2023:DHC:5131-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision:18.07.2023*

\+ **W.P.(C) 12677/2018**

SH.MANUJENDRA SHAH ..... Petitioner

Through: Dr Rakesh Gupta with Mr Somil Agarwal and Mr Anshul Mittal, Advs.

versus

COMMISSIONER OF INCOME TAX-8 & ANR. ..... Respondents

Through: Mr Puneet Rai, Sr Standing Counsel with Mr Ashvini Kumar and Ms Madhavi Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This writ petition concerns Assessment Year (AY) 2011-12.

2. Notice in this petition was issued on 27.11.2018 by a coordinate bench of this court.

2.1 At the stage of issuance of notice in the writ petition, an interim direction was passed to the effect that the respondent/revenue would not pass a final reassessment order during the pendency of the writ petition.

3. Since then, pleadings in the writ action have been completed.

4. Dr. Rakesh Gupta, learned for the petitioner, says that the reassessment proceedings have been triggered without due application of mind by the Assessing Officer (AO).

5. It is Mr Gupta's submission that even the authority granting approval

has not applied its mind as to whether the AO had sufficient material available with him to form a belief that income which was otherwise chargeable to tax had escaped assessment.

6. The record shows that the petitioner had filed his Return of Income (ROI) for the aforementioned AY i.e., AY 2011-12 on 29.06.2012.

6.1 The ROI was processed under Section 143(1) of the Income Tax Act, 1961 [in short, "the Act"].

7. The petitioner was served a notice dated 24.01.2014 under Section 133(6) of the Act. To this notice, the petitioner filed his response on 05.02.2014.

8. Thereafter, the petitioner was issued a non-statutory letter dated 10.06.2018 by the Assistant Commissioner of Income Tax (ACIT) seeking details of lands sold. The petitioner was also directed to furnish the documents with regard to the sale.

8.1 This notice was replied to by the petitioner *via* communication dated 23.06.2014.

9. The afore-mentioned correspondence led to the ACIT serving the notice dated 29.03.2018 under Section 148 of the Act on the petitioner.

10. The petitioner filed a reply on 11.04.2018 to the notice issued under Section 148 of the Act.

11. Thereafter, correspondence was once again exchanged between the petitioner and the ACIT on 15.05.2018 when the ACIT issued a letter to the petitioner, to which response was filed on 25.05.2018.

12. Ultimately, the petitioner was furnished reasons for re-opening the assessment *via* letter dated 02.07.2018.

12.1 This led to the petitioner filing his objections. The objections which

the petitioner filed are dated 17.07.2018.

12.1 The petitioner, *inter alia*, raised the ground that the ACIT had no material available with him which could have formed the basis for re-opening the assessment.

13 The record shows that the objections were disposed of by the AO on 24.09.2018. It is the petitioner's case that the order disposing of the objections was served upon him on 03.10.2018.

14. The petitioner appears to have filed a supplementary objection, which is dated 12.10.2018. These objections were, however, filed with the ACIT, on 15.10.2018.

15. The petitioner was issued two (2) separate notices of even date i.e., 15.10.2018, under Section 143(2) and 142(1) of the Act.

16. It is at this stage that the petitioner decided to move to Court by way of the present writ action.

17. The main pivot of Dr. Gupta's submission is the reasons recorded by the AO. Therefore, for easy reference, the reasons recorded by the AO, as furnished to the petitioner, are extracted hereafter:

> "Reasons for initiating the proceedings u/s 147 of the I.T. Act, 1961 in case of Sh. Manujendra Singh for A.Y. 2011-12."
>
> *1. This is the case of an individual having income from house property, capital gains and other sources for the captioned year. For the year under consideration the assessee had filed his return of income on 29.06.2022 declaring taxable income of Rs. 2,70,21,140/-. Subsequently, the return was processed u/s 143(1) of the Act on 29.04.2013 at returned income. As per the records available with this office, no scrutiny assessment has been found to be completed in this case for A.Y. 2011-12.*
> *2. Initially, in the instant case, an information has been received from the ITO, Ward-5(3), New Delhi vide letter no.*

ITO/Ward-5(3)/File No. 17/2013-14/675 dated 20.02.2014 wherein it was stated that above noted assessee had sold the immovable property to M/s Krit Yug infrabuild Pvt. Ltd at consideration of Rs. 92,00,00/- whereas the market value as per the sale deed was Rs. 3,42,89,000/-. The AO has suggested that the necessary action as per the provision of Sec. 50C of the Act may be taken in hands of the assessee.

