IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

T.C.(A)No.530 of 2019

Principal Commissioner of Income Tax
Central 1
No.108, Mahatma Gandhi Road,
Chennai 600 034. … Appellant

v.

Smt.Sasikala Raghupathy,
New No.60, Old No.100,
IV Street, Abhiramapuram,
Chennai-600 018.
PAN: AAFPR 5481B … Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 16.10.2018 in ITA No.366/Chny/2018 for Assessment Year 2008-09.

For Appellant : Mrs.Mr.R.Hemalatha

Senior Standing Counsel

For Respondent : Mr.Srinath Sridevan
Senior Counsel
for Mr.K.S.Elangovan

JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

This Tax Case (Appeal) arises from an order of the Income Tax Appellate Tribunal (in short 'ITAT'/'Tribunal') dated 16.10.2018. The facts in issue are as follows. The respondent/assessee is an individual. A search was conducted in the premises of the Assessee in terms of the provisions of Section 132 of the Income Tax Act, 1961 (in short 'Act') on 18.02.2014. In the course of search, it was found that the appellant had sold shares of one, BGR Energy Systems Limited (company) for a total consideration of Rs.111,07,20,000/-.

2. The income from sale was the subject matter of a Return filed by the assessee on 30.07.2008 under the provisions of the Act for Assessment Year (AY) 2008-09 and offered to capital gains claiming relief in terms of Section 54F of the Act. The return was processed under Section 143(1) of the Act on 25.03.2010 and was not taken up for scrutiny thereafter.

3. The Department initiated proceedings for re-assessment on 10.08.2011 by issue of notice under Section 148 of the Act. After due enquiry, an order of re-assessment had been passed on 30.05.2012 under Section 143(3) read with

Section 147 of the Act accepting the computation for the purposes of capital gains.

4. The assessee had claimed relief under Section 54F of the Act by investing a sum of Rs.47,44,95,882/- in residential property and the balance of Rs.55,82,82,845/- in long term capital gains scheme. The order of re-assessment examines the claim and accepts the return of income as filed.

5. While so, a notice was issued under Section 263 by the Commissioner of Income Tax (CIT) on 22.08.2012. The Commissioner re-visits yet again the claim under Section 54F and, being of the view that the order of re-assessment dated 30.05.2012 contained an error which was prejudicial to the interests of the revenue, put forth a proposal that the claim of deduction under Section 54F and the allowance of the same by the Assessing Authority in the order of re-assessment dated 30.05.2012 was incorrect.

6. Objections were called for and were duly filed by the assessee on 13.09.2012. To be noted, the provisions of Section 263(2) provide for limitation of 2 years from the end of the financial year from which the order sought to be revised, was to be passed. The order sought to be revised is dated 30.05.2012 and hence the period of 2 years expires by 31.03.2015. On 29.01.2015 an order has come to be passed by the CIT dropping the proceedings under Section 263.

7. While so, a search took place in the premises of the assessee under Section 132 of the Act on 18.02.2014. The conduct of the search was during the period when the matter was pending consideration by the CIT. A notice under Section 153A was issued on 30.12.2014 calling for a return of income for a block of 6 years including AY 2008-09 and return of income was duly filed by the assessee culminating in an order of assessment dated 31.03.2016 passed under Section 143(3) read with Section 153A of the Act.

8. The subject matter of assessment was the deduction under Section 54F. The Assessing Authority was of the view that the investment in residential house of a sum of Rs.47,44,95,882/- ought not to have been granted the benefit of relief under section 54F, as only a minute portion of the land had been utilised for the purpose of dwelling place.

9. In the order of assessment, a reference is made to a report of an Inspector dated 10.08.2011 referring to the land, and the building which was then under construction in 2011. The report states that '*1. The whole land look like barren land, and at the sea side of land there are trees, 2.The land is bounded by solid boundary wall, 3. At one corner of land, towards the ECR road one building is under construction, which is not ready to occupy and 4. As per conversion made with project manager Mr.K.Prakesh, it may take 2 to 3 month more to complete the building for occupation'.*

10. Based on the above report, the Assessing Authority adopts the view that the benefit provided under Section 54F of the Act is unavailable as, according to him, the thrust of Section 54F is on 'dwelling house' and hence the investment made must substantially relate to the residential house and not the component of land in the property.

