आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 1291/Hyd/2016**
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Maheshwari Megaventures Limited, Hyderabad [PAN No. AADCM9780D]	Vs.	The Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri K.C. Devdas, AR
राजस्व द्वारा / Revenue by: Shri Kumar Pranav, CIT-DR

सुनवाई की तारीख/Date of hearing: 02/04/2024
घोषणा की तारीख/Pronouncement on: 03/05/2024

आदेश / **ORDER**

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 04/08/2016 passed by the learned Commissioner of Income Tax (Appeals)-4, Hyderabad, in the case of Maheshwari Megaventures Ltd., ("the assessee") for the assessment year 2009-10, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is engaged in the business of real estate. For the assessment year 2009-10, it filed its return of income on 30/09/2009 declaring an income of Rs. 2,38,14,880/-. By order dated 30/12/2011 passed under section 143(3) of the Income Tax Act, 1961 ('the Act'), learned Assessing Officer determined the income of the assessee at Rs. 14,86,33,805/-. In appeal, learned CIT(A), by order dated 24/12/2012 deleted the said addition.

3. While the matters stood thus, learned Assessing Officer proposed to reopen the assessment under section 147 of the Act on the ground that the method of computation of income by the assessee was erroneous and the provisions under section 50C of the Act are applicable in respect of the sale transaction held on 21/01/2009. Assessee objected to the same stating that the property in question which happened to be a fixed asset, was converted into stock in trade on 02/01/2008 in respect of which the capital gains were computed with reference to the Fair Market Value (FMV) of the property as on the date of conversion and taxes were paid in the assessment year 2009-10 in which it is sold, whereas on the sale of such stock in trade on 21/01/2009, the business profit/loss were computed in the assessment year 2009-10. Assessee, therefore, pleaded that when the sale took placed on 21/01/2009, the nature of the property was not a capital asset, but it was stock in trade and, therefore, section 50C of the Act has no application.

4. Learned Assessing Officer, however, did not agree with the said submission and on the other hand, in his order dated 20/03/2015 passed under section 143(3) read with section 147 of the Act, observed that the assessee failed to explain the application of section 50C of the Act for the

purpose of computation of capital gains and, therefore, taking guidance from the provisions under section 50C of the Act, the learned Assessing Officer took the value of the property at Rs. 16,12,40,000/- which is the stamp duty value as against the sale consideration mentioned in the document itself. Accordingly, learned Assessing Officer brought to tax the difference amount of Rs. 4,59,29,000/-.

5. Aggrieved, assessee preferred appeal before the learned CIT(A) and pleaded the same thing as it did before the learned Assessing Officer. Learned CIT(A), however, recorded that the submissions of the assessee that section 50C is not applicable that the property sold was not a fixed asset, but only stock in trade for this assessment year, not to be accepted. Learned CIT(A) did not give any reasons for reaching this conclusion and proceeded to uphold the addition stating that as per the SRO certificate, the market value of stock in trade as on 01/01/2008 for the assessment year 2008-09 was Rs. 13,66,50,000/-, but not for the assessment year 2009-10. Hence, this appeal by the assessee aggrieved by such an order of the learned CIT(A).

6. Assessee filed this appeal initially challenging the orders of the Revenue authorities, stating that the provisions of section 50C of the Act cannot be applied to the property sold subsequent to its conversion into stock in trade, but subsequently, by way of additional ground, the assessee challenged the legality of the reopening proceedings themselves on the ground that reasons were not furnished and that the internal audit report cannot be a source of new information for the purposes of section 147 of the Act.

7. On the aspect of reopening of the matter is concerned, at the time of arguments, learned AR submitted that the internal audit report cannot be considered as a source of information contemplated under section 147 of the Act, to reopen a concluded assessment and for this purpose, he placed reliance on the decision of the Hon'ble Apex Court in the case of Indian & Eastern Newspaper Society vs. CIT 119 ITR 996 (SC).

8. Per contra, learned DR relied on the decisions of the Hon'ble Apex Court in the case of CIT vs. P.V.S.Beedies (P.) Ltd. [1999] 103 Taxman 294 (SC) and also in the case of R.K. Malhotra, Income-tax Officer vs. Kasturbhai Lalbhai [1977] 109 ITR 537 (SC) to say that the report of the internal audit party also constitutes a valid source of information if it shows that the basis of assessment was wrong and the learned Assessing Officer missed the vital aspects that were required for proper assessment.

9. We have gone through the record in the light of the submissions made on either side. Insofar as the information enabling the learned Assessing Officer to propose reopening of a concluded assessment, under section 147 of the Act is concerned, Hon'ble Apex Court in the cases of P.V.S.Beedies (P.) Ltd. and R.K. Malhotra, Income-tax Officer (supra), held that the audit department was the proper machinery to scrutinise assessments made by the ITO and to point out errors of law contained therein, but such a view was disapproved in a subsequent decision in the case of Indian & Eastern Newspaper Society (supra) wherein it was held that the expression 'information' is an indispensable ingredient and it shall be in respect of either fact or law, and if it is in respect of law, it must flow from a formal source. The Assessing Officer himself must

interpret and determine the law applicable to the facts of the case, but any interpretation of law from any external source cannot constitute the requisite information for the purposes of section 147 of the Act.