On making enquiry by the ACIT, Cir. 31(1), New Delhi [pre-restructuring] for A.Y. 2011-12, the assessee had submitted that following explanation with respect to the above stated transaction:
"….the circle rate is higher than market rate because the land is uneven as this is a hilly land so very small portion of the land is usable….".
Further, the assessee has enclosed a list containing details of lands sold during the financial year 2010-11, which is hereunder:

S.No.	Name of Party	Area (Sq. Mtr.)	Registry S.No.	Amount actually received.	Amount as per Circle Rate
1	M/s Krit Yug Infrabuild Pvt. Ltd.	44530	1284 I-10	92,00,000	3,42,89,000
2	Sh. Kamal Kant Malik	36432	10-I-10	65,00,000	2,80,52,640
3	M/s Nyas Infrabuild Pvt. Ltd.	36432	1127-I-10	75,00,0000	2,80,52,640
4	M/s Shree vaas Infrastructure Pvt. Ltd.	48600	204-I-11	1,00,00,000	3,74,22,000
5	M/s Saundriya Construction Pvt. Ltd.	48600	351-I-1	1,00,00,000	3,74,22,000
6	M/s Karamshil Construction Pvt. Ltd.	48600	352-I-1	1,00,00,000	3,74,22,000
	Total	263194		5,32,00,000	20,26,60,280

"2.1 Subsequently, information has been received from DCIT (Central Circle), Dehradun vide letter dated 27.01.2015. The relevant extract of the information sent vide letter dated 27.01.2015 pertaining to A.Y. 2011-12 is re-produced as under:
"……..A search and seizure action had taken place u/s 132 of the Income Tax Act 1961 on 21/11/2013 in the Shreevas Group of Rishikesh, Uttarakhand by the investigation Wing, Dehradun.

During the course of search the documents have been found and seized (copy enclosed for ready reference) as per which it has been observed that Maharaja Manujendra Shah of Tehri has sold various properties to this group and to other persons. The details of these are enclosed herewith as per the details furnished by the sub-registrar of Devprayag during the F.Y. 210-11, 2011-12 and 2012-13. The sale consideration of these properties is much less than the market rate through the stamp duty has been paid at the circle rate. These properties have been passed on to Maharaja Manujendra Shahby virtue of being the legal descendent of Late Maharaja Manvendra Shah as per the letter dated 23.01.2014 of the Sub-Registrar, Devprayag. As per returns of income filed by Maharaja Manujendra Shah for the A.Y. 2011-12; the details have been furnished as follows:

S. No.	A.Y.	Full Value of consideration	Cost of acquisition	Capital gain
1	2011-12	202660280	177774387	14760893

"A letter was written to Sub-Registrar Tehri to enquire the circle of land at Narendranagar as the land sold by Maharaja Manujendra Shah is within the municipal limits of the city. The Sub-registrar, Tehri vide his letter dated 25.1.2014 has enclosed a letter dated 26.07.1980 written by DM, Tehri Garhwal addressed to secretary Uttar Pradesh mentioning the market rates of the land for the years 1980-83. The relevant portion of value of land at Narendra Nagar is as follows:

Type of land.	Value of rural land per naali	Value of urban and motorable land per naali
Talau	1400	2000
Avval	700	1000
Dayam	566.67	666.67

Naali is the word for measuring land in Tehri Garhwal. One naali is equivalent to 20 muthis which further is equivalent to 200 sq. mtrs.