11. He makes a distinction between the provisions of Section 54F and Section 54 of the Act, noticing that the phrase '*lands appurtenant thereto'* contained in Section 54 are absent in Section 54F. According to him, this distinction is conscious and relevant, and can only mean that the emphasis is on the residential house in the property rather than on the land.

12. He concludes that since the land area in the property in respect of which the deduction was claimed was substantial when compared with the dimensions of the house, the claim of deduction was vitiated on this account. The claim thus came to be disallowed and a consequent demand raised vide order of assessment dated 31.03.2016.

13. As against the rejection of the claim, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) (in short 'CIT(A)'), who, by order dated 05.01.2018 dismissed the same upholding the order of assessment. A further appeal was filed before the Tribunal that has come to be allowed on 16.10.2018, accepting the ground that assumption of jurisdiction by the Assessing Officer u/s 153A was erroneous.

14. The Tribunal notes that as the assessee had already suffered proceedings under Section 147 as well as under Section 263, there was no justification for the Department to intervene yet again on the same issue. The grounds of appeal filed by the assessee before the Tribunal had assailed both the assumption of jurisdiction as well as the rejection of the claim under Section 54F. Since the Tribunal has gone into the aspect of assumption of jurisdiction and accepted the same, it found no necessity to advert to the merits of the matter.

15.The conclusion of the Tribunal is at paragraph 6.3, extracted below:

6.3 To sum up, in the case of the assessee, action U/s.263 of the Act was initiated and dropped stating it to be infructuous since proceedings were initiated U/s.153A of the Act. It is obvious from the clarification made by the CBDT that revision or rectification proceedings pending on the date of initiation of search U/s. 132 of the Act shall not abate. Therefore in the proceedings U/s.153A of the Act, the issues racked up in proceedings U/s. 263 of the Act, cannot be revisited. Hence we are of the considered view that the Ld. AO in the case of the assessee ought not to have revisited and re-adjudicated the issue with respect to deduction U/s.54F of the Act, against which proceedings U/s.263 of the Act was initiated especially when the Ld. AO on the earlier occasion has already adjudicated the issue in the scrutiny assessment proceedings U/s. 143(3) r.w.s. 147 & 148 of the Act. Therefore we are of the considered view that the Order of the Ld. Assessing Officer dated 31/03/2016 regarding adjudicating the issue of deduction U/s.54F of the Act is erroneous. Hence we hereby direct the Ld. AO to delete the addition made by disallowing the deduction U/s.54F of the Act. Since we have adjudicated herein above the legal issue with respect to revisiting an issue in the subsequent proceedings U/s.153A r.w.s. 143(3) of the Act which was already adjudicated *in the scrutiny assessment proceedings earlier U/s. 143(3) r.w.s 147 & 148 of the Act in favour of the assessee and were on the same issue proceedings U/s.263 of the Act was initiated and dropped, we restrain ourselves from adjudicating the issue with respect to deduction U/s.54F of the Act on merits since it is infructuous. Further it is pertinent to mention that the case laws relied and cited by the Ld.CIT(A) does not support the decision rendered by him considering the facts and circumstances of the case before us.*

16. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant and Mr.SrinathSridevan, learned Senior Counsel appearing for Mr.K.S.Elangovan, learned counsel on record for the respondent.

17. The substantial questions of law admitted for resolution are as follows:

"i. Whether the Appellate Tribunal is correct in law in holding that issues taken up in proceedings under Section 263 of the Income Tax Act cannot be reassessed in the proceedings under Section 153A of the Act, when the Commissioner of Income Tax had dropped the proceedings under Section 263 and the issue of deduction under Section 54F was never adjudicated in the revision proceedings ?

ii. Whether the Tribunal was legally correct in placing reliance upon Circular No.7 of 2003 dated 05.9.2003 to hold that the proceedings under Section 263 shall not abate consequent to search action, when the words employed in Section 153A, in the matter of assessment/reassessment proceedings, which include revision/ rectification proceedings indicate otherwise?

iii. Whether the Appellate Tribunal was legally justified in ignoring the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Ratan Melting & Wire Industries [reported in 220 CTR 98] to the effect that the Circular issued by Executive Authorities will not override the provisions of the Statute?

iv. Whether the Tribunal was right in law in not taking cognizance of the Karnataka High Court's decision in the case of Canara Housing Development Co. Vs. DCIT [reported in 274 CTR

