



IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “A” BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.179/Hyd./2024
Assessment Year 2015-2016

Somnath Konduru, United States of America PAN DRMPK6115C	vs.	The Income Tax Officer, [Int. Taxn.)-1, Hyderabad.
(Appellant)		(Respondent)

For Assessee :	CA K C Devdas
For Revenue :	Shri B Bala Krishna, CIT-DR

Date of Hearing :	15.04.2025
Date of Pronouncement :	21.04.2025

ORDER

PER MANJUNATHA G. :

This appeal has been filed by the Assessee against the final assessment order dated 26.12.2023 passed by the Assessing Officer u/sec.144 r.w.s.144C(13) of the Income Tax Act, 1961 [in short “the Act”] in pursuant to directions of the Disputes Resolution Panel-1 [in short “DRP”], Bengaluru-1, Bengaluru dated 30.10.2023 u/sec.144C(5) of the Act.

2. Brief facts of the case are that, the assessee is a non-resident and has filed his original return of income for assessment year 2015-2016 on 22.12.2015 declaring total income of Rs.17,230/-. As per the 50C information disseminated by the I&CI-Wing, it is seen that the assessee had sold an immovable property vide sale deed dated 11.03.2014 for a total consideration of Rs.58,48,000/- and the SRO value was at Rs.58,48,000/-. The Assessing Officer has recorded reasons and after taking approval from the prescribed component authorities, notice under section 148 of the Act dated 28.03.2021 was issued and served on the assessee. The assessee vide his reply dated 06.05.2021 submitted that he is a non-resident individual and has filed his return of income on 22.12.2015 declaring an income of Rs.17,230/-. The assessee has also filed copies of ITR, computation of income and capital gains, purchase deed and sale deed copies, valuation report and other documentary evidences. The Assessing Officer after considering relevant evidences filed by the assessee, has completed the assessment under section 144C and has

passed draft assessment order under section 144C(1) of the Act on 06.03.2023 and determined the total assessed income of Rs.32,26,252/- by making addition of Rs.32,09,022/- towards computation of long term capital gains for transfer of property.

3. The assessee has filed objection against the draft assessment order passed by the Assessing Officer before the DRP on 06.04.2023 and challenged the additions made by the Assessing Officer towards computation of capital gains. The DRP disposed of the said objection filed by the assessee vide its Direction issued under section 144C(5) of the Act dated 30.10.2023 and rejected the contention of the assessee on the ground that the objections filed by the assessee on 06.04.2023 is beyond the “due date” prescribed under the Act i.e., 05.04.2023 and not maintainable in terms of section 144C(2) of the Act. In pursuant to directions of the DRP, the Assessing Officer passed final assessment order under section 144 read with section 144C(13) of the Act on 26.12.2023 and assessed total income at Rs.32,26,521/-.

4. Aggrieved by the final assessment order, the assessee is now in appeal before the Tribunal.

5. CA KC Devdas, Learned Counsel for the Assessee, referring to the petition filed by assessee for filing additional grounds of appeal submitted that, the assessee has taken additional grounds challenging validity of initiation of reopening proceeding under section 148 of the Act in light of reasons recorded by the Assessing Officer and such ground is purely a legal ground which may be taken at any point of time including proceedings before the Tribunal and, therefore, in view of decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs., CIT [1998] 229 ITR 383 (SC), the additional grounds of appeal filed by the assessee may be admitted.

6. Shri B. Bala Krishna, learned CIT-DR for Revenue, opposed the petition filed by the assessee raising additional grounds of appeal and also filed a report from the Assessing Officer dated 13.11.2024 and argued that, these grounds were not raised by the assessee at any point of time

during the scrutiny assessment proceedings and, therefore, such additional grounds filed by the assessee cannot be admitted.

