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HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.P. No.9912/2021

Smt. Premlata Soni
-Versus-
National E-assessment Centre, Delhi & anr.

Shri Ruchesh Sinha, Advocate for the petitioner.
Shri Sanjay Lal, Advocate for the respondents.

CORAM :

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Order reserved on : 14-6-2021
Date of pronouncement of the order : 22-6-2021

O R D E R
(Jabalpur, dtd.22.06.2021)

Per : Vijay Kumar Shukla, J.-

The present petition has been filed under Article 226 of the Constitution of India seeking quashment of the reassessment proceeding for the Assessment Year 2014-15 in the case of the petitioner which has been initiated vide notice dated 20-12-2019 issued under Section 148 of the Income Tax Act, 1961 [hereafter referred to as "the Act"]. The petitioner has further prayed for quashing the order dated 24-5-2021 whereby the objections raised by the petitioner against the reassessment proceedings have been rejected.

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2. The transaction on which reassessment proceedings have been initiated pertains to transfer of a rural agricultural land. For scrutinising the very same transaction, scrutiny proceeding under Section 143(3) of the Act was undertaken in case of the petitioner. In pursuance to the same the petitioner appeared and filed a detailed reply along with relevant documents. The matter was discussed in detail with the Assessing Officer and opportunity of personal hearing was granted to the petitioner. Accordingly, an assessment order recording all relevant facts and figures was passed by the respondents. It is putforth that the respondents have sought to reopen the same transaction

3. The learned counsel for the petitioner submits that no any tangible material came to the notice of the respondents and, therefore, there was no failure on the part of the petitioner to disclose any information during course of the original assessment proceedings. It is further submitted that approval for reassessment has been given merely in a mechanical manner. The re-assessment proceeding in the case of the petitioner is clearly a case of *"change of opinion"* and review of the earlier assessment proceeding and, therefore, the same is impermissible. Learned counsel for the petitioner further submits that law pertaining to reassessment proceedings has been settled by various judgements of the High

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Courts and the Supreme Court. The stage of invoking the writ jurisdiction is the stage when objection of the assessee has been disposed of in contravention to the settled jurisprudence on the subject and a final assessment order has not been passed.

4. The instant petition has been preferred by the petitioner on the following grounds :

> "(i) That, in this case already assessment under Section 143(3) of the Income Tax Act, 1961 was done and in that proceeding all the relevant documents and the materials were filed and were duly considered by the Assessing Authority and the reassessment proceeding has been initiated without any proper reason to believe merely in the grounds of change of opinion.
>
> (ii) That, in this case the original assessment was done four years before, therefore, the sanction given by the competent authority under Section 151 of the Act has been given in a mechanical way.
>
> (iii) That, the Revenue has not alleged against the petitioner that she has not provided true and full disclosure at the time of original assessment order passed under Section 143(3) of the Act passed on 7-9-2016 annexed as Annexure-P/8 of the writ petition."

5. It is setforth that the petitioner herein is a woman and a senior citizen. The issue under consideration is the land transaction which has sought to be reassessed by the respondents. The petitioner purchased a rural agricultural land on 23-7-2007 for a consideration of Rs.12,53,000/- during the financial year 2013-14 relevant to the

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assessment year 2014-15. The said land was sold for a sum of Rs.1,20,00,000/- on 20.01.2014. As per agreement between the petitioner and Shri Saiyad Ali, 50% of sale consideration of Rs.60,00,000/- was transferred by the petitioner to Shri Saiyad Ali. The said fact was registered in a registered agreement between the parties on 18-11-2013.

6. It is stated that the case of the petitioner was selected for scrutiny under the provisions of Section 143(3) of the Act. It is asserted that the reassessment proceeding which has been initiated in the case of the petitioner has already been inquired, discussed, deliberated and ultimately culminated by passing the original order. It is putforth that on the same set of facts, after the end of 4 years from the end of the relevant assessment year, a notice of reassessment of income under Section 148 of the Act was issued to the petitioner by the respondents.

