

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **3096/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2006-07

Ramdoss Ramvijay Kumar,
No. 3/227, Balram Reddy Colony, v.
Parthasarathy Nagar,
Manapakkam,
Chennai – 600 016.

Income Tax Officer,
Non-Corporate Ward -14(5),
Chennai.

[PAN:AAEPV-5363-K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. K. Vishva Padmanabhan, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.02.2023

घोषणा की तारीख/Date of Pronouncement

: 15.02.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-14, Chennai, dated 04.06.2019 and pertains to assessment year 2006-07.

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 reopening was bad in law

3. For that the reassessment was barred by limitation

4. For that the reassessment was made without complying with the statutory requirements of law.

5. For that the reopening was made on the basis of a mere change of opinion

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in completing the assessment u/s.144

7. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.13,49,975/- as long term capital gains

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer did not allow the indexed cost of acquisition in arriving at the long term capital gains.

9. For that the relinquishment of property was made by the appellant in favour of Smt. R. Umadevi, since the said property was sold to the appellant by a seller who did not hold proper title of the property.

10. For that there would not arise any capital gain on relinquishment of the property since there was no proper title that was in possession of the appellant for the said property.

11. For that the Commissioner of Income Tax (Appeals) ought to have referred the matter to the Valuation Officer u/s.50C(2)

12. For that the appellant objects to the levy of interest under sections 234B and 234C."

3. The brief facts of the case are that, the assessee is an individual filed his return of income for the assessment year 2006-07 on 19.10.2006, admitting total income of Rs. 1,84,740/-. The case has been subsequently re-opened u/s. 147 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the reasons recorded, as per which income chargeable to tax had been escaped assessment and accordingly, notice u/s. 148 dated 31.03.2013 was issued on the assessee. During the course of assessment proceedings, the assessee raised objection for non-serving of notice u/s. 148, dated 31.03.2013 and objections filed by the assessee has been disposed off by the Assessing Officer with relevant evidence, as per which the notice issued u/s. 148 of the Act dated 31.03.2013 has been served on the assessee, as per the acknowledgment of Postal Department which has been scanned in the assessment order. The AO, completed the assessment u/s. 144 r.w.s. 147 of the Act on 27.03.2014 and determined total income of Rs. 16,45,420/- by making additions of Rs. 13,49,975/- towards computation of capital gains from sale of property by adopting full value of consideration as per the provisions of section 50C of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Ld. CIT(A), the assessee challenged re-opening of assessment on multiple grounds including non-serving of notice u/s. 148 of the Act dated 31.03.2013. The assessee had also challenged additions made towards computation of capital gains by adopting full value of consideration in terms of section 50C of the Act. The CIT(A), after considering relevant submissions of the assessee and also taken note of various facts brought on record by the AO, including evidence on issue of notice and serving of notice, rejected arguments of the assessee on re-opening of assessment by holding that serving of notice u/s. 148 of the Act is valid in law, because the acknowledgment of the Postal Department clearly indicates that notice has been served on the assessee even though there is no signature and date of receipt in the acknowledgment. The Id. CIT(A), had also rejected arguments of the assessee on the issue of computation of capital gains for transfer of property by adopting provisions of section 50C of the Act, by holding that as per provisions of section 50C(1) of the Act, the value assessed or assessable by the Stamp Valuation Authority is deemed to be full value of consideration received or accruing

as a result of transfer of capital asset. Since, guideline value of the property is more than the amount of consideration received for transfer of property, the AO has rightly adopted guideline value and computed capital gains and thus, upheld additions made by the AO. The relevant findings of the CIT(A) are as under:

"4. The first issue raised in the grounds of appeal relates to validity of jurisdiction for reopening the assessment u/ s 14 7. During the course of appeal proceedings the AR of the appellant submitted that the taxability of capital gains arising out of the impugned transfer, which is the reason recorded for reopening of the case, has been enquired into by the Assessing Officer during the course of original assessment proceedings. Therefore, the AR argued that there is change of opinion. The AR relied upon the following judgements:

(i) Decision of the Hon'ble ITAT, Chennai in the case of Shri KR Jayaram vs. ACIT in ITA No.1698/Mds/2016 dated 17.10.2017.