122] wherein it has been held that once the order passed by the Assessing Officer becomes subject to jurisdiction under Section 153A, there is no order, which can be said to be erroneous in so far as it is prejudicial to the interest of the Revenue, which confers jurisdiction on the Commissioner to exercise the power of revisional jurisdiction under Section 263 of the Income Tax Act?

v. Whether the Tribunal was right in holding that the Assessing Officer ought not to have re-adjudicated the issue with respect to deduction under Section 54F in proceedings under Section 153A, when the Assessing Officer had already adjudicated the issue in the scrutiny assessment proceedings under Section 143(3) read with Section 147 of the Act?

vi. When the Tribunal was legally justified in placing reliance on the Hon'ble Supreme Court's decision in the case of CIT Vs. Kelvinator of India Ltd. [reported in 320 ITR 561], which is clearly distinguishable from the facts obtaining in the instant case?

vii. Whether the Tribunal was correct in not following the decision of the Hon'ble Karnataka High Court's decision in the case of Canara Housing Development Co. Vs. DCIT [reported in 274 CTR 122] to the effect that once the assessment is subject to reopening under Section 153A, the Assessing Authority can take note of the income disclosed in the earlier return, any undisclosed income found during search and also any other income, which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the total income of each year and then pass the assessment order?"

18. Both parties would restrict their arguments to the aspect of assumption of jurisdiction only, as that is the only question arising from the impugned order of the Tribunal.

19. The sequence of dates and events in this matter are admitted and we recapitulate the same now. An intimation under Section 143(1) was issued on 25.03.2010 and the assessee thereafter received a notice under Section 148

dated 10.08.2011. The order of re-assessment dated 30.05.2012 reveals the reason for re-opening of the assessment was the claim under Section 54F.

20. A return was filed by the assessee in pursuance of notice under Section 148 and the claim of exemption was also looked into in detail. The assessing authority accepts the return of income filed and the deduction claimed, and the relevant portion of the order of re-assessment reads as follows:

> *4. The main issue involved in the above claim of the assessee is that the assessee has bought 43.56 acres of the land at Mahabalipuram for Rs.47,44,95,882/- and constructed a house in some part of land and claimed exemption u/s 54F of the IT Act. On examining the huge area of the land for exemption, the AR of the assessee has asked to explain why the exemption should not be restricted to the construction area instead of the whole land. The AR of the assessee has replied that "in the provisions of the Incomes tax Act there is no restriction to the word 'Land appurtenant to and forming part of House' and accordingly the assessee has rightly claimed the whole area of land along with house u/s 54F of the IT Act, 1961. The AR of the assessee also mentioned that the assessee has many case laws in support of the claim made. The AR of the assessee has quoted the following case laws:*
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> *a. The decision of the ITAT, Delhi in case of 'Additional Commissioner of Income-Tax, Range-I, Dehardun, Vs. Narendra Mohan Uniyal [2009, 34, SOT 152 (Delhi)].*
> *b. The decision of the High court of Madras in case of CIT Vs. Smt. M.Kalapagam [93, Taxman 283 (MAD)]*
>
> *On perusal of the above cases, specially the decision of the Honourable ITAT, Delhi, the assessee can claim any extent of land appurtenant to building as long as it is continuous stretch of land.*
>
> *In the present case also the whole area of 43.56 acres of the land is continuous and claim of the assessee has to be accepted inspite of large area of the land based on the above case laws mentioned by the assessee.*

Hence, the assessment for the AY 2008-09 is completed by accepting the return of income submitted by the assessee.

Tax should be paid as per calculation sheet and demand notice enclosed.

21. Close on heels of the closure of Section 147 proceedings on 22.08.2012, a notice under Section 263 of the Act came to be issued on 22.08.2012. The proposal in that notice remains the same as the reasons for re-opening of assessment, and the CIT has opined, prima facie, that the claim of exemption is incorrect insofar as the area on which the residential dwelling stood was only a fraction of the entirety of the property.

