.143(3) and its relation with formation of belief should have been spelt out in the reasons recorded to justify reopening. According to Ld.AR the AO had miserably failed to demonstrate the foregoing in the recorded reasons which vitiated the usurpation of jurisdiction by the AO. The Ld.AR pointed out that in the course of the original proceedings u/s.143(3) the assessee was directed to furnish the details of 'large deduction claimed u/s.54, 54B, 54C, 54D, 54F, 54G & 54GA" during the relevant year. And in compliance, the particulars as requisitioned were furnished which thereafter were examined by the AO not only with reference to the assessee's books of account, balance-sheet, income & expenditure, computation of income but also by enquiry from the assessee by issuing notice u/s.142(1) of the Act. The assessee had produced/filed relevant documents in respect of the deduction claimed u/s.54 of the Act viz., sale/purchase agreement of the scheduled property Court decree, MoU dated 13.12.2014, proof of investment in new property, etc., which were considered by the AO while framing the assessment order u/s.143(3) of the Act dated 22.12.2017 thereby accepted the RoI filed by the assessee and allowed deduction claimed u/s.54 of the Act. Therefore, according to the Ld.AR, the question of re-opening on the basis of very same material & again raising the same issue which is related to the scheduled property



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by virtue of which assessee received compensation of Rs.1.45 Crs, can't be raked up again after four years from the end of the relevant assessment year unless there was failure on the part of the assessee to disclose truly and fully all material facts prior to completion of order u/s 143(3). In the circumstances therefore, the reopening of assessment after four years was claimed to be impermissible. Moreover, according to the Ld.AR, a perusal of the reasons recorded would reveal that there was no tangible/fresh material to re-open the assessment, which fact is evident from the AO's own admission at Para No.2 of the reasons recorded " *On perusal of the assessment records, it is found that you have received Rs.1.45 Cr. as per MoU dated 13.12.2024 as an out of Court settlement to honour the agreement entered in to by assessee with the land owner Shri S Renganathan on 15.03.2005 by giving an advance of Rs 4 lakhs*". Such an admission by the AO would show that all facts were fully & truly disclosed by the assessee during the original assessment u/s.143(3) and there was no fresh tangible material to form the requisite belief that there was an escapement of income of Rs.1.45 Crs while the AO recorded reasons to re-open the original assessment wherein, the issue related to capital gains of Rs.1.45 Crs and the claim of deduction u/s.54F of the Act, which was allowed. Therefore, according to the Ld.AR, on the basis of very same material, the AO's action to re-open the assessment is bad in law being nothing but review or change of



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opinion, which is impermissible. Therefore, he urged the legal issue against re-opening of assessment be allowed by relying on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Limited reported in 320 ITR 561 (SC) wherein it was held that the AO has no power to review and the power to re-assess can't be based on change of opinion, and therefore he urged for allowing the legal issue against re-opening.

**6.** Per contra, the Ld.CIT, DR supported the order of the Ld.CIT(A) and does not want us to interfere with the action of the Ld.CIT(A).

**7.** We have heard both parties and perused the records. Since, assessee has challenged the legal issue against re-opening of the assessment already undergone scrutiny assessment u/s.143(3) of the Act, we have to examine whether the AO rightly assumed jurisdiction u/s.147 of the Act, to validly re-assess the income of the assessee. Before that, let us understand the settled position of law on the legal issue at hand. We note that before the AO assumes jurisdiction to re-open it is necessary that the conditions laid down in the said section 147 has to be satisfied viz., AO should record "reason to believe" that the income chargeable to tax for that assessment year has escaped assessment. If this condition is not satisfied at the first place, then it cannot be said the AO has validly assumed jurisdiction u/s.147 of the Act. Further, if the AO