(ii) Full Bench decision of the Hon'ble Delhi High Court in the case of CIT vs. Usha International Ltd., 251. CTR 28.

(iii) Bombay High Court decision in the case of Precilion Holdings Ltd., 262 Taxman 228.

The decisions relied upon by the AR of the appellant are not applicable to the facts of the case. In the cases cited above, the Assessing Officer examined the issue in the original assessment and the asses see furnished the relevant information though no query was raised by the Assessing Officer and therefore, the Hon'ble Courts have held that reexamining of the same issue in the reopened assessment is not possible. Whereas, in the case of the appellant, the issue relates to applicability of the provisions of section 50C of the Act. The Assessing Officer never examined the applicability of

the provisions of section SOC during the course of original assessment proceedings. Therefore, the question of change of opinion does not arise in this case.

6. During the course of appeal proceedings the AR of the appellant also submitted that the appellant did not receive the notice u/ s.148 of the Act though it was stated to be issued on 31.03.2013 by the Assessing Officer. Therefore, the AR argued that since no valid notice was served on the appellant within the stipulated time for reopening of assessment for the A.Y. 2006-07, the reopening of assessment is null and void. The AR further submitted that this point was even agitated before the Assessing Officer during the course of assessment proceedings. The AR relied upon the Hon'ble Delhi High Court judgement in the case of CIT vs. Chetan Gupta 382 ITR 613 wherein it was held that service of notice u/s.282(1) of the Act cannot be construed as a mere procedural requirement which can be condoned by the provisions of section 292BB of the Act. The AR also relied upon the Supreme Court judgement in the case of M/ s. Hotel Blue Moon 321 ITR 362 in coming to the conclusion that in the absence of valid service of notice u/s.148, the reassessment proceedings are bad in law.

7. The Assessing Officer while framing the assessment order has taken into consideration the above submissions of the AR of the appellant that the notice u/s.148 was not served. The Assessing Officer mentioned in the assessment order that the notice u/s.148 was issued on 31.03.2013 and also enclosed the relevant page of the dispatch register. The Assessing Officer also scanned the copy of the acknowledgement received after despatch wherein admittedly the signature of the addressee is absent. However, the Assessing Officer enclosed a copy of the acknowledgement containing the date seal of the post office wherein the date affixed appears to be 01.04.2013. The AR of the appellant pointed out that the notice was issued in April and therefore, it is barred by the limitation of the Act.

8. In this regard, it is relevant to draw the law laid down by High Court of Punjab and Haryana in the case

of V.R.A. Cotton Mills (P) Ltd. vs. Union of India, 33 taxmann.com 675, wherein it was held as under:

A perusal of proviso to section 143(2)(ii) contemplates that no notice under said clause shall be served on the assessee after the expiry of six months. The expressions 'serve' and 'issue' are interchangeable, as has been noticed in section 27 of the General Clauses Act, 1887.

The date of receipt of notice by the addressee is not relevant to determine, as to whether the notice has been issued within the prescribed period of limitation. The expression 'serve' means the date of issue of notice. The date of receipt of notice cannot be left to be undetermined dependent upon the will of the addressee. Therefore, to bring certainty and to avoid attempts of the addressee to evade the process of receipt of notice, the purpose of the statute will be better served, if the date of issue of notice is considered as compliance of the requirement of proviso to section 143(2). In fact that is the only conclusion that can be arrived at to the expression 'serve' appearing in

section 143(2).