7. The petitioner filed objections against the reassessment proceedings which were disposed of by the impugned order in the instant petition. According to the petitioner the objections filed by the petitioner have been disposed of by the respondents in a mechanical manner and, therefore, the reassessment proceeding in the present case is illegal. Learned counsel for the petitioner

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strenuously urged that the reassessment proceedings in the present case are of a clear case of "change of opinion" and the respondents desired to review the assessment order in the garb of reassessment, which is impermissible. It is argued with vehemence that the reassessment proceedings in this case are bad in law and there is no failure on the part of the petitioner to truthfully disclose all the material facts. The reassessment proceedings in this case are injudicious, as the same have been initiated on the realm of change of opinion, borrowed satisfaction and based on audit objections. It is argued that the reassessment proceeding initiated by the respondent is in absence of any fresh tangible material. It is further contended that the reassessment proceedings in this case are bad in law, as the approval has been given in a mechanical manner.

8. To buttress his submission, the learned counsel for the petitioner relied on the judgments rendered in the cases of Commissioner of **Income Tax, Delhi vs. Kelvinator of India Ltd**., [2010] 187 Taxman 312 (SC) – para 4; **Income Tax Officer vs. Lakhmani Mewal Das**, Civil Appeal No.2526 of 1972; **Haryana Acrylic Manufacturing Co.** vs. CIT, [2008] 175 Taxman 262 (Delhi), paras 6,18, 19, 20 and 20; **CIT vs. Manish Ajmera**, [2011] 13 Taxman.com 132 (Rajasthan) – para 7; **DCIT vs. Bajaj Allianz Life Insurance Co. Ltd.** [2021] 125 Taxman.com 71 (SC) – para 8;

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ACIT vs. FIS Global Business Solutions India (P) Ltd., [2019] 104 Taxman.com 169 (Delhi) – para 6; **CIT vs. S. Goyanka Lime & Chemical Ltd.**, [2015] 64 Taxman.com 313 (SC) – paras 7 and 8; **Dhadda Exports vs. Income Tax Officer, Ward-1(1), Jaipur** – para 11; **Balmukund Acharya vs. DCIT**, [2009] 310 ITR 310 (Bom) – para 31; **Calcutta Discount Co. Ltd. vs. Income Tax Officer, Companies District 1, Calcutta**, 41 ITR 191 (SC); and **Jeans Knit (P) Ltd. Vs. Deputy Commissioner of Income Tax, Bangalore**, [2017] 77 Taxman.com 176 (SC) – para 2. The learned counsel further relied on the Circular No.14(XL-35), dated 11-4-1955 issued by the Central Board of Direct Taxes and referred para 3 of the Circular.

9. It is asseverated on behalf of the petitioner that the provisions of the Act does not preclude a person to not show the sale transaction of a 'rural agricultural land' in the Income Tax Return (ITR). It only excludes the same from being a capital asset and the consequential capital gain arising from the same. The respondents have completely failed to appreciate that merely because the petitioner has shown the transaction as capital gain, will not change the nature of transaction. In other words, merely irrespective of the fact that whether it is a capital asset or not a capital asset, shall not change the characteristic of the transaction.

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10. It is submitted that it is not the case of the respondents at all, that anywhere in the ITR or during the course of original assessment proceedings, the petitioner has conceded that the land sold is not a rural agricultural land, but an urban agricultural land. The said transaction was examined, discussed, verified and finally accepted by the Assessing Officer during the course of the original assessment proceedings. It is argued that Section 50C of the Act is not applicable to the present transaction. It is undisputed that the provisions of Section 50C are not applicable when the asset is not a capital asset. In the present case the impugned land sold is a rural agricultural land and not an urban agricultural land.

11. It is pleaded that merely because the petitioner has shown the transaction under the capital gain, does not mean that the petitioner can be penalised. It is trite law that if an any assessee, under a mistake, misconception or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. Reliance in this regard has been placed on the decision rendered in the case of **Balmukund Charaya (supra)**.