10. Now coming to the facts of the case, even according to the learned Assessing Officer, there is no material whatsoever that is referred to in the assessment order to constitute a basis for reopening the case and on the other hand, in the reasons recorded by way of order sheet dated 15/02/2012, the learned Assessing Officer noted that "On verification of record, it was seen that while computing the taxable income ……". Except this, the learned Assessing Officer did not refer to any external source of information. When the assessee had taken the plea by way of additional grounds that the internal audit report is the only basis for reopening the matter, learned DR admitted that the Revenue audit raised an objection on facts and pointed out that the assessee offered long term capital gains on sale of property in the computation of income and there was an error in the working of such long term capital gains. However, his justification for reopening is that the learned Assessing Officer verified the computation statement filed by the assessee, accepted the objections and then proceeded to initiate the reopening proceedings.

11. It makes the things clear that other than the Revenue Audit Report, there is no new material as to the fact or law. Revenue audit pointed out the discrepancy in the method of computation of the long term capital gains. Revenue audit party was obviously referring to the applicability of section 50C of the Act to the sale that took place on 21/01/2009. The report of the Revenue Audit Party on the question whether or not section 50C of the Act is applicable to the sale dated

21/01/2009 is only its interpretation and opinion on that aspect and never will it partake the character of law and, therefore, such an interpretation of Revenue Audit Party is not information of law, but it is only its interpretation of law. Interpretation of law is no basis for reopening of proceedings under section 147 of the Act. Knowledge gained by the learned Assessing Officer about a law from a formal source subsequent to the conclusion of the assessment proceedings, stands on a different footing than the interpretation of the existing law by the Revenue Audit Party. We, therefore, find it difficult to agree with the learned DR that the internal audit report constitutes the information under section 147 of the Act.

12. Apart from this, the reasons recorded by the learned Assessing Officer further show that the issue requires verification through scrutiny proceedings by reopening the assessment also further shows that the basis for reopening is not the reason to believe, but it is only a reason to suspect as has been held by the Hon'ble Rajasthan High Court in the case of Mukesh Modi vs. DCIT [2014] 45 taxmann.com 468 (Rajasthan), wherein while looking at the reasons for reopening of the assessments was for verifying or verification of the existing material, the Hon'ble Court found that such an action of reopening by the learned Assessing Officer per se, founded on mere change of opinion and the same cannot satisfy the legislative intent that the learned Assessing Officer had reason to believe that any income chargeable to tax had escaped. For the sake of completeness, we deem it just and proper to refer to the relevant observations of the Hon'ble High Court hereunder,-

> *"53. While examining the matter in its entirety and on the basis of findings and conclusions recorded supra, in my considered opinion, notices issued to the assessees by the AO under Section 147/148 of the Act are not satisfying the pre-requisites for the same. There is no whisper in the notice, or iota of proof that while issuing the same the AO had reason to believe that any income chargeable to tax has escaped assessment for the assessment year. Thus, the notice has been issued by the AO simply for his own verification and to clear his doubts and suspicions to re-examine the material which were already available on record at the time of passing of the earlier assessment orders. The legislature under Section 147 has not clothed AO with such jurisdiction therefore the action cannot be upheld in the background of the facts of instant case. One more redeeming fact which has direct nexus with the subsequent re-assessment proceedings and ramification of the same has culminated into re-assessment orders is the impugned order whereby the AO has rejected the objections submitted by the assessees pursuant to notice under Section 147/148 of the Act. The order passed by the AO in this behalf is not a speaking order which cannot be sustained. In view of legal infirmity in the notice under Section 147/148 of the Act and laconic order of AO while rejecting the objections of the assessees the consequential assessment orders are also liable to be annulled."*

13. In view of the settled position of the law applicable to the facts of this case, we have no hesitation to hold that the assumption of jurisdiction by the learned Assessing Officer in reopening the assessment is erroneous and does not stand to judicial scrutiny. Consequently, we hold that the reopening of assessment in this case is bad and unsustainable under law.

14. Be that as it may, even otherwise, coming to the merits of the case, the contention of the assessee all through the proceedings is that section 50C of the Act has no application to the property in question in this appeal. Learned AR placed reliance on the decision of the Hon'ble Madras High Court in the case of CIT vs. Thiruvengadam Investments Pvt.

Ltd., 320 ITR 345 (Mad) and also in the case of Inderlok Hotels Pvt. Ltd. vs. Ito 122 TTJ 145; whereas learned DR placed reliance on the decisions reported in the cases of CIT vs. Carlton Hotel (P.) Ltd., [2017] 88 taxmann.com 257 (Allahabad) and Saras Metals (P.) Ltd., vs. CIT [2018] 99 taxmann.com 405 (Delhi).