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intends to re-open the assessment after four years from the relevant assessment year, then as per first proviso to section 147 of the Act, an additional safeguard or condition needs to be satisfied i.e. the alleged escapement of income was due to fault of the assessee, in not fully and truly disclosing the material facts at the time of original assessment. In this regard, it is gainful to refer to the decision of the Hon'ble Supreme Court while endorsing the Full Bench decision of the Hon'ble Delhi High Court in CIT vs. Kelvinator of India Ltd. (supra) held in its order reported in 320 ITR 561, ".....that Assessing Officer has power to reopen, provided there is *"tangible material"* to come to the conclusion that there is *escapement of income from assessment. Reasons must have link with the formation of belief.*" And further it was held that on *"change of opinion*, the AO can't re-open the assessment because he doesn't enjoy the power to review his own order. Thus, the question for consideration is whether on the basis of the reasons recorded by the AO, he could have validly reopened the assessment. To answer that it has to be seen as to whether the AO on the basis of whatever material before him, [which he had indicated in his "reasons recorded"] had reasons warrant holding a belief that income chargeable to tax has escaped assessment. At this stage, it is important to remember that the reasons recorded by AO to reopen has to be evaluated on a stand-alone basis and no addition/extrapolation can be made or assumed, while adjudicating the



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legal issue of AO's usurpation of jurisdiction u/s. 147 of the Act. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, inter alia, observed that "*.....It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons.*" Their Lordships added that "*The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence....*". Therefore, the reasons are to be examined only as they were recorded by the AO before the issue of the notice.

**8.** From the aforesaid understanding of law governing the issue at hand, we have to examine the reasons already set out above and test whether the condition precedent necessary to usurp the re-opening jurisdiction can be discerned from perusal of the reasons recorded by the AO in the instant case (supra). From the reasons recorded by the AO (refer Page No.4 supra), at Para No.1, the contents are general in nature, wherein, the AO takes note of the assessee filing RoI on 31.08.2015 declaring Rs.13,19,430/- and the return being selected for scrutiny assessment under CASS to examine deduction claimed u/s.54/54F of the



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Act and that assessment was completed u/s.143(3) on 22.12.2017 accepting the income of the assessee. Further, it discerns from reading of Para No.2 of the reasons recorded that while he was going through the assessment records, he found that the assessee had received a sum of Rs.1.45 Crs as per MoU dated 13.12.2014 as an out of Court settlement in order to honor the agreement dated 15.06.2005 entered into by the assessee with the land owner by giving an advance of Rs 4 lakhs. Further, in the reasons recorded, he notes that the said agreement [dated 15.06.2005] was not registered and therefore, legal title/ownership can't be transferred by making a small advance of Rs.4 lakhs. According to him, the guideline value of the property as on 01.04.2014 [website of Tamil Nadu Registration Department] was Rs.1,71,06,800/- whereas the assessee has received compensation of Rs.1.45 Crs. Therefore, according to him, the amount received can't be considered as gain arising from transfer of capital asset held by the assessee. At Para No.3 of his reasons recorded, the AO concludes on the basis of the aforesaid facts that there is an escapement of income of Rs.1.45 Crs. It is pertinent to note that even though at first paragraph of the reasons recorded, the AO admits about the assessee's RoI for AY 2015-16 undergoing scrutiny assessment and that too on the claim made by assessee [claim of deduction u/s.54/54F] has resorted to re-opening of assessment [completed u/s.143(3) of the Act on 22.12.2017] after four years [from the end of



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the relevant assessment year] has merely made a bald statement that Rs.1.45 Crs. have escaped assessment due to failure on the part of the assessee to disclose fully and truly all materials facts necessary for the assessment, without spelling out what was the relevant material which assessee didn't disclose fully and truly all materials facts necessary for the assessment which caused the impugned re-opening of assessment. From a read of the 'reasons recorded', it is clear that the AO was very well aware of the original assessment u/s.143(3) of the Act and the AO accepting the claim of deduction u/s.54/54F of the Act. And that four years had elapsed from the end of the relevant assessment year before he was resorting to re-open the assessment. Para No.2 of the reasons recorded revealed that there was no tangible material in possession of the AO to justify re-opening the assessment which fact is clear from AO's own admission at Para No.2 "*on perusal of assessment records, it is found that you have received a sum of Rs. 1,45,00,000/-as per MoU dated 13.12.2014 as an out of court settlement to honor the agreement entered by assessee with the landowner, Shri S.Renganathan on 15.06.2005 by giving an advance of Rs.4,00,000/-*", which contents reveal that assessee had disclosed about (i) the assessee entering into unregistered agreement of sale/purchase of scheduled land on 15.06.2005 with land owner Shri S.Renganathan, by giving an advance of Rs.4 lakhs (ii) assessee received Rs.1.45 Crs. as per MoU dated 13.12.2014 as out of Court settlement to