7. We have heard both the parties, perused the material on record and considered the relevant additional grounds of appeal filed by the assessee in its petition filed on 15.07.2024 before the Tribunal. We find that, the grounds taken by the assessee is purely of legal grounds and facts with regard to such grounds are already on record before the Assessing Officer and there is no requirement of conducting any enquiry to ascertain the facts and, therefore, in our considered view, there is merit in the petition filed by the assessee for admission of additional ground and thus, by following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs., CIT (supra), we admit the additional grounds filed by the assessee for adjudication.

8. CA KC Devdas, Learned Counsel for the Assessee, referring to additional grounds filed by the assessee

submitted that, the initiation of re-assessment proceedings under section 147 of the Act by issuing notice under section 148 dated 21.03.2021 is illegal, *void abinitio* and liable to be quashed, because the Assessing Officer reopened the assessment on wrong assumption of facts that, the assessee an NRI, had not filed his return of income for the year under consideration, but, the fact remains that, the assessee has filed his return of income for the year under consideration disclosing relevant capital gains arising out of transfer of immovable property. Therefore, he submitted that, there is no valid reasons for reopening of the assessment and consequently issue of notice under section 148 of the Act dated 29.03.2021 and consequential assessment order passed by the Assessing Officer is illegal and liable to be quashed. In this regard, he relied upon decision of Hon'ble High court of Gujarat in the case of Vijay Harishchandra Patel vs. ITO [2018] 400 ITR 167 (Guj.) and also decision of ITAT, Hyderabad Bench in the case of Mrs. Tahera Abida Ghori vs. Dy.CIT-2, Intl. Taxation, Hyderabad in ITA-IT.No. 777/Hyd./2020, dated 29.12.2023.

9. Shri B. Bala Krishna, learned CIT-DR, on the other hand, supporting the order of the learned DRP submitted that, the assessee is a non-resident and as per the information available with the Assessing Officer the assessee is not having PAN which is evident from the sale deed executed for sale of property where the assessee has not referred PAN. From the enquiry conducted by the Assessing Officer before issuing notice under section 148 of the Act, it is abundantly clear that, the assessee has not reported PAN and that, the PAN of the assessee was not available in the database and, therefore, the Assessing Officer has rightly concluded that, the assessee has not filed his return of income disclosing relevant capital gains arising from the transfer of immovable property. Therefore, there is a live nexus between the reasons recorded for reopening of the assessment and escapement of income and thus, the grounds taken by the assessee challenging the validity of reopening of assessment should be rejected.

10. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact the assessee has filed his original return of income for assessment year 2015-2016 on 22.12.2015 declaring total income of Rs.17,230/-. It is also an undisputed fact that, as per the reasons recorded for reopening of the assessment, the Assessing Officer proceeded to record reasons for initiation of proceedings under section 147 of the Act on the ground that, the assessee is a non-filer and had sold immovable property, but the capital gain derived on the same is not offered to tax. From the reasons recorded by the Assessing Officer for reopening of the assessment and the facts brought on record by the Assessing Officer, we find that the very basis for reopening of the assessment is that, the assessee has not filed any return of income disclosing the capital gains arising from sale of immovable property, whereas, the assessee has submitted before the Assessing Officer that, he has filed his return of income on 22.12.2015 disclosing capital gains arising from sale of

property. Therefore, from the above facts, it is undisputedly clear that, the very foundation for which the reopening is based in the reasons recorded by the Assessing Officer for the reopening of the assessment collapses, therefore, in our considered view, the Assessing Officer has reopened the assessment on an incorrect assumption of facts even though, the assessee has filed his return of income for the impugned assessment year. Further, the Assessing Officer went on to record reasons on the fact that, the assessee has not filed his return of income disclosing relevant capital gains. Since the very foundation of reopening of the assessment is collapsed, in our considered view, the subsequent issue of notice under section 148 of the Act and consequent final assessment order passed by the Assessing Officer under section 144 rws 144C(13) of the Act dated 26.12.2023 cannot survive under Law. This legal principle is supported by the decision of Hon'ble Gujarat High Court in the case of Vijay Harishchandra Patel vs. ITO (supra), wherein the Hon'ble Gujarat High Court on identical set of facts in para-10 of it's order has held as under.