*The cost of acquisition as on 1.4.1981 even if taken at the highest rate, the cost of acquisition of land sold by Maharaja Manujendra Shah should have been Rs. 2,000/- per 250 sq. mtrs. * The A.O. is required to further work out the value of capital gain tax liability after taking into consideration the material found during the course of search and collected during the course of post search enquiries. In view of the above facts and documents found and seized during the course of search and perusal of ITR for A.Y. 2011-12, it is evident that the cost of acquisition claimed is much higher. In light of the facts it is therefore, requested to examine the same facts and take appropriate action in the light of provision of section 50C of Income Tax Act, 1961, by invoking the provision of section 153C/148 as deemed fit at your end…..".*

3. On perusal of all details contained in the above referred letter/information, it is observed that the assessee had sold the above stated lands below the circle rate as prescribed by the stamp valuation authority. Hence, the provision of Sec.50C is clearly attracted in this case. Further, the cost of acquisition of the lands had been taken at higher rate. The provision of Sec. 50C is stated as under:

Special provision for full value of consideration in certain cases

50C.(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a 'State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or: assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

[Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque of account payee bank draft or by use of electronic clearing system through a

bank account, on or before the date of the agreement for transfer.].
(2) Without prejudice to the provisions of sub-section (1), where-
(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (I) exceeds the fair market value of the property as on the date of transfer;
(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may be refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3). (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-(27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of the Act.
Explanation I.- For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause ® of section 2 of the Wealth-tax Act, 1957 (27 of 1957).
Explanation 2.- For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.
(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.
Following section 50CA shall be inserted after section 50C by the Finance Act, 2017, w.e.f. 1-4-2018:
4. On perusal of ITR and computation of income filed by the assessee for the year under consideration, it reveals that the assessee has declared 'Long Term Capital Gain' amounting to Rs. 1,4760,893/- as per the calculation below:

Full value of consideration Less:	*: Rs. 20,26,60,280/-*
Cost of acquisition	*: Rs. 17,77,74,387/-*
Less: Transfer expenses	*: Rs. 1,25,000/-*

Long Term Capital Gain	*: Rs. 2,47,60,893/-*
Less:	
Deduction u/s 54EC	*:Rs. 1,00,00,000/-*
Balance long term capital gain	*: Rs. 1,47,60,893/-*

5. ***But, as per the information in my possession and provisions contained in Sec. 50C of the Act, it can be concluded that assessee had not declared the full and true value of consideration of the lands sold during the F.Y. 2010-11 relevant to A.Y. 2011.12****.*

Considering the above, the long term capital gain of the assessee would be as under:

Full value of consideration	*: Rs. 20,26,60,280/-*
Less:	
Cost of acquisition	*: Rs. 21,05,552/-*
Less: Transfer expenses	*: Rs. 1,25,000/-*
Long Term Capital Gain	*: Rs. 2,47,60,893/-* (refer to para 2.1).*
Less: Transfer expenses	*: 1,25,000/-*
Long Term Capital Gain (re-computed)	*: Rs. 20,04,29,728/-*
Less:	
LTCG declared in ITR	*:Rs. 1,47,60,893/-*
Balance taxable LTCG	*: 18,56,68,835/-*

In view of these facts, the inevitable conclusion is, that an income of s. 18,56,68,835/- has escaped assessment in the case of the assessee for A.Y. 2011-12 by reason of the failure on the part of the assessee to disclose full and truly all material facts necessary for its assessment.

6. In the present case, the live link between the material available on record and the reasons for belief that income has escaped assessment has also been sufficiently demonstrated.

