

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA Nos. 1571 & 1572/Bang/2016
Assessment year : 2007-08

Smt. Parvathamma PAN: AKJPP 0454G Smt. Hemanalini C.H. PAN: AAKPH 3091E No. 3, 3 rd Cross, Gandhinagar, Bangalore – 560 009.	Vs.	The Income Tax Officer, W-5(2)(4), Bengaluru.
APPELLANTS		RESPONDENT

Appellants by	:	None
Respondent by	:	Shri A.R. V. Sreenivasan, JCIT(DR) (ITAT), Bengaluru.

Date of hearing	:	16.02.2017
Date of Pronouncement	:	23.02.2017

ORDER

Per A.K. Garodia, Accountant Member

Both these appeals are filed by two different assesseees which are directed against two separate orders of the CIT (Appeals)-5, Bengaluru, both dated 01/07/2016 for the assessment year 2007-08. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised in both the appeals are identical which read as under:-

“ITA No. 1571/Bang/2016

1. *The order of assessment made u/s. 143(3) r.w.sec. 147 is liable to be annulled as no notice u/s. 143(2) was issued.*
2. *The notice u/s. 148 has been issued by obtaining satisfaction of the Commissioner of Income (OSD), who is not a Joint Commissioner referred to in sec.151(2) and sec.2(28C).*
3. *The Assessing Officer having taken deemed value u/s.50C of the Act, at Rs. 56,96,000, it was not open to make separate addition of non-refundable deposit of Rs. 6,75,000 since it is subsumed in Rs. 56,96,000.*
4. *The Assessing Officer ought to have computed capital gain at Rs. Nil and not at Rs. 6,04,990 as under:-*

Computation of capital gain

Sl.No.	Particulars	As per Assessment order	As per Assessee
1.	<i>Consideration</i>	<i>59,96,000</i>	<i>17,80,000</i>
2.	<i>Non-refundable deposit</i>	<i>6,75,000</i>	<i>6,75,000</i>
3.	<i>Total</i>	<i>63,71,000</i>	<i>24,55,000,</i>
4.	<i>Cost of land 47,348 x 519/351</i>	<i>70,010</i>	<i>--</i>
5.	<i>Cost of land & residential house</i>	<i>--</i>	<i>8,46,920</i>
6.	<i>Long term capital gain</i>	<i>63,00,990</i>	<i>16,08,080</i>
7.	<i>Exemption u/s.54 (Sl.No. 1 above)</i>	<i>56,96,000</i>	<i>--</i>
8.	<i>Exemption u/s.54 (Sl.No. 1 above) – limited to</i>	<i>--</i>	<i>16,08,080</i>
	<i>Long term capital gain</i>	<i>6,04,990</i>	<i>Nil</i>

5. *The appellant is entitled to the cost of this appeal in accordance with sec.254 (2B) of the Income-tax Act, 1961.*

6. Each of the above grounds of appeal are independent and without prejudice to each other.”

3. None appeared on behalf of the assessee at the time of hearing of the appeals. However, the assesses have filed a letter requesting for adjudication of the appeals on the basis of written submissions. Accordingly, the revenue was heard and the written submissions filed by the assesses have been taken into consideration. It is submitted by the assesseees that in both cases, notice was issued by the AO u/s. 148 of the Income-tax Act, 1961 [“the Act”] and in reply thereto, letter was filed by the assessee before the AO requesting the AO to treat the return already filed by the assessee as a return filed in response to notice u/s 148 of the Act. It is further submitted that after this, the AO had not issued any notice u/s. 143(2) of the Act in any of these two cases and passed the assessment order u/s 143(3) r.w.s. 147 of the Act on 31/03/2015. Reliance is placed on the judgment of Hon’ble Madras High Court rendered in the case of *CIT V. Alstom T & D India Ltd., 45 taxmann.com 424 (Mad)*. A copy of this judgment is also filed and is available on record wherein it was held by the Hon’ble Madras High Court in this case that when assessee has requested the AO to treat the return already filed as one in response to sec. 148 proceedings, further proceedings regarding compliance of the procedure u/s. 143(2) is mandatory in nature and if no notice was issued u/s. 143(2) of the Act, the assessment order framed by the AO u/s. 143(3) r.w.s. 147 is not valid. It is submitted that this judgment of Hon’ble Madras High Court is squarely applicable in the present cases.

4. The Id. DR of revenue supported the orders of authorities below.
5. I have considered the rival submissions. I find that there is no dispute on the facts that no notice was issued by the AO u/s. 143(2) of the Act and without issuing such notice, the assessment order was framed by the AO in both these cases u/s. 143(3) r.w.s. 147 of the Act. As per the judgment of Hon'ble Madras High Court rendered in the case of *CIT V. Alstom T & D India Ltd. (supra)*, it was held by the Hon'ble Madras High Court that passing of assessment order u/s 143(3) r.w.s. 147 without issuing notice u/s. 143(2) is not valid. Respectfully following this judgment of Hon'ble Madras High Court, I hold that the assessment order passed by the AO u/s. 143(3) r.w.s. 147 without issuing mandatory notice u/s. 143(2) is not valid and therefore, the same is quashed in both these cases. After holding so, no adjudication is called for regarding merits of various additions made by the AO and confirmed by the Id. CIT (Appeals).
6. In the result, both the appeals of the assesseees are allowed.

Pronounced in the open court on this 23rd day of February, 2017.

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd February, 2017.

/ DS / MS /

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.