

आयकर अपीलीय अधिकरण, 'ए'/'बी'/'सी'/'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2154, 2155 & 2156/Mds/2015

&

C.O. Nos.10, 11 & 12/Mds/2016

निर्धारण वर्ष / Assessment Years : 2007-08, 2008-09 & 2009-10

The Deputy Commissioner of
Income Tax,
Central Circle,
No.3, Gandhi Road,
Salem – 7.

(Appellant)

v. M/s Green Field Shelters Pvt. Ltd.,
No.C-10(14/41), Perumal Koil Street,
Swarnapuri, Salem.

PAN : AACCG 6140 L / CCCG003

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Sh. P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri T. Vasudevan, Advocate

सुनवाई की तारीख/Date of Hearing : 24.02.2016

घोषणा की तारीख/Date of Pronouncement : 05.05.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the common order dated 18.08.2015, passed by the Commissioner of Income Tax (Appeals)-18, Chennai, for the assessment year 2007-08, 2008-09 and 2009-10. The assessee has also filed cross-objections against the very same common order. Therefore, we

heard all these appeals and cross-objections together and disposing of the same by this common order.

2. Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that there was a search in the case of Shri A.S. Aadhinarayanan on 29.01.2009. Several incriminating materials were found at the residence of Shri A.S. Aadhinarayanan. A simultaneous search was also conducted in the premises of the assessee on 29.01.2009. Assessment was framed on the basis of material found during the course of search operation in the case of Shri A.S. Aadhinarayanan and in the case of the assessee under Section 153C of the Income-tax Act, 1961 (in short 'the Act'). The assessment made in the hands of the assessee was deleted by the CIT(Appeals) on the ground that the brochure found at the residential premises of Shri A.S. Aadhinarayanan cannot be construed as incriminating material for the purpose of initiating proceeding under Section 153C of the Act. Accordingly, the addition made by the Assessing Officer for the assessment year 2008-09 was deleted by the CIT(Appeals). On appeal by the Revenue, this Tribunal by an order dated 16.10.2015, confirmed the order of the CIT(Appeals), holding that there cannot be any addition on the basis of so-called brochure, which was said to be found in

the premises of Shri A.S. Aadhinarayanan, since the same cannot be construed as incriminating material. The Assessing Officer after the order of the Tribunal, sought to reopen the assessment for the assessment year 2008-09. According to the Ld. D.R., the CIT(Appeals) found that the material available on record is only a brochure which was said to be found at the residence of Shri A.S. Aadhinarayanan. This was held to be not an incriminating material found during the course of search operation. Therefore, there cannot be any addition for the assessment year under consideration. However, according to the Ld. D.R., the Assessing Officer reopened the assessment for the year under consideration by issuing notice under Section 148 of the Act.

3. The Ld. Departmental Representative further submitted that in the assessment order, the Assessing Officer found that the assessee has received on-money of ₹26,00,000/- from the buyers for the assessment year 2008-09. By extending the same analogy for the assessment years 2008-09 and 2009-10, the Assessing Officer made addition in the reassessment proceedings. According to the Ld. D.R., since the material was found during the course of search operation, with regard to receipt of on-money, the Assessing

Officer has rightly reopened the assessment. The receipt of on-money was not the subject matter of examination in the regular assessment, therefore, according to the Ld. D.R., it is not a case of change of opinion. However, the CIT(Appeals) found that the assumption of jurisdiction by reopening the assessment under Section 147 of the Act is illegal. Accordingly, he deleted the addition made by the Assessing Officer. According to the Ld. D.R., the proceeding initiated under Section 153C of the Act may not be correct since the brochure found during the course of search operation was construed as not an incriminating material. The Assessing Officer, during the examination under Section 132(4) of the Act, found that the assessee has received on-money on sale of plot which was supported by the brochure found at the residence of Shri A.S. Aadhinarayanan. Therefore, according to the Ld. D.R., this material is very much available during the course of search operation. Since the income chargeable to tax escaped assessment, the notice under Section 148 of the Act was issued within four years from the end of the relevant assessment year. Therefore, the question of change of opinion does not arise. According to the Ld. D.R., it is a case of escapement of income which is otherwise assessable under the Income-tax Act.

Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in deleting the addition made by the Assessing Officer.

3. On the contrary, Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that the only document available on record is brochure which was found at the residence of Shri A.S. Aadhinarayanan. There is no other corroborative evidence available on record to suggest that the assessee has received on-money. According to the Ld. counsel, it is for the Assessing Officer to prove that the assessee has received on-money over and above the amount disclosed in the sale deed. Moreover, the assessee was not given any opportunity to cross-examine the so-called purchasers who said to have paid the on-money. The CIT(Appeals), after examining the relevant facts, found that there is no foundation for reopening assessment under Section 147 of the Act, accordingly, he deleted the addition made by the Assessing Officer for all the assessment years.

