

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, CHENNAI**

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.2278/Mds/2015

निर्धारण वर्ष /Assessment year : 2009-2010.

S. Pavan Kumar,  
Plot No. 1838, I Block,  
20<sup>th</sup> Street, Anna Nagar,  
Chennai 600 040.

**Vs.** The Income Tax Officer,  
Business Ward XIV(3),  
Chennai.

**[PAN AAGPP 9533P]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Department by : Shri. T. Banusekar, C.A.  
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriyo Pal, JCIT.

सुनवाई की तारीख/Date of Hearing : 06-07-2016  
घोषणा की तारीख /Date of Pronouncement : 18-08-2016

**आदेश / O R D E R**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-7, Chennai in ITA No.20/CIT(A)-7/2014-15, dated 28.10.2015 for the assessment year 2009-2010 passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised two substantive grounds (i) the Id. Commissioner of Income Tax (Appeals) erred in confirming the reopening of assessment by Id. Assessing Officer as valid and irrespective of fact of change of opinion and the material was already considered in original assessment u/s.143(3) of the Act (ii) The Id. Commissioner of Income Tax (Appeals) erred in confirming the addition of ₹91,80,000/- on sale of rural agricultural land as the same is in the nature of agricultural land but the Id. Assessing Officer has assessed it under the income from other sources.

3. The Brief facts of the case are that the assessee is an individual and filed Return of income on 30.09.2009 disclosing total income of ₹2,52,549/- and agricultural income of ₹1,69,280/- and the case was selected for scrutiny and the assessment order u/s.143(3) of the Act was passed on 19.12.2011. Subsequently, the Id. Assessing Officer had reasons to believe that income has escaped assessment has issued notice u/s.148 of the Act. In compliance the Id. Authorised Representative of assessee appeared and filed submissions and also filed a letter dated 09.04.2014 to treat original return filed in response to notice u/s.148 of the Act and requested reasons for reopening of assessment and the same was communicated to the assessee on 03.09.2014 as under:-

*"As per office records the assessee received an amount of ₹91,80,000/- received towards settlement through*

*Cheque dated 27.06.2008 (Axis Bank Ltd) vide a rehabilitation and settlement agreement. This has not been included as income by the assessee. Hence, I have reason to believe that income chargeable to tax has escaped assessment for the assessment year 2009-2010".*

The Id. Authorised Representative filed letter dated 22.09.2014 questioning the legality of the notice and objecting to the re-assessment proceedings and reopening is bad in law as no fresh tangible material is available and the issue of notice by the Id. Assessing Officer is based on change of opinion. The assessee has admitted a sum of ₹91.80 lakhs in the Income Tax Return as per rehabilitation and settlement agreement in connection with transfer of agricultural land. The Id. Assessing Officer disposed off the objections raised by the assessee through a separate order and relied on the judicial decisions referred at page 3 of his order and dismissed the objections raised by the assessee and explaining that the reopening of assessment is not based on change of opinion but on material facts. The reopening is solely based on the facts that the assessee has sold agricultural land as per registered sale deed for a consideration of ₹48.60 lakhs and the purchaser has paid stamp duty based on purchase consideration. The Id. Authorised Representative filed a letter dated 21.10.2014 explaining that the assessee has received ₹91.80 lakhs in connection with sale of agricultural land only and the schedule of property is same as conveyed by way of sale deed referred in

rehabilitation and settlement agreement. The Id. Assessing Officer verified the clauses of rehabilitation and settlement agreement and also judicial decisions relied by the assessee on treatment of sale of agricultural land where the sale deed was executed for transfer of property for a consideration of ₹48.60 lakhs. The Id. Assessing Officer presumed that the amount paid by the developer through rehabilitation and settlement agreement is not in connection with transfer of property and concluded as independent receipt and charged to Income Tax under income from other sources and passed order u/s.143(3) r.w.s. 147 dated 27.10.2014. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the Id. Authorised Representative argued the grounds. The first ground being validity of re-assessment is bad in law based on mere change of opinion. The Id. Authorised Representative challenged the re-assessment proceedings and filed written submissions and judicial decisions on 26.10.2015 referred at para 5.1 at page 3 & 4 of his order as under:-

- a) *That the Assessing Officer has merely stated that the reason for reopening due to amount of Rs.91,80,000/- received towards settlement vide rehabilitation and settlement agreement which has not been included in 'income' and has not identified any 'specific reason' to believe that income has escaped assessment.*
- b) *That the reopening is bad in law as according to the appellant, the AO was fully aware that an amount of ₹91,80,000/- was received by the appellant as rehabilitation and settlement*

*compensation. Hence the AO had based his reasons on the very material which was available at the time of original assessment.*

- c) That the reassessment, in the absence of fresh tangible material, is merely a change of opinion, and any reassessment on such change of opinion is bad in law.*
- d) That the assessment order was passed in haste. It has been submitted that the order disposing off the objections of the appellant in re- opening the case was passed by the AO on 13.10.2014, and the reassessment order was passed on 27.10.2014, which is less than a period of four week”.*

The Id. Commissioner of Income Tax (Appeals) considered the grounds and submissions and distinguished judicial decisions and relied on the various orders of the Court and confirmed that re-assessment proceedings are valid and dismissed the ground of the assessee.