22. Again, a distinction has been made between Sections 54/54F noting that the phrase *lands appurtenant thereto* were used only in Section 54 but not in Section 54F. In fact, this very issue has caught the attention of the Assessing Officer in re-assessment and has also been considered in the order of re-assessment dated 30.05.2012, notwithstanding which, proceedings were initiated under Section 263 of the Act. The proposal in notice dated 22.08.2012 reads thus:

> *7. For the reasons as mentioned above, It is apparent that the AO has passed the impugned assessment order allowing the claim of deduction u/s 54-F and of the transfer expenses without application of mind and without conducting necessary enquiries. Therefore, I am of the prima facie view that the impugned assessment order passed by the AO on 30-05-2012 is erroneous and prejudicial to the interests of revenue warranting invoking of provisions u/s 263 of the Act. If the assessee has got any objections against invoking the provisions of sec. 263 of the Act*

and for withdrawing the claim of deductions u/s 54-F and u/s 48(i), the assessee may represent either in person or through an authorized representative or through written submissions.The case is posted for hearing on 13-09-2012 at 11 A.M. at Room No.601, VI Floor, Aayakar Bhavan, New Block, No. 121, N.H.Road, Nungambakkam, Chennai 600 034. In case of failure to avail the opportunity of hearing, it will be presumed that the assessee has no objections to the proposed revision of assessment u/s 263 by the undersigned and accordingly, an order u/s 263 will be passed ex parte on the basis of the material available on record.'

23. The assessee filed a reply dated 13.09.2012 to notice under Section 263 dated 22.08.2012, which was pending consideration before the CIT. Inter alia, the assessee has pointed out specifically that there is no error in the order of re-assessment dated 30.05.2012. The re-assessment had been concluded after calling for several particulars in relation to the claim for capital gains exemption under Section 54F.

24. The specific issue that had been deliberated upon in the course of assessment also was whether the exemption claim should be restricted only to the constructed area of the building as against the entirety of the property as claimed by the assessee.

25. Several objections have been put forth by the assessee, who stated that the issue had been appreciated in proper perspective by the Assessing Officer in the re-assessment proceedings, there was no error in the re-assessment order and in any event, there is no restriction in Section 54F to the

effect that exemption be granted only in respect of the constructed area and not the entirety of the property including the land area.

26. In this context, the assessee had cited the decision of this Court in *CIT V. M.Kalpagam* (227 ITR 733) as well as several other decisions in her support including of the Delhi High Court in *CIT V. Smt.Sunita Aggarwal* (284 ITR 20). It is only after this, and being convinced with the explanation set forth, that an order had come to be passed on 27.01.2015 dropping the 263 proceedings, as confirmed by Ms.Hemalatha, learned Senior Standing Counsel for the Department.

27. While so, there was a search in the residential premises of the assessee under Section 132 on 18.02.2014. The trigger for the search was a statement recorded from the General Manager (Finance) of B.G.R Energy Systems Limited merely reiterating what the Department already was aware of, that the assessee had sold shares of B.G.R.Energy Systems Limited to Stockholding Corporation of India Ltd. After deduction of expenditure and indexation, capital gains was arrived at, of which, certain amount was invested in residential property and the balance in the Long Term Capital Gain Account Scheme.

28. This is hardly incriminating material which came to light solely on account of the search. There is admittedly, no material available on the basis of which the search assessment could have been made. It is this very transaction

that has been the subject matter of adjudication in the re-assessment proceedings as well in the 263 proceedings, ultimately dropped. It is in the context of the aforesaid circumstances that we proceed to examine the substantial questions of law admitted for consideration.

29. The legal issue raised for decision is as to whether the authorities were right in framing an assessment in terms of section 153A of the Act, on the same issue that had been the subject matter of re-assessment as well as of detailed examination in revision under Section 263, that had ultimately come to be dropped. We extract below the provisions of Section 153A and proviso thereunder to the extent to which they are relevant to this matter:

> ***Assessment in case of search or requisition.***
>
> ***153A.****(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall-*
>
> > *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*
> >
> > *(b) assess or reassess the total income of six assessment*

years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years] :

***Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years]:*

***Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:*

…….

…….

[(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the [Principal Commissioner or] Commissioner:

***Provided** that such revival shall cease to have effect, if such order of annulment is set aside.*

……………

30. Sections 153A to 153D of the Act have succeeded the scheme of block assessment in Chapter XIVB consisting of Sections 158B to 158 BI of the Act, vide Finance Act, 2003, with effect from 01.06.2003. Section 153A provides for assessments on a searched person for a block of six years

commencing from the previous year relevant to the assessment year in which the search was conducted, and for which requisition was made.