9. In the above judgement it is made clear that it is the date of issue and not the date of service which determines the limitation period for the service of notice. In that case the Hon'ble Court also held that the date of receipt of notice cannot be left to be undermined dependent upon the will of the assessee. In order to bring certainty and to avoid attempts of the assessee to evade the process of receipt of notice, the purpose of statute would be served if the date of issue of notice is considered as compliance of the requirement of proviso to section 143(2) of the Act. Though the above judgement is in the context of issue of notice u/s 143(2), the law laid down in that case is also applicable to issue of notice u/s 148 of the Act. The date of issue of notice u/s 148 is 31.03.2013 as stated in the assessment order and therefore, the same has to be deemed as valid service within the limitation period provided in the Act. It was also mentioned by the Assessing Officer that the subsequent

notices issued u/ s.142(1) and summons u/s.131 were received by the assessee's wife and all these notices were served on the same address as the notice u/ s.148 was issued. Further, the judgements relied upon by the AR of the appellant are not relevant since in those cases notice u/s.148 was neither issued nor served. There is no doubt that issue of notice u/ s.148 is paramount for sustaining any proceeding u/s.14 7 of the Act. In this case, notice u/ s.148 was issued within time. Therefore, the service of notice u / s. 148 is valid in law.

10. The second issue relates to addition of Rs.13,49,975/- towards the difference in sale consideration and FMV under the head "Capital Gain". The A.O. observed that the appellant had relinquished property in favour of Smt. R. Umadevi for which the appellant received a sum of Rs.4,00,000/though the stamp duty has been paid for the value of Rs.17,49,975/- and attracted applicability of Sec.50C of the I.T.Act. Accordingly, the A.O. added the difference in sale consideration and FMV of Rs.13,49,975/- under the head "Capital Gain".

11. The appellant. stated in the grounds of appeal during the course of appeal proceedings that the A.O. ought to have referred the matter to the Valuation Officer u/ s 50C(2).

12. The observation of the AO and the submissions of the appellant have been carefully considered. The issue is whether the actual consideration received as a result of transfer or the value assessed by the stamp valuation authority must be taken as deemed consideration. The AO adopted Rs.17 ,49, 975/- in place of Rs.4,00,000/- in terms of Section 50C of the Act. Under Section SOC(1) of the Act, the value assessed or assessable by the stamp valuation authority is deemed to be the full value of consideration received or accrued as a result of transfer of capital asset. Under subsection (2) of Section SOC, where the assessee claims before any AO that the value adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer and; the value so adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or

the High Court, the AO may refer the valuation of the capital asset to a Valuation Officer. The appellant has not raised this issue during the course of assessment proceedings. Even during the course of appeal proceedings there is no material furnished establishing that the value adopted by the stamp valuation authority exceeded the fair market value.

13. The appellant has also not clarified whether the value determined by the Stamp Valuation Authority, i.e., guideline value is not disputed in any appeal or revision or no reference has been made before any other authority or Court or High Court. Since the conditions required u/ s 50C(2) are not fulfilled, the value adopted by Stamp Valuation Authority is rightly taken as deemed sale consideration and accordingly the addition is hereby confirmed.”

5. The Ld. Counsel for the assessee, submitted that notice u/s. 148 dated 31.03.2013 was not served on the assessee which is evident from the fact that the assessee has not acknowledged receipt of notice in the Postal Department acknowledgment with date of receipt. He further submitted that, re-opening of assessment is bad in law, because there is no fresh tangible materials in the possession of the AO to form a reasonable belief of escapement of income. He further, submitted that notice issued u/s. 148 dated 31.03.2013 and consequent re-assessment order suffers from infirmity, because there is no proper satisfaction from the authority who is granting approval for issue of notice u/s. 148 of the Act, which is very clear from the approval given by the CIT, where

he has been very briefly and cryptic words stated that "I am satisfied". In this regard he relied upon plethora of judicial precedence, including the decision of Hon'ble Supreme Court in the case of CIT vs Kelvinator of India Ltd [2010] 320 ITR 561 (SC). In so far as merits of the issue, the Ld. Counsel for the assessee submitted that the Ld. CIT(A), did not adjudicate the issue on merits and also the AO has applied provisions of section 50C(1) of the Act, ignoring provisions of section 50C(2) of the Act, without referring the matter to the DVO to determine the fair market value of the property. Thus, the matter may be set aside to the file of the Assessing Officer for fresh verification.