4. Referring to the cross-objections filed by the assessee, the Ld.counsel for the assessee submitted that the reopening of assessments without any fresh material on record would amount to change of opinion. The Ld.counsel further submitted that there is

no failure on the part of the assessee to disclose relevant material for completing the assessment. Therefore, according to the Ld. counsel, the issue of notice under Section 148 of the Act is not justified. The brochure seized at the premises of Shri A.S. Aadhinarayanan relates to only one purchaser, therefore, according to the Ld. counsel, extending the same to all the lands sold by the assessee would tantamount to change of opinion. Therefore, according to the Ld. counsel, reopening of assessments is bad in law. The Ld.counsel further pointed out that the Assessing Officer himself examined some of the purchasers of the land who confirmed that they have paid only the sale consideration which was disclosed in the sale deed. Therefore, the Assessing Officer reopened the assessments only on surmises and conjunctures. Therefore, according to the Ld. counsel, reopening of assessments was not justified.

5. We have considered the rival submissions on either side and perused the relevant material available on record. On the basis of search conducted under Section 132 of the Act at the residential premises of Shri A.S. Aadhinarayanan, the Assessing Officer completed the assessment in the case of the assessee under Section 153C of the Act. On the basis of the brochure found during

the course of search operation, block assessment made under Section 153C of the Act, was challenged before the CIT(Appeals) who set aside the addition made by the Assessing Officer on the ground that the so-called brochure cannot be construed as incriminating material for the assessment year 2008-09. When the matter travelled to this Tribunal, this Tribunal confirmed the order of the CIT(Appeals) holding that there was no incriminating material for making addition for on-money for the assessment year 2008-09 in the block period under Section 153C of the Act. Now the Assessing Officer has reopened the assessment by issuing notice under Section 148 for all the assessment years. The notice was issued within four years from the end of the relevant assessment year. The proviso to Section 147 would be applicable only in case the assessment was completed under Section 143(3) of the Act. The prohibition contained in the proviso to Section 147 of the Act is for reopening assessment after expiry of four years from the end of relevant assessment year. In the case before us, assessments for all the three assessment years were reopened within a period of four years. Therefore, this Tribunal is of the considered opinion that the proviso to Section 147 of the Act may not stand in the way of reopening assessments. Admittedly, during the course of search

operation, a brochure was found and a statement was also recorded. The brochure found by the Revenue authorities was held to be not an incriminating material. Therefore, the addition made by the Assessing Officer was deleted by the CIT(Appeals) which was confirmed by this Tribunal. Based upon the order of this Tribunal for the block assessment proceeding, confirming the order of the CIT(Appeals), the CIT(Appeals) found that there is no foundation for reopening assessment for the assessment years under consideration.

6. We have carefully gone through the Sections 147 and 148 of the Act. Section 147 clearly says that if the Assessing Officer has reason to believe that any income chargeable to tax escaped assessment for any of the assessment year, subject to provisions of Sections 147 and 148 of the Act, can assess or re-assess such income which escaped assessment. In this case, there is some evidence to indicate that the assessee has received on-money for the assessment year 2008-09. The same set of plots were sold during other years also. Therefore, the Assessing Officer believed that the income chargeable to tax escaped assessment. We have carefully gone through the reasons recorded by the Assessing Officer for reopening the assessment which is available at page 41

of the paper-book. The Assessing Officer stated in the reasons for reopening the assessment that one Shri A.B.S. Sanjay stated in his sworn statement that he paid an amount of ₹26,00,000/- as on-money to the assessee-company at the time of purchase of two plots at Yercaud in the assessment year 2008-09. A copy of the sworn statement recorded from Shri A.B.S. Sanjay has been filed by the Revenue which is available on record. The said Shri A.B.S. Sanjay clearly explained that the purchase value of the land was ₹16,84,750/- for two plots and stamp duty was paid separately. In response to question No.4, the said Shri A.B.S. Sanjay clarified that no payment was made apart from the document value. Therefore, no evidence is available on record to suggest that any on-money was received by the assessee even for assessment year 2008-09 from Shri A.B.S. Sanjay.

7. When no evidence is available for receipt of on-money during assessment year 2008-09, extending the analogy to other assessment years for re-assessment proceedings may not be justified. As rightly found by the CIT(Appeals), there is no base for the reasons to believe that the income otherwise chargeable to tax has escaped assessment. In the absence of any material to

suggest that the income chargeable to tax escaped assessment, this Tribunal is of the considered opinion that the Assessing Officer cannot believe that the income chargeable to tax escaped assessment. Since the statement recorded from Shri A.B.S. Sanjay does not indicate any receipt of on-money during assessment year 2008-09 and no material is available on record for assessment years 2007-08 and 2009-10, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that there is no justification in reopening the assessments. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. In the result, both, the appeals of the Revenue and the cross-objections of the assessee are dismissed.

Order pronounced on 5th May, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 5th May, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT-Central 2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.