31. The first proviso to Section 153A states that the Assessing Officer shall assess or re-assess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years. The second proviso states that assessments or re-assessment, if any, in relation to any assessment year falling within the block period that are pending as on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate.

32. There has been a schematic shift in the framing of assessments pre 01.06.2003 and post 01.06.2003. Prior to 01.06.2003, there were two assessments that could be made, one, a regular assessment and the other, an assessment that was based wholly and solely on incriminating materials found in the course of search.

33. Post 01.06.2003, the two assessments merge, in that, the requirement for two assessments, one regular and one for income found in the course of the search, stands obviated. Sections 153A and C provide for a single assessment that takes into account issues touching on search materials as well as other regular additions/disallowances.

34. The above procedure is enabled by the proviso which mandates that once a search has taken place, then, pending assessments/re-assessments for that year shall abate. This is to pave the way for a wholistic assessment, including income based on search material as well as regular (not based on incriminating search material) income.

35. The Supreme Court in the case of *Principal Commissioner of Income-tax, Central – 3 vs. Abhisar Buildwell (P) Ltd.* (454 ITR 212) throws light on the new scheme of assessment. Prior to this issue coming before the Supreme Court, several High Courts had dealt with the vexed issue as to the scope of assessment under Section 153A of the Act. The Delhi, Gujarat, Bombay, Karnataka, Orissa, Calcutta, Rajasthan and Kerala High Courts had taken the view that no additions could be made in the absence of incriminating material, in respect of those years where assessments had been completed prior to the search.

36. The above view, taken by the Delhi and Gujarat High Courts in *Commissioner of Income Tax V. Kabul Chawla* (380 ITR 573) and *Principal Commissioner of Income Tax V. Saumya Constructions (P) Ltd.* (387 ITR 529), have come to be affirmed in the case of *Abhisar Buildwell (P) Ltd* (supra), Thus, the settled position today is that in cases where assessments have been completed at the time of conduct of a search, an assessment u/s 153A or C can be made only if incriminating material had been unearthed during the search.

37. However, if assessments for a year remained pending as on the date of search, such assessments would abate and a wholistic assessment would be framed in terms of Section 153 A/C, which would be both a regular assessment as well as an assessment of undisclosed income based on incriminating materials found in the course of search.

38. This position also finds support in Circular No.7 dated 15.09.2023, particularly paragraph 65.5, reading thus:

> ***Circular No.7/2003, dated 05-09-2003 5 September 2003***
> *Finance Act, 2003- Explanatory Notes on provisions relating to Direct Taxes*
> ………
> ………
> *65.5 The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made under section 153A. It is also clarified that assessment or reassessment made under section 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.*

39. In the present case, the fact of the matter is that proceedings under Section 263 were pending as on the date of search. However, and as per the

above Circular, nothing prevented the CIT to have concluded the revisionary proceedings as it is only the proceedings for assessment or re-assessment pending as on date of the search that would abate. The CIT has however not chosen to do so and has dropped the proceedings officially. With this, the curtains fall on the revisionary proceedings and the benefit available under the above Circular is no longer available to the Department.

40. We also do not find that the above Circular advances the case of the Department in the facts and circumstances of the present case. The Circular clarifies that proceedings for assessment or re-assessment pending as on date of the search shall abate. In the present case, the re-assessment initiated has culminated in an order dated 30.05.2012 that has attained finality. The issues dealt with in the re-assessment have attained finality as the proceedings for revision u/s 263 have also been dropped by the Department on 27.01.2015, as confirmed by the learned Senior Standing Counsel, Ms. Hemalatha.

41. The Karnataka High Court in the case of *Canara Housing Development Company* vs. DCIT (274 CTR 122) had occasion to consider the question as to whether the power to initiate revision in terms of Section 263 can be exercised after the Assessing Officer has initiated assessment proceedings under Section 153 A of the Act.

42. The Court answers in the negative, noticing the unitary scheme of assessment under Section 153 A where a single assessment will be framed

taking note of both regular income as well as income based on incriminating search materials. In doing so, the Court refers to the decision of the Delhi High Court in *CIT vs. Anil Kumar Bhatia* (80 DTR 169).