15. According to the assessee, prior to its conversion into stock in trade on 02/01/2008 such an asset was capital asset in nature, but it was converted into stock in trade and the resultant capital gains were computed at Rs. 3,79,39,675/- and on that basis, the income was declared at Rs. 2,38,14,880/-. The said stock in trade was sold on 21/01/2009 at Rs. 11.53 crores, but the registration authorities valued the same at Rs. 16.12 crores for levying the stamp duty, but the assessee did not object to the same firstly because of their dire need for funds and secondly because such stamp duty was to be borne by the transferee. Assessee, however, maintains that insofar as there is no dispute as to the conversion of the property from capital asset to the stock in trade remains undisputed, the sale of stock in trade does not attract the provisions under section 50C of the Act.

16. The assessment order dated 20/03/2015 clearly speaks that the case of the assessee has been that there was no capital asset as such involved in the sale dated 21/01/2009 because one year prior thereto such capital asset ceased to exist on its conversion into stock in trade. Since no capital asset was there involved in the sale transaction, section 50C of the Act has no application. Assessee also referred to the decisions reported in the cases of CIT vs. Thiruvengadam Investments Pvt. Ltd., and Inderlok Hotels Pvt. Ltd. (supra) to buttress its submissions. In spite of it,

the learned Assessing Officer opined that the assessee failed to explain the application of section 50C of the Act for the purpose of computation of capital gains from property transferred on 21/01/2009, where value adopted for stamp purpose was Rs. 16.12 crores. No reasons are assigned by the learned Assessing Officer to brush aside the contention of the assessee as to the non-applicability of section 50C of the Act to the sale transaction dated 21/01/2009. Similarly, the learned CIT(A) also did not state any reason to say that she does not agree with the assessee in its contention that section 50C has no application, when a stock in trade was sold, inasmuch as section 50C itself says that "where the consideration received or accruing as a result of the transfer by an assessee of a capital asset …… "

17. The Revenue authorities failed to examine the issue in its proper perspective and in the light of the binding precedents, more particularly when the assessee rested its case on the decisions reported in the cases of Thiruvengadam Investments Pvt. Ltd., and Inderlok Hotels Pvt. Ltd. (supra). In the case of Thiruvengadam Investments Pvt. Ltd., (supra), the Hon'ble Madras High Court categorically held that provisions of section 50C can be applied only to find out the true value of a capital asset and not for computing business income and, therefore, the same were not applicable in the matter of computation of assessee's income from the sale of the property which was treated as 'business asset' and not as 'capital asset' in the hands of the assessee. So also, in the case of Inderlok Hotels Pvt. Ltd. (supra), the finding is to the effect that section 50C is applicable only for the purpose of determining the sale consideration for computation of capital gains and it cannot be applied for determining the

income under other heads. There cannot be any dispute that the plea of the assessee is fortified by the view taken in these two decisions.

18. Now coming to the submissions of the learned DR, the decision in the case of Carlton Hotel (P.) Ltd., (supra), relates to the case where the value of land contributed by assessee in stock in trade was much higher as against its negligible profit sharing in the firm. In that scenario, the Hon'ble High Court held that the transaction of contribution to the partnership firm was sham and an attempt to device a method to avoid capital gains tax on transfer of land to firm. In the other case, Saras Metals (P.) Ltd., (supra), the main object of assessee company was to carry on business of manufacturing etc., of all kinds of ferrous and non-ferrous material and, therefore, the investment in the plot was not towards stock in trade and, therefore, any gain on sale of such property would be taxed as short term capital gain.

19. Neither of these cases are similar in facts to the case of the assessee. On the other hand, the conversion of the capital asset into stock in trade has never been in dispute. It is not the case of learned Assessing Officer or learned CIT(A) that the conversion of the capital asset into stock in trade was a sham and nominal transaction devised to evade tax, but on the other hand, such an issue attained finality in assessee's own case for the assessment year 2008-09 by order dated 05/07/2016 in ITA No. 190/Hyd/2012. Facts are like this. Assessee converted the capital asset into stock in trade on 02/01/2008 and sold a part of it on 31/03/2008. The assessment for the assessment year 2008-09 was revised by the learned CIT(A) under section 263 of the Act. When the matter reached the Tribunal, the Tribunal while taking cognizance of

this conversion of capital asset into stock in trade, quashed the order under section 263 of the Act. Order of the Tribunal had attained finality. Conversion of the capital asset into stock in trade, therefore, not only remains an undisputed fact, but also judicially taken note of by the Tribunal. We, therefore, do not think it proper to allow such a conversion to be disputed again.

20. For the reasons recorded in the preceding paragraphs, we hold that section 50C of the Act has no application to the sale of the property after its conversion into stock in trade in view of the binding precedents reported in the cases of Thiruvengadam Investments Pvt. Ltd., and Inderlok Hotels Pvt. Ltd. (supra) and, therefore, on merits also, the assessee succeeds. Grounds are answered accordingly.

21. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 3rd day of May, 2024.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 03/05/2024

TNMM

Copy forwarded to:

1. M/s. Maheshwari Megaventures Limited, C/o. B. Narsing Rao & Co., Chartered Accountants, Plot No. 554, Road No. 92, Jubilee Hills, Hyderabad.
2. The ACIT, Circle-16(2), Hyderabad.
3. The Pr.CIT-4, Hyderabad.
4. DR, ITAT, Hyderabad.
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