“10. As is apparent on a plain reading of the reasons recorded, the very basis for reopening the assessment is that the petitioner had not filed any return of income disclosing such sale of the immovable property valued at Rs.40,00,000/-. The record of the case shows that earlier, pursuant to a notice under section 148 of the Act, the petitioner had, in fact, filed return on income disclosing the sale of such immovable property, and the Assessing Officer after duly applying his mind to the issue had accepted the return of income. Considering the fact that a return of income had been filed disclosing sale of the immovable property, the very foundation on which the reopening is based in the reasons recorded by the Assessing Officer for reopening the assessment, collapses. Therefore, on the reasons recorded, the Assessing Officer could not have formed the belief that income had escaped assessment, inasmuch as such belief had been formed on a factually incorrect premise. It is settled legal position, that the reopening of the assessment has to be maintainable on the reasons recorded for reopening the same, and that such reasons cannot be substituted. In the facts of the present case, when the original ground for reopening the assessment does not survive, the Assessing Officer seeks to proceed further with the assessment on totally different grounds, which is impermissible in law. Moreover, what the Assessing Officer now seeks to do is

to sit in judgment over the assessment framed by his predecessor Assessing Officer, which again, is not permissible in law.”

11. Similar view has been taken by the Coordinate Bench of ITAT, Hyderabad Tribunal in the case of Mrs. Tahera Abida Ghorri vs. DCIT (supra), wherein similar view has been taken by the Tribunal in light of the fact that the Assessing Officer reopened the assessment on the premise that, the assessee has not filed her return of income, whereas, the fact clearly shows that, the assessee had filed her return of income before the Assessing Officer records his reasons for reopening of the assessment. The sum and substance of ratio laid down by the Hon'ble Gujarat High Court and by the Coordinate Bench of ITAT, Hyderabad Tribunal is that, once the foundation on which, the reopening was based, is not based on relevant facts or contrary to facts available on record, then, subsequent issue of notice under section 148 of the Act and consequent assessment order passed by the Assessing Officer is illegal and *void abinitio* and liable to be quashed.

12. In the present case, going by the facts available on record, it is undisputedly clear that, the Assessing Officer based his reopening on the sole premise that, assessee has not filed his return of income and disclosed relevant capital gain arising out of transfer of immovable property, whereas, the fact remains that, the assessee had already filed his return of income and disclosed the relevant capital gains arising out of transfer of property. Therefore, we are of the considered view that, there is no application of mind by the Assessing Officer to the relevant material before arriving at a conclusion that, there is escapement of income as per the provisions of section 147 of the Act. Therefore we are of the considered view that, the reopening of the assessment in light of an “invalid reasons” recorded by the Assessing Officer cannot be sustained in law and thus, we quash the notice issued by the Assessing Officer under section 148 of the Act dated 28.03.2021 and consequently, the final assessment order passed by the Assessing Officer under section 144 r.w.s.144C(13) dated 26.12.2023 is also quashed.

13. The assessee has filed various other grounds and challenged additions made by the Assessing Officer towards computation of capital gains. Since, we have quashed assessment order passed by the Assessing Officer under section 147 of the Act, in our considered view, the other grounds taken by the assessee challenging additions made by the Assessing Officer towards computation of capital gains becomes academic in nature and thus, all other grounds taken by the assessee are dismissed as infructuous.

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

Order pronounced in the open Court on 21.04.2025

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 21st April, 2025

VBP

Copy to

1.	Somnath Konduru, [United States of America] H.No.3-10-20/9/3, Gokhalenagar, Ramanthapur, Hyderabad – 500 013. Telangana.
2.	The Income Tax Officer, [Int. Taxn.)-1, Aayakar Bhavan, Hyderabad.
3.	The Pr. CIT, Hyderabad.
4.	The DR ITAT “A” Bench, Hyderabad.
5.	Guard File.

//By Order//

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