4.1 On the next ground, the Id. Authorised Representative explained that the assessee has executed sale deed in respect of agricultural land of 1 acre 9 cents at Oonamanchery Village, Chengalpattu Taluk, Kancheepuram Dist for ₹48,60,000/- and also rehabilitation and settlement agreement was entered on 30.06.2008 and the Id. Commissioner of Income Tax (Appeals) referred to the clause at page 2 of the agreement in his order at page 10 as under:-

- a) The vendor has conveyed the Schedule mentioned property to the purchaser by a separate Sale deed for separate consideration.*
- b) The vendor has requested the purchaser to make payment of resettlement and rehabilitation compensation and taking into*

*consideration the facts and circumstances, the purchaser has agreed to the same.*

**NOW THIS AGREEMENT WITNESS THAT**

- 1) *The Purchaser has this day paid a sum of Rs.91,80,000/- to the vendor by way of cheque bearing No.129709 dated 27.06.2008 drawn on Axis Bank Ltd., Velachery Branch, Chennai as resettlement compensation the receipt of which by transfer of funds into the account of the vendor to be withdrawn by the vendor, the vendor hereby admits and acknowledges and further confirms the full and final settlement of all types of compensation and payments, howsoever, due to the vendor from the Purchaser towards resettlement and rehabilitation.*
- 2) *The vendor confirms and declares that any person may act on the basis of this agreement”.*

and considered the findings of the Id. Assessing Officer and rehabilitation and settlement agreement and there is no binding clause of sale document to enter into separate agreements for payment of additional amount ₹91,80,000/-. The Id. Commissioner of Income Tax (Appeals) found from the submissions of the assessee that the rehabilitation and settlement agreement in respect of sale deed clearly mention the land to be transferred and also the reference of sale deed was made in for transfer of land. The point of dispute arises were the assessee claims amount of ₹91,80,000/- on the same footing as sale of agricultural land and the agricultural land is not be treated as capital asset. The Id. Assessing Officer considered the sale deed in respect of agricultural land executed on 09.07.2008 and accepts that there is sale of land which is not

disputed but the contention of the Id. Assessing Officer was that there is no mention of payment of ₹91,80,000/- whereas the rehabilitation and settlement agreement was executed on 30.06.2008 and sale deed was executed after nine days on 09.07.2008. The fact that the assessee has not disclosed this amount in the sale deed. The Id. Commissioner of Income Tax (Appeals) analyzed the rehabilitation and settlement agreement executed on 30.06.2008 and came to a conclusion that the agreement does not specify about the payment of ₹91.80 lakhs is part of the total consideration of impugned agricultural land and these payments are not disclosed in registered sale deed for the reasons known to the assessee. Therefore, the Id. Commissioner of Income Tax (Appeals) is of the opinion that the agricultural land sold as per sale deed for ₹48,60,000/- as per the Sub-Registrar office and additional ₹91,80,000/- as per the rehabilitation and settlement agreement cannot fit into the transaction of sale of agricultural land and concurred with the findings of the Id. Assessing Officer and dismissed the appeal of the assessee. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before the Tribunal.

**5.** Before us, the Id. Authorised Representative of assessee reiterated the submissions made in the appellate proceedings alongwith documentary evidence in support of the grounds. The Id. Authorised

Representative argued on the validity of re-assessment proceedings that in the original proceedings, the Id. Assessing Officer has verified the transactions and no new material were found, to issue notice u/s.148 of the Act was only a mere change of opinion as there is no income escaping assessment. The additional payment of ₹91.80 lakhs is in respect of agricultural land as per rehabilitation and settlement agreement which is not disputed but only the character and nature of payments and also filed judicial cases to support his grounds that the assessment is only on change of opinion based on the information on record.

5.1 On the aspect of second ground, the Id. Authorised Representative argued that the transaction was for the same property though rehabilitation and settlement agreement and assessee has disclosed the fact in his computation of income filed with Income Tax Department and also filed paper book in support of agricultural land and prayed for allowing the appeal.

**6.** Contra, the Id. Departmental Representative relied on the order of Commissioner of Income Tax (Appeals) and vehemently opposed to the grounds.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative argued on the validity and legal implication of reassessment proceedings as bad and there is no valid reasons and no intangible material was available on record for issuing notice u/s.148 of the Act as it is only a mere change of opinion on the same set of facts which was considered in the original assessment. We perused the paper book at page 15 & 16 where the order u/s.143(3) of the Act was passed dated 19.12.2011, the then Id. Assessing Officer has passed two page order and there is no specific mention in the order but the Id. Assessing Officer has made a finding that documentary evidence produced were perused and returned, further the AIR information available in the system was verified. The fact that the Id. Assessing Officer has not made any satisfactory note in his order with respect of sale of agricultural land even though agricultural income is accepted. So, prime facie on perusal of the assessment order there is no iota of discussion on the facts on sale of agricultural land and rehabilitation and settlement agreement. The Id. Assessing Officer has issued notice u/s.148 of the Act within a period of four years. As per the information the assessee has not disclosed ₹91,80,000/- received by cheque as per rehabilitation and settlement agreement. The Id. Assessing Officer provided the reasons on the request of the assessee and considered the objections challenging the reopening and the Id. Assessing

