

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" 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 No.1150/Mds/2015

निर्धारण वर्ष / Assessment Year : 2006-07

Shri A. Ravindran,
No.45, Bazaar Street,
Chinnasalem – 606 201.

v. The Assistant Commissioner of
Income Tax,
Villupuram Range,
Villupuram.

PAN : AAFPR 2006 L
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Venkatraman, ITP

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 29.10.2015

घोषणा की तारीख/Date of Pronouncement : 27.11.2015

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 12.03.2015 and pertains to assessment year 2006-07.

2. Shri R. Venkatraman, the Ld. representative for the assessee, submitted that the Assessing Officer reopened the

assessment beyond the period of four years even though there was no negligence on the part of the assessee in furnishing the particulars for completing the assessment. According to the Ld. representative, the assessee filed the return of income for the assessment year 2006-07 on 31.03.2006 admitting a total income of ₹3,94,460/- and agricultural income of ₹75,000/-. The assessment order was passed under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act') on 23.10.2009 determining the total income at ₹4,52,236/- and agricultural income at ₹75,000/-. Subsequently, the Assessing Officer by a notice under Section 148 of the Act dated 28.03.2013 reopened the assessment on the ground that the sale consideration received by the assessee to the extent of ₹96,75,000/- and the cash credit of ₹6,50,000/- were not offered to taxation. According to the Ld. representative, a copy of the notice issued by the Assessing Officer is available at page 7 of the paper-book. The Assessing Officer called for details during the course of assessment proceedings by way of a questionnaire, a copy of which is available at page 8 of the paper-book. Vide question No.11, the Assessing Officer called for the details with regard to ₹6,50,000/-, which was introduced as capital and the source therein and vide question No.14, the Assessing Officer called for details with regard

to ₹96,75,000/-, which was received as advance for sale of land at Chinnasalem.

3. Referring to paper-book, more particularly page 14, the Ld. representative for the assessee submitted that this is a copy of reply given by the assessee on 21.10.2009 in response to the questionnaire issued by the Assessing Officer. A copy of the agreement for sale of property is available at page 15 of the paper-book. With regard to ₹6,50,000/-, the assessee explained before the Assessing Officer that it is not a fresh capital introduced. It is only a contra of business accounts in the previous books of account. With regard to advance of ₹96,75,000/-, the Ld. representative submitted that the assessee explained in a letter dated 21.10.2009 that it is an advance received for sale of land at Chinnasalem, which was shown in the balance sheet as land account 4.64 acres, for which a copy of the advance receipt was also filed before the Assessing Officer. Hence the credit of ₹6,50,000/- and the advance receipt of ₹96,75,000/- were explained before the Assessing Officer in the course of assessment proceedings by way of letter dated 21.10.2009. Therefore, according to the Ld. representative, there was no negligence on the

part of the assessee in furnishing the details before the Assessing Officer. Since there was no negligence, according to the Ld. representative, the assessment cannot be reopened after expiry of four years from the end of the relevant assessment year.

4. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that admittedly the assessment was completed under Section 143(3) of the Act on 23.10.2009. Subsequently, it had come to the notice of the Assessing Officer that the assessee received a sum of ₹96,75,000/- on sale of the land and there was also cash credit to the extent of ₹6,50,000/- in the capital account. Therefore, the Assessing Officer reopened the assessment by issuing a notice under Section 148 of the Act on 28.03.2013. According to the Ld. D.R., the reply given by the assessee is very vague. Referring to the order of the CIT(Appeals), the Ld. D.R. pointed out that the assessee has also given a reply on 15.10.2009 in which the assessee had not properly explained the details called for. The balance sheet as on 31.03.2006 of proprietary concern of M/s Pasumark Tobacco Company did not contain any addition of ₹96,75,000/- as an advance from sale of land. The CIT(Appeals) has also called for books of account. The

balance sheet and the personal capital account as on 31.03.2006 submitted by the assessee before the Department was a questionable one. Therefore, the CIT(Appeals) has come to a conclusion that there was negligence on the part of the assessee to disclose fully and truly all the material facts for completing the assessment. Therefore, the CIT(Appeals) has rightly confirmed the reopening of the assessment. On a query from the Bench whether a copy of the letter written by the assessee on 21.10.2009, which is available at page 14 of the paper-book, was filed by the assessee, the Ld. D.R. after verifying the records of the Department, clarified that the copy of the letter dated 21.10.2009 is very much available on the record of the Department.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The original assessment under Section 143(3) of the Act was completed by an order under Section 143(3) of the Act on 23.10.2009. The assessment year under consideration is 2006-07. The four years period expired on 31.03.2010. Admittedly, the notice for reopening the assessment under Section 148 was issued on 28.03.2013 which is beyond the period of four years.

6. We have carefully gone through the provisions of Section 147 of the Act. The proviso to Section 147 clearly says that the assessment completed under Section 143(3) of the Act can be reopened after expiry of four years from the end of the relevant assessment year provided there was negligence on the part of the assessee in furnishing necessary particulars for completing the assessment. In this case, admittedly, the assessment was reopened after expiry of four years from the end of the relevant assessment year under consideration. Therefore, the assessment can be reopened only when there was negligence on the part of the assessee in furnishing necessary details for completing the assessment. Now let's examine whether there was any negligence on the part of the assessee in furnishing particulars for completing the assessment. The detailed questionnaire issued by the Assessing Officer to the assessee, a copy of which is available at page 8 of the paper-book, shows that the Assessing Officer called for details with regard to capital introduced to the extent of ₹6,50,000/- and the advance receipt to the extent of ₹96,75,000/- for sale of the land. The assessee filed reply on 15.10.2009 as well as on 21.10.2009. The CIT(Appeals), by referring to the letter of the

assessee dated 15.10.2009, observed that the reply given by the assessee is very vague, therefore, there was negligence on the part of the assessee in furnishing the required particulars. The CIT(Appeals) has not commented on the reply given by the assessee on 21.10.2009. The Ld. D.R. clarified that the assessee has also filed letter dated 21.10.2009 and a copy of the letter is available on the files of the Department. The assessment proceeding was completed originally on 23.10.2009. The assessee filed the letter on 21.10.2009. Therefore, it is obvious that the details with regard to advance receipt of ₹96,75,000/- and the capital to the extent of ₹6,50,000/- were very much available on the file of the Assessing Officer. In other words, the assessee has furnished the details with regard to the capital said to be introduced by the assessee to the extent of ₹6,50,000/- and the receipt of ₹96,75,000/- as advance for sale of land at Chinnasalem. The assessee has also filed a copy of the agreement dated 01.03.2006 before the Assessing Officer. In those factual situation, this Tribunal is of the considered opinion that the assessee has filed all the details before the Assessing Officer before completing the assessment. It is unfortunate that the CIT(Appeals) has not considered the letter of the assessee dated 21.10.2009, which was

filed before the Assessing Officer. The letter dated 21.10.2009 is very clear and the assessee has explained before the Assessing Officer with regard to so-called capital of ₹6,50,000/- and receipt of ₹96,75,000/-. In those factual situation, this Tribunal is of the considered opinion that there was no negligence on the part of the assessee in furnishing the required details for completing the assessment. Since there was no negligence on the part of the assessee, this Tribunal is of the considered opinion that reopening of the assessment beyond four years period from the end of the relevant assessment year is not justified. Accordingly, we are unable to uphold the orders of the lower authorities. The orders of the lower authorities are set aside and the reassessment is quashed.

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

Order pronounced on 27th November, 2015 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 27th November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Puducherry
4. आयकर आयुक्त/CIT, Puducherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.