

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **3414/CHNY/2016**
निर्धारण वर्ष / Assessment Year: 2008-09

Shri S.A. Bhimaraja,
Flat No.A-1,
Whispering Heights,
130, St. Mary's Road,
Alwarpet,
Chennai – 600 018.

The Income Tax Officer,
v. Non-Corporate Ward 16(2),
Chennai – 34.

PAN: AEFPB5660J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Banusekar, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 16.07.2021
घोषणा की तारीख/Date of Pronouncement : 23.07.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-4, Chennai, dated 27.09.2016 and pertains to assessment year 2008-09.

2. The assessee has raised the following grounds of appeal:-

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case to the extent prejudicial to the interest of the assessee and is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the reassessment was bad in law.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment was not completed as per the directions of the Hon'ble Income Tax Appellate Tribunal.
5. For that the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.4,36,59,000/- as business income on sale of land.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the impugned land was agricultural land within the meaning given in the exclusion under section 2(14)(a) of the Income Tax Act.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant is not in the business of buying and selling of lands and that the appellant has bought lands only for investment purposes.
8. For that the Commissioner of Income Tax (Appeals) erred in concluding the purchase and sale of the land as business activity and the resultant gain as business profits in the hands of the appellant.
9. For that the Commissioner of Income Tax (Appeals) failed to appreciate the facts and circumstances under which the impugned land was sold by the appellant.
10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer has not considered the report of the inspector.
11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the land is treated as agricultural land in revenue records and that agricultural activity was carried on until the sale of land.
12. For that the Commissioner of Income Tax (Appeals) failed to appreciate the circumstances under which the impugned land was purchased from 100 people.

3. The assessee had filed a petition for admission of additional grounds that there was a failure to raise these grounds due to inadvertence. The relevant additional grounds raised by the assessee are as under:-

“Additional Ground of Appeal

Ground No.3

For that the Commissioner of Income Tax (Appeals) failed to appreciate that the reassessment was bad in law.

Ground No.4

For that the Commissioner of Income Tax (Appeals) failed to appreciate that where the reason for reopening fails, the reopening fails.”

4. The Id.AR for the assessee at the time of hearing submitted that the assessee has raised additional grounds and said grounds are purely legal in nature and facts related to said grounds were already on record and hence, the additional grounds filed by the assessee may be admitted to decide the issue in accordance with law. In this regard, he relied upon the decision of the Hon’ble Supreme Court in the case of M/s.National Thermal Power Co. Ltd. vs. CIT, [1998] 229 ITR 383 and the decision of the Hon’ble High Court of Madras in the case of CIT vs. M/s. Indian Bank, [2015] 55 taxmann.com 372.

5. The Id.DR on the other hand strongly opposing additional grounds filed by the assessee submitted that the assessee has failed to prove with necessary evidence that facts with regard to additional grounds raised were already on record at the time of assessment proceedings and hence, there is no merit in arguments of the assessee that additional grounds can be raised at any time. In this regard, he relied upon para 31 of the decision of the ITAT, Chennai Bench in the case of PVP Ventures Ltd., vs. ACIT [2015] 94 CCH 0147.

6. We have heard both the parties and perused petition for admission of additional ground. It is a well settled principle of law by the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., vs. CIT, *supra*, that the Tribunal has jurisdiction to examine the question of law which arise from the facts as found by the authorities below and having bearing on the tax liability of the assessee, notwithstanding the fact that the same was not raised before lower authorities. In the case of M/s. Jute Corporation of India Ltd., vs. CIT, [1990] 88 CTR 66 (SC), the Hon'ble Supreme Court held that there is no reason to justify curtailment of the