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12. Combating the aforesaid submissions the learned counsel for the respondents submitted that the case of the petitioner is governed by substantive provision of Section 147 of the Act, where all that is required is that the Assessing Officer should *prima facie* have some material on the basis of which there should be "reason to believe" of certain income chargeable to tax has escaped assessment. The aspect of sufficiency of material at this stage, initiation of reassessment proceedings under sections 147 and 148 of the Act cannot be looked into. To substantiate his submissions he has relied on the judgment passed by the Apex Court in the case of **Raymond Woollen Mills Ltd. vs. Income Tax Officer and others**, (1999) 236 ITR 34 (SC). The said judgment was further considered in the matter of **Malay Shrivastava vs. Deputy Commissioner of Income Tax and others**, (2016) 385 ITR 14 (MP). He referred to the relevant paras 8 to 17 of the judgment.

13. The argument advanced by the learned counsel for the petitioner that there was no tangible material available with the Department is not correct, as the requirement to form an honest reason to believe is that the Assessing Officer must have *prima facie* material available before him before issuing notice under Section 148 of the Act. It is submitted that from a bare perusal of the Questionnaire for the year 2014-15 which was issued prior to

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completion of assessment proceedings under Section 143(3) of the Act, it can be seen that the Assessing Officer has not taken the said aspect of capital gain into consideration. It is also observed that the Assessing Officer while passing the order under Section 143(3) of the Act has held that urban agricultural land bearing Patwari Halka No.34/17 situated at Village, Andhua as agricultural land, however, did not examine whether the provisions of Section 50C of the Act were also applicable in the case of the petitioner.

14. It is further canvassed that the petitioner herself has shown capital gain of Rs.3,95,950/- on the said land in the ITR and, therefore, the contention of the petitioner itself gets defeated when it is submitted that the land in question was agricultural in nature and the same did not fall within the ambit and scope of Section 2(14) of the Act and hence, was not liable to capital gain. The petitioner herself has shown the capital gain and has made a contradictory statement to what she has filed or shown in her ITR. Thus, the respondents have submitted that initiation of reassessment proceeding against the petitioner is absolutely legal and justified and it is not a mere “change of opinion”, because there was escapement of income by virtue of the provisions of Section 50C of the Act and the LTCG disclosed by the petitioner at a lesser amount necessitated initiation of proceedings under Sections 147 and 148 of the Act.

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15. We have heard the learned counsel for the parties and bestowed our anxious consideration on the arguments advanced on behalf of the parties. We do not perceive any merit in the writ petition. The respondents have recorded cogent and plausible reasons while rejecting the objections raised by the petitioner against initiation of the assessment proceedings under sections 147 and 148 of the Act for the Assessment Year 2014-15. They have given detailed reasons for initiation of the reassessment proceedings against the petitioner, which we think apt to reproduce :

> "1. In paragraphs 1 to 3 of your letter, you have stated only the facts and the same do not require any comments.
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> 2. In paragraph No.4, it has been stated that since the impugned land was agricultural in nature, the same did not fall within the ambit of section 2(14)(iii) of the Act and was thus not liable to capital gain and further even the AO in the assessment order has accepted the impugned land as agricultural. This objection is without any basis because your have yourself shown capital gain of Rs.3,95,950/- on the said land in the ITR. Further, as the AO while completing the assessment did not take into consideration this important fact and aspect of the case which, in turn, necessitated invoking the provisions of section 147/148 of the Act.
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> 3. Under paragraph No.5, you have stated that initiation of reassessment proceedings was bad in law because the AO himself has held the urban agricultural land bearing PHN 34/17 situated in Village Andhua (Jabalpur) as agricultural land and further the provisions of section 50C were also not applicable in your case. This objection also has no force because the AO failed to appreciate the fact firstly that you have

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yourself shown LTCG on the sale of the impugned land by hold it as 'capital asset' and secondly the AO also did not take into consideration the provisions of section 50C of the Act. Section 50C of the Act states that where the consideration declared to be received or accruing as a result of transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. Stamp Valuation Authority), the value so adopted or assessed shall be deemed to be the full value of the consideration, and capital gain shall be computed on the basis of such consideration. In the present case, the value of the impugned land was Rs.1,47,97,000/- as per Stamp Valuation Authority while you have calculated the LTCG on the basis of apparent consideration of Rs.1,20,00,000/- which is contrary to the mandatory provisions of section 50C of the Act. Thus, there was undervaluation of LTCG to the tune of Rs.42,03,436/- in our case. In such a situation, the initiation of proceedings under section 147/148 was legal and in order.