43. The ratio of the above decision of the Karnataka High Court aligns with the ratio of the Judgement in *Abhisar Buildwell P Ltd*., in its interpretation of the scheme of assessment under Sections 153 A and C. However, even an application of the aforesaid ratio is of no avail to the Department in the facts and circumstances of the present case. This is for the reason that the issue sought to be addressed in all the proceedings, be it in re-assessment, revision or under Section 153A remains one and the same, being claim under Section 54F of the Act.

44. Section 153A is thus sought to be invoked in a situation where the re-assessment has already been completed on the same issue under Section 147 on 30.05.2012. There cannot thus be, as per the judgement in *Abhisar Buildwell (P) Ltd* (supra), yet another assessment in terms of Section 153A of the Act again on the same issue as identified already in the course of the re-assessment proceedings.

45. The fact that the proceedings for revision were pending at the time of the search is of no relevance in this case since the issue sought to be addressed in the revision is also only the claim under section 54F of the Act, which is a re-

visitation of the issue already considered in re-assessment. The notice to show cause issued u/s 263 makes this position crystal clear.

46. As the issue dealt in re-assessment and that dealt with in the order u/s 153A are one and the same, there is an embargo in the Department raking up the same issue yet again in the absence of any incriminating material. Hence, and on a plain reading of the second proviso to Section 153A, the Department is estopped from framing a regular assessment in this case as the re-assessment stands concluded as on 30.05.2012.

47. Moreover, and on the question of assumption of jurisdiction u/s 153A, the search has admittedly not yielded any incriminating materials in regard to the claim under Section 54F of the Act. A perusal of assessment order dated 31.03.2016 does not indicate any incriminating material based on which the assessment has been made, save the Inspector's report dated 10.08.2011. That report is extracted in unnumbered paragraph in internal page 3 of order of assessment and reads as follows:

> *The land purchased is agricultural dry land with standing Casuarina Trees and after purchasing the land from M/s.Pallava Resort Pvt. Ltd., constructed a boundary wall and started constructing the building in one corner of the land.*
>
> *One Inspector was deputed for a field enquiry during the reopened assessment proceedings. The inspector has reported on 10.08.2011. The following are the observations made in the ITI's report.*
>
> *1. The whole land look like barren land, and at the sea side of land there are trees.*
> *2.The land is bounded by solid boundary wall.*

> *3. At one corner of land, towards the ECR road one building is under construction, which is not ready to occupy.*
> *4. As per conversion made with project manager Mr.K.Prakesh, it may take 2 to 3 month more to complete the building for occupation.*

48. It is admitted position that save the Inspector's report which is part of the record of the Department since 10.08.2011, there is no other material based on which the relief u/s 54F has been denied and learned Standing Counsel fairly agrees that no other material is available on the record. The purpose of an assessment u/s 153A is to bring to tax income that has been hitherto undisclosed for the purpose of assessment, emanating from incriminating materials found in the course of the search. Hence, the order of assessment under Section 153A cannot be sustained even on this score.

49. Incidentally, this is a case where the Department has raked up the same issue in multiple proceedings, an order of re-assessment under Section 147, proceedings under Section 263 and an assessment under Section 153A. The claim has been accepted under Section 147, considered and dropped in revision under Section 263 and disallowed in search assessment u/s 153A in the absence of incriminating search materials. We thus cannot, but recall the observations of the Supreme Court in the case of *Parasuram Pottery vs ITO* (106 ITR 1) where the Supreme Court has this to say in regard to allowing stale

matters to attain finality. Though in the context of re-assessments, the observations will be equally applicable to the present case as well:

> *It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that state issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. So far as income-tax assessment orders are concerned, they cannot be reopened on the scope of income escaping assessment under section 147 of the Act of 1961 after the expiry of four years from the end of the assessment year unless there be omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. As already mentioned, this cannot be said in the present case. The appeal is consequently allowed.'*

50. The questions of law are answered adverse to the revenue and in favour of the assessee. This Tax Case (Appeal) stands dismissed. No costs.

[A.S.M., J] [G.A.M., J]
05.12.2024

sl
Index:Yes
Neutral Citation:Yes
Speaking order

To

The Income Tax Appellate Tribunal, Madras 'A' Bench,

Dr.ANITA SUMANTH,J.
AND
G.ARUL MURUGAN,J.

Sl

T.C.(A)No.530 of 2019

05.12.2024