powers of the AAC in entertaining additional grounds raised by the assessee in seeking modification of the order of assessment passed by the AO. The Hon'ble Jurisdictional High Court in the case of CIT vs. M/s. Indian Bank, [2015] 55 taxmann.com 372, considered an identical issue and held that the assessee has right to raise additional grounds before Tribunal and if the same is beneficial to the assessee, same should be considered by the Tribunal. Insofar as arguments of the Id.DR that the assessee has not taken this legal ground challenging validity of assessment in first round of litigation, we find that the ITAT, Chennai Bench in the case of M/s. Hemal Knitting Industries v. ACIT, [2010] 127 ITD 160 held that as long as the issue had not reached finality whether it in the second or third round, it is always open to question or challenge in any judicial proceedings, the legality of the assessment order passed by the assessing authority. The sum and substance of ratios laid down by various courts are that the assessee can take legal ground by way of additional grounds, provided the fact with regard to said legal ground were already on record before the assessing authority. In this case, the assessee has taken up additional grounds challenging validity of reassessment

proceedings in light of certain judicial precedents on the ground that when reasons recorded for reopening of assessment fails, any other additions made during reassessment proceedings is also fails. The fact with regard to said legal ground is the reasons recorded by the AO for reopening of assessment, which was very much already on record before the AO at the time of framing assessment. Therefore, we are of the considered view that the case of the assessee is squarely covered by the decision of the Hon'ble Supreme Court in the case of M/s. National Thermal Power Co. Ltd. vs. CIT, *supra*, and hence, we deem it appropriate to admit additional grounds of appeal filed by the assessee and hence, we admit additional grounds to decide the issue on merits.

7. The brief facts of the case are that the assessee is an individual and was deriving income from salary and other sources, filed his return of income for the assessment year 2008-09 declaring total income of Rs.84,76,770/-. During the year under consideration, the assessee has sold certain lands at Padur giving rise to capital gains. The case has been subsequently reopened u/s.147 of the Income Tax Act, 1961

(hereinafter the 'Act') on the ground that income chargeable to tax had been escaped assessment for the reasons recorded, as per which the assessee had lent a sum of Rs.2.5 crores to his wife Smt. Sulochana for purchase of agricultural land. Since, the assessee has not admitted loan transactions and interest thereon, the AO had reason to believe that income chargeable to tax had been escaped assessment within the meaning of section 147 of the Act and hence, notice u/s.148 of the Act was issued. The assessment for the impugned assessment has been completed u/s.143(3) r.w.s. 147 of the Act on 30.12.2011 and determined total income of Rs.5,36,23,782/- by assessing profit arising out of sale of lands at Padur as 'income from business' as against admission of the assessee under the head 'income from capital gains'. The assessee preferred an appeal before the first appellate authority, who vide his order dated 22.11.2012 deleted addition made by the AO on sale of land. The Revenue has preferred further appeal against order of the CIT(A) before the ITAT. The ITAT, Chennai vide its order dated 30.08.2013 in ITA No.408/Mds/2013 has set aside the appeal to the file of the AO and directed him to re-examine the issue whether lands sold by

the assessee are agricultural lands and the same are used for agricultural activities or stock-in-trade purchased for the purpose of buying and selling property, the income from which is assessable under the head 'income from business'.

8. Pursuant to the directions of the Tribunal, the AO has taken up assessment and has completed assessment u/s.143(3) r.w.s. 147 r.w.s. 254 of the Act, and has assessed profit derived from sale of agricultural land under the head 'income from business or profession' by holding that the assessee has not carried out any agricultural activity on the land purchased but was involved in systematic activity of buying and selling of lands which is in the nature of adventure in the nature of trade and commerce and thus, income from sale of land is assessable under the head 'income from business or profession'. The assessee carried the matter in appeal before the first appellate authority but could not succeed. The Id.CIT(A) for the detailed reasons recorded in his appellate order dated 27.09.2016 confirmed findings of the AO in assessing income derived from sale of land under the head

'income from business or profession'. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