Officer passed a separate order on reopening of assessment proceedings considering the information and reasons for reopening of assessment, objections of the assessee treated that the reopening of assessment as valid. The Id. Authorised Representative drew our attention to the computation statement where the sale of rural agricultural land is mentioned. Prime facie, the present Id. Assessing Officer has relied on the records that the predecessor has not verified the details and believe that there is income escaped assessment. We are of the opinion that the assessment order passed u/s.143(3) of the Act and the notice u/sec. 148 of the Act and the objections and order passed by the Assessing Authority on reopening, the Id. Assessing Officer in original assessment has not seen or verified this aspect and passed the order on 19.02.2011 u/s.143(3) of the Act, therefore we are inclined to uphold the order of Commissioner of Income Tax (Appeals) on the validity of re-assessment proceedings and dismiss the assessee's ground.

7.1 On the next ground where the Id. Assessing Officer treated the amount of ₹91,80,000/- received towards sale of agricultural land as income from other sources. The Id. Authorised Representative reiterated the contentions made before the Id. Commissioner of Income Tax (Appeals) that the assessee has entered into an agreement with builder on 30.06.2008 referred at page 13 & 14 of paper book. As per the

agreement, the purchaser has made payment of ₹91,80,000/- by cheque as resettlement compensation and also to deal with specific action that the vendor shall convey the property by separate sale deed. The Id. Authorised Representative drew our attention to page 6 of paper book where the sale deed is executed in respect of the same property referred in rehabilitation settlement deed and the market value of property is ₹48,60,000/- in respect of agricultural land. In the assessment proceedings, the Id. Assessing Officer accepts the amount of ₹48,60,000/- paid to the assessee by the purchaser is towards agricultural land conveyed the position by registered sale deed dated 09.07.2008. But the amount credited to the assessee's Bank account ₹91,80,000/- was received by unregistered rehabilitation settlement agreement where the schedule of land mentioned in sale deed and the rehabilitation agreement are same but Id. Assessing Officer took different view that it is not part and parcel of agricultural land but a separate independent receipt and treated as income from other sources. The Id. Authorised Representative drew our attention to the acknowledgment of return of income, computation of income and statement of sale of rural agricultural land at page 2 to 5 and argues that this information was filed with the Department and Id. Assessing Officer has complete knowledge and these facts are challenged in re-assessment proceedings. We find the Return of income filed electronically by the assessee as per page 2 of paper book on

30.09.2009. But the computation of statement of total income and statement of sale of rural agricultural land are not print out of Income Tax Department website which is relied by the assessee except on the dispute of disclosures but there is no ambiguity on sale of agricultural land by the Revenue. The action of the assessee is not disclosing the said disputed amount as per rehabilitation agreement in sale deed may be to avoid stamp duty were as the sale deed was registered on a market value of ₹48,60,000/-. This payment was in addition to the sale consideration received as per sale deed. Prime facie there is no dispute with respect of character of agricultural land though it has received in two segments. We take support from the decision of *CIT vs. Intezar Ali 372 ITR 0651* (All) it was held as under:-

*“Assessee as honest citizen not only made complaint to registering authority that sale deed had been registered at value much below amount, which he had actually received, he deposited entire amount in bank and voluntarily filed return. There was no material whatsoever or any circumstance, which could have suggested that such amount was received by him from any other source. Deposition of witness of sale deed, Bank Manager and evidence filed with regard to valuation of property was more than sufficient to discharge burden, which AO had unreasonably placed on assessee. AO in disbelieving evidence had not given any reasons whatsoever to discard statement of witnesses, deposit of entire sale consideration in bank and deposition of Bank Manager. Assessee had not only deposited entire amount in bank but also informed registering authority of deficiency of stamp in sale deed. In case of One of purchaser, Assessing Officer had accepted that he was owner of the money i.e. ₹97,80,000/- and accordingly addition of ₹77,80,000/- was*

*made in his hand on substantial basis as his income. Revenue's appeal dismissed".*

So, considering the apparent facts, material evidence, judicial decisions whether these fact are disclosed before Id. Assessing Officer in the original return filed electronically. We direct the Id. Assessing Officer to verify from the Income Tax website whether this amount was disclosed in electronic return ITR III filed on 30.09.2009 and after satisfying the Id. Assessing Officer shall examine the characteristic of agricultural land from the purchaser and allow the claim of the assessee by treating the transaction as sale of agricultural land and the assessee shall be provided with adequate opportunity of hearing before passing the order on merits.

**8.** In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Thursday, the 18<sup>th</sup> day of August, 2016 at Chennai.

sd/-

**(ए. मोहन अलंकामणी)**

**(A. MOHAN ALANKAMONY)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

sd/-

**(जी. पवन कुमार)**

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य /JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 18<sup>th</sup> August, 2016.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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