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honor agreement dated 15.06.2005 entered by assessee with land owner Shri S.Renganathan by paying Rs.4 lakhs as advance. Thus, it is clearly discerned from the reasons recorded by the AO itself that all the material facts necessary for the claim of LTCG as well as the claim u/s.54/54F was fully disclosed by the assessee, which resulted in the AO accepting the claim in the first round on 22.12.2017 u/s.143(3) of the Act. And it is not the case of the AO as per 'reasons recorded to reopen the assessment' that assessee disclosed wrong facts at the time of original assessment. Therefore, the bald statement in Para No.3 of the reasons recorded that assessee failed to disclose fully & truly all material facts necessary for assessment is baseless, and is per-se contradicting with contents of Para No.2 of his own reasons recorded and therefore, the impugned 'reasons recorded' by the AO doesn't muster the requirement of law to enable the AO to re-open the assessment. At best, it can be seen to be an attempt made by the AO to review his own/predecessors assessment which is impermissible and tantamounts to mere 'change of opinion' on the same set of facts. Moreover, the AO observation in 'reasons recorded' at Para No.2 that 'agreement is not registered and legal title/ownership can't be transferred by making small advance of Rs.4 lakhs' is out of not knowing/appreciating the provisions of Specific Relief Act and Transfer of Property Act, which enables the buyer to file Suit for Specific Performance even of the unregistered agreement and compel the vendor/owner of the



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land to perform his part of the obligation provided buyer is willing to perform his obligation as per the terms of the agreement/contract. And it is no longer 'res-integra' that the expression "property of any kind" used in Section 2(14) of the Act is of wide import. When we read this expression along with expression defined in Section 2(47)(ii), i.e., extinguishment of any rights therein, we are of the considered view that giving up of right to claim specific performance by the assessee to get conveyance of immovable property in lieu of receiving consideration resulted in extinguishment of right in property thereby attracting the rigour of Section 2(14) read with Section 2(47) of the Act. In other words, the action on the part of an assessee in giving up his right to claim the property and instead accepting the money compensation was a clear case of relinquishment of a right in the property resulting in transfer as defined in Section 2(47) of the Act. When the legislature in its wisdom defines a particular type of transaction to be in the nature of transfer for taxing purpose, then the effect has to be given to such transaction to be in the nature of transfer as defined. The reading of definition of transfer under Section 2(47) of the Act clearly indicates that the intention of legislature is to include several kinds of transaction to be falling in the category of transfer for the purpose of bringing them in income-tax net under the Act.



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**9.** Further, after the decision of the Hon'ble Supreme Court in the case of Grace Collis and Others reported in (2001) 248 ITR 323 (SC), we are of the view that the AO in the first round of assessment u/s.143(3) of the Act on 22.12.2017 took the plausible view that the right to claim Specific Performance of the agreement/contract does creates right to property and as a consequence, relinquishment of such a right results in the transfer of interest in the property within the meaning of section 2(47) [transfer of capital asset] of the Act and allowed the assessee's claim of LTCG and deduction claimed u/s 54/54F of the Act. In view of the foregoing discussion, we hold the impugned re-opening of assessment bad in law and are inclined to quash the issue of notice u/s.148 of the Act dated 30.03.2021 and consequent actions thereafter are held to be void in eyes of law. And since assessee succeeds on the legal issue, we are not inclined to adjudicate the merits of the addition being only an academic exercise.

**10.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 15<sup>th</sup> day of January, 2025, in Chennai.

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

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



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चेन्नई/Chennai,  
दिनांक/Dated: 15<sup>th</sup> January, 2025.

**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