9. The Id.AR for the assessee referring to additional grounds of appeal filed before the Tribunal submitted that reassessment order passed by the AO is bad in law and liable to be set aside because the reasons for reopening of assessment u/s.147 of the Act has failed and thus, additions made by the AO to any other income which comes to his knowledge during reassessment proceedings cannot survive under the law. The Id.AR for the assessee referring to reasons recorded for reopening of assessment, which is part of paperbook filed by the assessee submitted that as per reasons recorded by the AO, the assessment has been reopened to tax escapement of income on account of non-disclosure of loan given by the assessee to his wife Smt. Sulochana for purchase of agricultural land, whereas if you go through the reassessment order passed by the AO, it is very clear that the AO has not made any additions towards loan transactions referred to in reasons recorded for reopening of assessment, but has made additions towards income deriving from sale of lands under the

head 'income from business' as against income admitted by the assessee under the head 'income from capital gains'. From the above, it is very clear that the reason recorded for reopening of assessment fails and thus, once reasons for reopening of assessment fails, the AO has no jurisdiction to make additions towards any other income which comes to his knowledge during reassessment proceedings. In this regard, he has relied upon plethora of judicial precedents including decision of the Hon'ble High Court of Madras in the case of M/s. Martech Peripherals Pvt. Ltd. vs. DCIT, [2017] 394 ITR 733. The case laws relied upon by the assessee are as under:-

- 1) CIT v Dr. Devendra Gupta [2008] 220 CTR 629 (Raj)
- 2) CIT v Shri Ram Singh [2008] 306 ITR 343 (Raj)
- 3) CIT v Jet Airways (I) Ltd [2011] 331 ITR 236 (Bom)
- 4) Ranbaxy Laboratories Ltd v CIT [2011] 336 ITR 136 (Del)
- 5) CIT v Mohmed Juned Dadani [2013] 355 ITR 172
- 6) Oriental Bank of Commerce v AdCIT [2014] 90 CCH 27 Del High Court
- 7) PVP Ventures Limited v ACIT [2015] 94 CCH 0147 (Chennai HC)

10. The Id.DR on the other hand strongly opposing additional grounds filed by the assessee challenging validity of reopening of assessment submitted that there is no merit in arguments advanced by the Id.AR for the assessee, because once assessment has been reopened, the AO has jurisdiction to

assess / re-assess total income including income which is escaped from tax and hence, the AO has power to assess any other income which is escaped from tax and further which has come to his knowledge during the course of reassessment proceedings. The Id.DR referring to para 31 of the decision of the Hon'ble High Court of Madras in the case of PVT Ventures Limited v ACIT [2015] 94 CCH 147 submitted that the moment AO has gained entry lawfully through the first check-post, the proceedings for reassessment begin. In the course of those proceedings, if issues other than those which triggered the formation of his opinion u/s.147 of the Act, come to his notice, he would be permitted, by virtue of Explanation 3, to gain entry into all other check-posts located within the prohibited area. The Id.DR further clarified the issue and argued that once assessment has been lawfully reopened, the AO is empowered to assess the escaped income which is subject matter of the formation of his opinion u/s.147 of the Act and also any other income escaped assessment which comes to his knowledge during the course of reassessment proceedings. In this case, although the reason for formation of belief of escapement of income is something else, but the AO has

deducted escapement of income on other ground, which could be done in reassessment proceedings and hence, there is no merit in the arguments of the Id.AR for the assessee that once reasons fails, additions made on other grounds also fails.

11. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Section 147 of the Act, deals with reassessment of income escaped assessment from tax. The basis for reopening of assessment is formation of belief by the AO and such belief should be recorded in writing. The crux of section 147 of the Act is escapement of income which may be assessed or reassessed as well as any other income chargeable to tax which had escaped assessment and which comes to the notice of the AO subsequently in the course of proceedings under the section. Similarly, Explanation 3 to section 147 of the Act, makes it clear that the AO may assess or reassess the income in respect of issue which has escaped assessment, if such issue comes to his notice in the course of proceedings under this section even though said issue did not find mention in the reasons recorded and the notice issued u/s.148 of the

Act. In this case, the AO has assessed income escaped from tax, which is different from income escaped from tax for formation of belief of escapement of income, as per reasons recorded for reopening of assessment.