6. The Ld. DR, on the other hand referring to the assessment order and dispatch register of Assessing Officer submitted that notice issued u/s. 148 of the Act, dated 31.03.2013 has been dispatched on the very same day, which is evident from the dispatch register. Further, as per the acknowledgment of Postal Department, the notice has been served on the assessee within the time allowed under the Act, which is evident from the fact that although there is no signature and date of receipt in the acknowledgment for

servicing 148 notice, but subsequent notice issued u/s. 142(1) of the Act, has been received by the assessee and his wife. Therefore, it can be safely concluded that notice u/s. 148 of the Act, has been served on the assessee. He further submitted that, there is fresh tangible material with the AO to form a reasonable belief of escapement of income and thus, it is not a case of change of opinion. On the issue of satisfaction, he submitted that the Ld. CIT(A), while granting approval for issue of notice has recorded his reasons for approving issue of notice and thus, the arguments of the Id. Counsel for the assessee, for no proper satisfaction by the Ld. CIT(A) is in correct. He further submitted that, on the issue of merits, the matter has not been considered by the CIT(A) and thus, it may be remitted back to the Ld. CIT(A) to decide the issue on merits.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The first and foremost objection raised by the assessee for re-opening of assessment is non-serving of notice u/s. 148 of the Act, dated 31.03.2013. We find no merits in the arguments of the assessee for the simple reason that as per

documents available with Assessing Officer, the notice u/s. 148 of the Act dated 31.03.2013 has been dispatched on the very same day and also served on the assessee within the reasonable time, which is evident from the Postal Department acknowledgment. Therefore, we reject the ground raised by the assessee on non-serving of notice within reasonable time. In so far as second argument of the assessee on the ground of no fresh tangible material, we find that from the reasons recorded for re-opening of assessment, there is a live link to form reasonable belief of escapement of income and there is new material in the possession of the AO and thus, the arguments of the Ld. Counsel for the assessee that, there is no fresh tangible material is devoid of merits and thus, we reject argument of the assessee. As regards the third argument of the Ld. Counsel for the assessee, on the satisfaction from the Ld. CIT, we find that the Ld. CIT while granting approval for issue of notice u/s. 148 of the Act, categorically observed 'I am satisfied and it is a fit case for issue of notice u/s. 148', on the basis of reasons submitted by the AO and in our considered view, said satisfaction constitute a valid satisfaction as required under law and thus, we reject argument of the assessee. To sum up, we reject arguments of the assessee on

the issue of validity of assessment and thus, we uphold the findings recorded by the Ld. CIT(A) to uphold re-opening and consequent re-assessment order.

8. In so far as merits of the issue, although the Ld. CIT(A) did not adjudicate the issue on merits with regard to the additions made on account of computation of capital gain by adopting full value consideration in terms of provisions of section 50C(1) of the Act, but fact remains that the assessee has raised his objection for adopting full value of consideration in terms of provisions of section 50C(2) of the Act, and requested to refer the matter to the DVO for determination of fair market value of the property as on the date of sale. Although, the assessee has requested to refer the matter to DVO in terms of provisions of section 50C(2) of the Act, but the AO has proceeded with computation of capital gains and adopted full value of consideration in terms of provisions of section 50C(1) of the Act. In our considered view, once the assessee objects for adopting full value of consideration and requests for reference to DVO, it is the duty of the Assessing Officer to refer the matter to the DVO and find out correct fair market value of the property as on the date of sale. Since, the

AO has failed to comply with the requirements of law, we are of the considered view that the issue needs to go back to the file of the AO and thus, we set aside the issue to the file of the Assessing Officer and direct the AO to reconsider the issue of computation of capital gains and also refer the matter to the DVO to determine correct fair market value of the property as on the date of sale, and decide the issue in accordance with law.

9. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the court on 15th February, 2023 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 15th February, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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