

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 802/Srt/2023 (Assessment Year 2015-16)
(Hybrid hearing)

Asifiqbal Ismail Jangda, Highway Service Centre, AT & PO Kharod Tal. Ankleshwar, Dist-Bharuch-393001. PAN No. AFHPJ 3722 N	Vs.	I.T.O., Ward 2(1), Bharuch.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Mehul Shah, C.A.
Department represented by	Shri Vinod Kumar, Sr.DR
Appeal instituted on	24/11/2023
Date of hearing	30/01/2024
Date of pronouncement	15/02/2024

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 27/09/2023 for the Assessment Year (AY) 2015-16.
2. Brief facts of the case are that the assessee is an individual and no return of income for A.Y. 2015-16 was filed. The Assessing Officer was having information that the assessee has sold immovable property of Rs. 75,13,220/-. On the basis of such information, the Assessing Officer was of the view that the income of assessee has escaped assessment. Notice under Section 148A(b) of the Income Tax Act, 1961 (in short, the Act) was issued to the assessee. The assessing officer recorded that the assessee has not responded to such notice. Thereafter, the Assessing Officer passed order under Section 148A(d) of the Act on 31/03/2022 and issued notice under Section 148 of the Act on 31/03/2022. The Assessing

Officer also recorded the information received in his office in para 1 of his assessment order. The Assessing Officer noted that in response to notice under Section 148 of the Act, the assessee filed return of income on 15/06/2022 declaring total income at Rs. 22,050/-. The Assessing Officer further noted that various notices were issued to the assessee for making compliance, however, no compliance was made. Such non-compliance was recorded in para 2 of assessment order. The Assessing Officer further recorded that vide letter dated 12/10/2022, the assessee raised objection against reopening. The contents of such objection are recorded in para 2.1 of assessment order. The assessee in its objection submitted that the allegation that he has sold property at Rs. 75,13,220/- during the year under consideration is wrong. The assessee has sold rural agricultural land which was jointly held/joint property and he has received only Rs. 31,51,000/- on account of his share. The income escaped in his case is below Rs. 50.00 lacs and his case relates to A.Y. 2015-16 and it may be dropped in view of CBDT Instruction No. 1/22 dated 11/05/2021. The assessee specifically contended that the main objection against reopening is that he has sold rural agricultural land which is not capital asset and the same is not taxable, therefore, the basis of reopening of assessment of income escaped from assessment itself is wrong, therefore, proceedings initiated under Section 147 and issuance of notice under Section 148 of the Act may please be dropped. The objection of assessee was rejected by Assessing Officer. The Assessing Officer recorded that he was given enough and more opportunity at the time of reopening proceedings and show caused as to why amount of Rs. 75,13,220/- should not be brought to tax but the assessee remained unresponsive and not filed any submission even after show

cause notice under Section 148A(b) of the Act. After rejecting the objection, the Assessing Officer proceeded for reassessment. The Assessing Officer recorded that the assessee filed return of income, computation of income, sale deed, certificate issued by Talati, sale bill of agriculture income etc. The assessee also stated that they have sold land out of Block No. 181, R.S. No. 178/2, village-Dhamdod, Taluka-Mangrol, District-Surat on 07/10/2014, the land was in the name of joint name of assessee, Salim Ismail Jangda and Imran Ismail Jangda. The assessee also furnished copy of 7/12 extract to substantiate the ownership and shareholding. The assessee explained that he has received only Rs. 31,51,000/-. The reply of assessee was not accepted by Assessing Officer, the Assessing Officer recorded that there is no Khata number and survey number mentioned in 7/12 extract issued by Talati and only address of land is mentioned at old block No. 181, new block No. 185 admeasuring 2-82-11. The assessee has sold the land at the rate of Rs. 75,13,220/-, the assessee is having 44.85% share, therefore, as per Jantri price, the assessee has received Rs. 33,70,156/-. The Assessing officer treated the sale consideration as short term capital gain by taking a view that copy of the agreement in respect of purchase is not filed by the assessee and in absence thereof the date of acquisition and cost thereof cannot be ascertain. Further to detail of immovable property sold by assessee are not same immovable property against which the certificate is provided. In absence of such detail, the Assessing Officer held that land cannot be treated as agricultural land. The assessee has not provided copy of agreement for purchase of land, therefore, he was unable to ascertain the date of purchase and cost of acquisition. The Assessing Officer thus brought the entire consideration to taxation under short term capital gain. The

assessing officer in para 4.3 of his order held that the assessee has earned capital gain of Rs. 33,70,156/- during the AY 2016-17.

3. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. Further aggrieved, the assessee has filed present appeal before the Tribunal. Though, the assessee has raised various grounds of appeal, however, as per our considered view, the legal ground of appeal relates to validity of reopening under Section 147 and / or if the notice under Section 148 was issued within period of limitation or not. And No. (ii) whether the addition of capital gain of Rs. 33,70,156/- on account of short term capital gain is justified.
4. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that he has raised legal ground that notice under Section 148 of the Act was issued on 31/03/2022 for A.Y. 2015-16, which clearly beyond the period of limitation. In the notice under Section 148, the Assessing officer recorded that income chargeable to tax has escaped assessment and that the order under sub-section (d) of Section 148A of the Act has been passed in case of assessee on 31/03/2022. In response to such notice, the assessee while filing objection brought to the notice of Assessing Officer that on sale of rural agricultural land, he has received only Rs. 31,51,000/- thereby the income escaped assessment is below Rs. 50.00 lacs and proceeding initiated may be dropped. The Id. AR of the assessee submits that after introduction of new scheme of reopening under section 147 and issuance of notice under w.e.f. 01/04/2021 by way of Finance Act, 2021, the reopening beyond three years from

the end of relevant assessment year is not permissible unless, the Assessing Officer has evidence that income chargeable to tax is Rs. 50.00 lacs or more. In the objection filed against reopening, the assessee specifically brought it to the notice of Assessing Officer that the assessee has received consideration of Rs. 31,51,000/- that too against sale of rural agricultural land, thus, issuance of notice under Section 148 of the Act is absolutely time barred. The assessing Officer instead of considering the objection of assessee in right perspective, proceeded for reassessment by taking view that the certificate issued of Talati has no Khata number. The Id. AR of the assessee submits that the assessee has furnished the copy of sale deed jointly executed by assessee alongwith his co-owner and share of assessee is clearly discernable from sale deeds. The Assessing Officer instead of verifying the fact or bringing any adverse evidence completed the assessment by treating the sale consideration as short term capital gain. The Id. AR of the assessee submits that the assessee has also filed certificate of Talati, copy of 7/12 extract and form 8A to show that land sold by assessee is purely a rural agriculture land. Even otherwise in the sale deed itself, the nature of land is mentioned. The Id. AR of the assessee submits that he has strong case on legal issue as the impugned income chargeable to tax is less than Rs. 50.00 lacs. Even otherwise the Assessing Officer made addition of Rs.33,70,156/-, which is thus admitted facts that the reopening beyond there year from the end of relevant financial year. To support such contention, the Id. AR of the assessee relied on the following case laws:

- Sanath Kumar Murali Vs ITO (2023) 152 taxmann.com 231 (Karnataka HC)
- Nitin Nema Vs Pr.CCIT (2023) 155 taxmann.com 276 (MP HC)
- Abdul Majeed Vs ITO (2022) 140 taxmann.com 485 (Raj HC).

5. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that the assessee was given ample opportunity to file various details during the assessment, the assessee chose not to respond such notices as has been recorded by Assessing Officer in para 2 of assessment order. The Id. Sr.DR for the revenue submits that all the objections of assessee were duly considered by Assessing Officer before passing the assessment order.
6. In the rejoinder submission, the Id. AR of the assessee submits that in para 2 of assessment order itself, the Assessing Officer has recorded that either the assessee filed response or filed part response, the assessee furnished all required details during the assessment.
7. We have considered the submissions of both the parties and have perused the record carefully. We find that in response to notice under Section 148 of the Act, the assessee filed return of income. The assessee simultaneously filed objection against reopening. In the objection against reopening, vide objection dated 12/10/2022, the assessee specifically stated that he has received only Rs. 31,51,000/- as his share against the sale of rural agriculture land. We find that this fact is duly acknowledged by Assessing Officer. We find that before the Assessing Officer, the assessee also filed copy of sale deed executed by three co-owners. The sale consideration received by all three co-owners are duly reflected on page No. 3 of sale deed. We find that the Assessing Officer has not considered the share of assessee while deciding the objection against reopening and proceeded to complete reassessment without adhering to the amended provisions of Section 148A of the Act. As per Section 148A, as per amended scheme and time

limit for reopening and issuing notice under Section 148 is only three years from the end of relevant assessment year unless the income chargeable to tax has escaped assessment is Rs. 40.00 lacs or more. Admittedly, the share of assessee which is allegedly escaped from assessment is less than Rs. 50.00 lacs, thus in terms of Section 149(1)(b) of the Act, notice under Section 148 of the Act would not fall within the extended period of 10 years. We further find that the Assessing Officer has not appreciated the contents of reply and the sale deed furnished by assessee. Thus, the notice under Section 148 of the Act was issued beyond three years from the end of relevant assessment year.

8. We find that the Hon'ble Rajasthan High Court in Abdul Majeed Vs ITO (supra) held that where the Assessing Officer issued reopening notice by passing order under Section 148A(d) of the Act after expiry of three years from the end of relevant assessment year on the ground that the assessee made undisclosed cash deposit amounting to Rs. 52.00 lacs in his bank account, however, no material was available to show that the cash deposit was more than Rs. 19.39 lacs were made, the Assessing Officer was not justified to presume that the assessee might have more bank account merely on the basis of such cash deposit of Rs. 19.39 lacs as escaped assessment. Thus, in view of aforesaid factual and legal discussion, we find that the notice under Section 148 of the Act was issued beyond the prescribed period of limitation, therefore, assessment proceedings under Section 147 is held invalid and subsequent action initiated by Assessing Officer is void ab initio. In the result, the assessee succeeded on legal ground.

9. Considering the fact that we have allowed the appeal of assessee on legal issue, therefore, adjudication and discussion on the validity of addition on merit have become academic.
10. In the result, this appeal of assessee is allowed.

Order announced in open court on 15th February, 2024.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 15/02/2024

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

By order

Sr. Private Secretary, ITAT, Surat