12. The issue, whether the AO can limit his powers to assess income which is escaped from tax on the basis of reasons recorded for reopening of assessment or he could further proceed to any other income which is escaped from tax and which has subsequently come to his knowledge during the course of reassessment proceedings or not, has been examined and answered by various courts, including the Jurisdictional High Court of Madras. The Hon'ble High Court of Rajasthan in the case of CIT v. Shri Ram Singh, [2008] 306 ITR 343 had held that once the AO came to the conclusion that income with respect to which he had entertained 'reason to believe' to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of reassessment proceedings, which were found by him, to have escaped

assessment. The Hon'ble High Court of Bombay in the case of CIT v. Jet Airways (I) Ltd., [2011] 331 ITR 236 had considered an identical issue and after considering various decisions, including decision of Hon'ble High Court of Rajasthan in the case of CIT vs. Shri Ram Singh, *supra*, held that AO may assess or reassess the income in respect of any issue which come to his notice, subsequently in the course of the proceedings though the reasons for such issue were not included in the notice, however, after issuing a notice u/s.148, the AO accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has a matter of fact not escaped assessment, it is not open to him independently to assess some other income. The Hon'ble High Court of Delhi in the case of Ranbaxy Laboratories Ltd v. CIT, [2011] 336 ITR 136 had taken similar view and held that AO had jurisdiction to assess or reassess income other than the income in respect of which proceedings u/.147 were initiated, but he was not justified in doing so when the very reasons for initiation of those proceedings ceased to survive, legislature could not be presumed to have intended to give blanket powers to the AO

that on assuming jurisdiction u/s.147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. The Hon'ble High Court of Delhi in the said case has considered Explanation 3 inserted in section 147 and after considering said Explanation has held that for every new issue coming before AO during the course of proceeding of assessment or reassessment of escapement of income and which he intends to take into account, he would be required to issue a fresh notice u/s.148 of the Act. The Hon'ble Jurisdictional High Court of Madras in the case of Martech Peripherals Pvt. Ltd. v. DCIT, [2017] 394 ITR 733 had considered an identical issue and by following the decision of the Hon'ble High Court of Bombay in the case of CIT v. Jet Airways, *supra*, held that purported income discovered subsequently during the course of reassessment proceedings, can be brought to tax, if the escaped income, which caused, in the first instance, the issuance of notice u/s 148 of the Act, is assessed to tax. The Hon'ble High Court of Madras in yet another case of PVP Ventures Ltd v. ACIT, [2015] 94 CCH 147

after considering Explanation 3 to section 147 of the Act had held that Explanation 3 comes into play only after the AO gains entry through the first door. If the AO is imagined to be an air passenger, travelling by flight to another destination, his reason to believe, his recording of reasons and the issuance of notice can be compared to a valid ticket that he holds. Only if he holds such a valid ticket, he will be permitted entry into the airport. After gaining entry into the airport, he may also be permitted to visit restaurants, duty-free shops etc., before boarding the flight. His access to the facilities inside the airport is dependent upon his right of entry into the airport. This is how sub-sections (1) and (2) of section 148 and Explanation 3 to section 147 have to be understood. The sum and substance of ratio laid by various High Courts are that unless the AO succeeds in taxing income escaped assessment which is basis for reasons for reopening of assessment, then he cannot tax any other income which escaped from tax and which came to his knowledge subsequently during course of reassessment proceedings.

13. In this case, on perusal of facts available on record, it is abundantly clear that the AO has formed reasonable basis of escapement of income for taxing income escaped assessment on account of non-disclosure of money lent by the assessee to his wife for purchase of agricultural lands. However, in the reassessment proceedings, the AO has accepted the explanation of the assessee regarding money lent by the assessee to his wife and has not made any addition, but he has made addition towards profit deriving from sale of lands under the head 'income from business or profession' as against income declared by the assessee under the head 'income from capital gains' but said addition is not part of reasons recorded for reopening of assessment. Therefore, we are of the considered view that the reasons for reopening of assessment is fails and hence, the AO is not permitted to assess any other income which has escaped from tax and come to his knowledge subsequently during the course of reassessment proceedings. Therefore, we quash reassessment order passed by the AO.

14. The assessee has raised other grounds challenging additions made by the AO towards income derived from sale of

lands under the head 'income from business'. Since, we have quashed reassessment order passed by the AO, other grounds taken by the assessee challenging additions made by the AO towards profit derived from sale of land becomes infructuous and hence, other grounds taken by the assessee are dismissed as infructuous.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 23rd July, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd July, 2021

RSR

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. |