4. In paragraph No.6, it has been contended that initiation of reassessment proceedings on account of change of opinion is not legal and justified. In this regard, it may be informed that in your case, there was no change of opinion but there was escapement of income in view of the provisions of section 50C of the Act and the LTCG disclosed by your at a lesser amount necessitated initiation of proceedings under section 147/148 of the Act. The case laws relied upon by you have no bearing on the facts of your case.

5. Again, in para No.7 of your letter dated 25-02-2021, it has been contended that there was no failure on the part of the assessed to fully and truly disclose all the material facts. With regard to this objection, it may be informed that in the ITR you had shown LTCG at Rs.3,40,128/- after taking into consideration the apparent consideration of the impugned land at Rs.1,20,00,000/- while the same should have been worked out by taking into consideration the market value of Rs.1,47,97,000/- as per the Stamp Valuation Authority in view the provisions of section 50C of the Act. Thus, there was apparent failure on your part to disclose fully and truly all the material facts in the ITR

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as well as during the course of original assessment proceedings. Accordingly, this objection is also not acceptable. Further the reliance placed by you in the judgment of various Hon'ble Courts have no bearing in your case.

6. In para No.8, you have contended that there was no application of mind by the AO while recording the reasons for reopening. This objection also has no force because while recording the reasons under section 147 of the Act, complete facts were mentioned and the escapement of LTCG was worked out at Rs.42,03,436/- in view of the provisions of section 50C of the Act after due application of mind.

7. In paragraph No.9, it has been stated by you that only reasons justify the reopening. There is no doubt about it. However, as stated in the foregoing paragraphs, the reasons were recorded after taking into consideration all the related facts and the mandatory provisions of law with due application of mind. There is no infirmity in the reasons recorded u/s 147 in your case. Your attention is also invited to the judgment of Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. reported in (2007) 291 ITR 500 (SC).

8. In paragraph No.10, it has been contended by you that the approval for issue of notice u/s 148 of the Act was given by Pr.CIT-2 u/s 151 of the Act in a mechanical manner and in this regard you have also relied upon certain judgments. This objection is also not acceptable because the reasons recorded u/s 147 were based on facts of the case and the mandatory provisions of law and the Ld. Pr.CIT-2 accorded sanction for issue of notice u/s 148 of the Act after due application of mind and taking into consideration the facts and the provisions of law involved in the case and after being satisfied, he approved issue of notice u/s 148 of the Act.

Since the various objections raised by you are not acceptable, it is requested to please co-operate in the matter of completion of assessment."

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16. Recording the aforesaid reasons, the respondents have mentioned that the objections raised by the petitioner are not acceptable. The petitioner was asked to cooperate in the matter of completion of the assessment proceedings. The case relied upon by the petitioner does not have bearing looking to the facts of the present case. In the case of **Sanjay Agarwal vs. Principal Commissioner Income Tax** [2021] 40 ITJ 397 – W.P. No.139/2019 this Court has taken into consideration all the earlier cases and even in the case of **CIT Vs. Kelvinator India Ltd. (supra)** and **Income Tax Officer vs. Tech. Spam India (P) Ltd**., (2018) 404 ITR 10 it is held that the phrase "reasons to believe" does not mean that the Assessing Officer should have ascertained the facts by legal evidence. All that is required to is that the Assessing Officer should *prima facie* have some material on the basis of which there should be "reasons to believe" of certain income chargeable to tax escaping assessment.

17. In the case in hand, a bare reading of the Questionnaire issued for the Assessment Year 2014-15 before completion of the assessment order under Section 143(3) of the Act on the touchstone of the reasons to believe mentioned at 119 of the petition as well as order dated 24-5-2021 by which objection of the petitioner has been disposed of, would show that the reassessment proceeding initiated is

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not mere “change of opinion”, but based upon additional facts which were not at all taken into consideration by the assessing authority. Initiation of the reassessment proceedings was started by issuance of notice under Section 148 of the Act. Those proceedings are yet to be concluded, as no assessment order has been passed. Yet in this case, only objection filed by the petitioner has been decided. The petitioner will have effective and efficacious remedy against the said assessment order. Reassessment proceeding has been initiated on the basis of material having direct bearing over the case of the assessee which is based on the “reason to believe” which was recorded by the assessing authority. Further, there is no merit in the contention of the learned counsel for the petitioner that sanction under Section 151 of the Act was granted by the competent authority in a mechanical manner. The only requirement for initiating the proceedings under Section 147 of the Act beyond the period of 4 years is that the subjective satisfaction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on the reasons recorded by the Assessing Officer explaining the circumstances under which according to the Assessing Officer it was a fit case for issuance of notice under Section 148 of the Act. Section 148 of the Act does not envisage the sanctioning authority to separately give reason while approving the reasons recorded by the Assessing Officer. He has only to be satisfied with the reasons

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recorded by the Assessing Officer which has been forwarded to him for necessary sanction and approval.

18. In this case, Annexure-P/11 appended at page 118 to the petition is the proforma for obtaining approval of Additional Commissioner Income Tax, Range-2, Jabalpur. In the said proforma all the details have been mentioned from paras 1 to 10. Para 11 shows reason for belief that income has escaped assessment and in front of para 11 it has been mentioned as per Annexure enclosed. Entire recording of reasons to believe formed by the Assessing Officer were produced before the sanctioning authority as mentioned in para 13 and after going through the entire reasons recorded by the Assessing Officer the sanction was granted by him. Therefore, all the conditions prescribed under Section 151 of the Act were followed in stricto sensu.

19. In view of the aforesaid, we find that re-opening of the assessment proceeding was conducted on the basis of legally valid sanction accorded by the authority under provisions of Section 151 of the Act. In regard to the argument that the present case falls within the ambit of “change of opinion” and, therefore, the reassessment proceeding initiated is not maintainable, it has already been considered that the Questionnaire issued prior to completion of

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assessment proceeding under Section 143(3) of the Act does not indicate anything as regards the inquiry conducted by the Assessing Officer in accordance with the provisions of Section 50C of the Act as well as undervaluation of LTCG to the tune of Rs.42,03,436/-. In the entire Questionnaire, nowhere this query was made that why the petitioner has shown capital gain of Rs.3,95,950/- on the said land in the ITR when she herself was of the view that the impugned land was and agricultural land and does not fall within the purview of Section 2(14) of the Act and hence, not liable for capital gain. This act of the petitioner *per se* is contrary in nature and, therefore, based on tangible material the Assessing Officer has initiated the reassessment proceedings, and if the same is examined on the touchstone of "reason to believe" for issuance of notice under Section 148 of the Act recorded by the Assessing Officer. A bare reading of the "reason to believe", would show that the twin requirement of Section 147 of the Act that the Assessing Officer *prima facie* have some material on the basis of which there should be reason to believe that certain income chargeable to tax has escaped assessment.

20. In view of the preceding analysis, it is luminescent from the record that re-assessment proceeding has been initiated on the basis of the material which has given rise to "reason to believe" as

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well as escapement of assessment has been quantified by the Assessing Officer.

21. We do not perceive any illegality in the reassessment proceeding, which has been initiated against the petitioner by the respondents under Section 148 of the Act for the Assessment Year 2014-15 vide impugned notice dated 20-12-2019. Further, we do not find any illegality in the order dated 24-5-2021 whereby objections raised by the petitioner against the reassessment proceeding have been disposed of.

21. Ex-consequenti, the writ petition being sans substratum, **is dismissed.** There shall be no order as to costs.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.