7. It is worth discussing the following case laws which are relevant to the matter in hand. In the case of CIT v Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012, the Hon'ble Delhi High Court, which is the jurisdictional High Court, held that as long as there is a 'live link' between the material which was placed before the Assessing Officer at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held-

"We are aware of the legal position that at the stage of issuing the notice u/s 148, the merits of the mater are not relevant and the Assessing Officer at that stage is required to form only a

> *prima facie belief or opinion that income chargeable to tax has escaped assessment".*
> *7.1 Further, pin the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. V. ACIT (2007) 291 ITR 500/161 Taxman 316 (Supreme Court). The Hon'ble Apex Court has held that:-*
> *"All that is required for the Revenue to assume valid jurisdiction u/s 148 is the existence of cogent material that would lead a person of normal prudence, acting reasonably, to an honest belief as to the escapement of income from assessment."*
> *8. To conclude, I have independently examined the entire gamut of facts and circumstances surrounding the case as also the material available on record and after due application of mind on the same as brought out above**, I, therefore, have, reasons to believe that an income of Rs. 18,56,68,835/- in the case of the assesseee that was chargeable to tax under the provisions of Income Tax Act, 1961 has escaped assessment during the A.Y. 2011-12 by reason of the failure on the part of the assesse to disclosure fully and truly all material facts necessary for its assessment. Hence, it is a fit case for initiation of proceedings in terms of Explanation 2(b) read with 2(ca) to Sec. 147 of I.T. Act 1961**; so as to bring to tax the income escaping assessment to the tune of Rs. 18,56,68,835/- or any other income which comes to my notice subsequently during the course of assessment proceedings.*
> *In this case, more than four years have lapsed from the end of the assessment year under consideration. Accordingly, necessary approval u/s 151 of the Income-tax Act, 1961 is solicited to issue notice u/s 148 of the Income-tax Act to initiate the proceedings u/s 147 of the Income-tax Act, 1961, so as to bring to tax the income chargeable to tax which has escaped assessment"*
>
> [Emphasis is ours]

18. A careful perusal of the above extract would show that the AO had triggered the reassessment proceedings on account of the petitioner not disclosing the "full and true value of the consideration" of the subject parcels of land sold during Financial Year (FY) 2010-11 [AY 2011-12].

19. Concededly, the consideration received against sale of land by the petitioner against various parcels of land sold by the petitioner was less

than the prescribed circle rate. This aspect emerges from the table contained in reasons recorded by the AO.

20. A perusal of the said table would show that the petitioner had sold six parcels of land of various measurements, having a cumulative area of 2,63,194 square meters.

21. The total consideration received by the petitioner against the sale of these six (6) parcels of land was Rs. 5,32,00,000/-.

22. The cumulative value, at the prevailing circle rate, of the said lands, as recorded by the AO, was Rs. 20,26,60,280/-.

23. The record discloses (concerning which there is no dispute) that the petitioner had calculated his capital gains while filing ROI by taking the circle rate concerning the six parcels of land sold by him and then arrived at the cumulative value, which, as indicated above amounted to Rs. 20,26,60,280/-.

24. The AO seems to have missed this crucial aspect and adverted to the fact that provisions of Section 50C of the Act would be applicable in the instant case.

25. A plain reading of the Section 50C of the Act would show that when consideration is received by an assessee which is less than the value adopted by any authority of the state government, for the purposes of payment of stamp duty in respect of such like transfers, the value so adopted or assessable, for the purposes of Section 48 of the Act, is deemed to be the full value of consideration accrued as result of such transaction.

26. In other words, the value fixed by the stamp valuation authority, which is the circle rate, should be taken as the full value of the consideration while calculating capital gains.

27. As noted above, there is no dispute whatsoever that capital gains were calculated by the petitioner by taking the circle rate into account; the cumulative value of which, as noticed above, was Rs. 20,26,60,280/-. Therefore, clearly, the provisions of Section 50C were not applicable, as the computation of capital gains was based on the circle rate.

28. A careful perusal of paragraphs four (4) and five (5) of the reasons recorded by the AO would show that the real difference in the long-term capital gain upon the sale of subject lands, as calculated by the respondent/revenue, and that which the AO has arrived at, was on account of the cost of acquisition.

29. The cost of acquisition that the petitioner had arrived at, as noted in paragraph four (4) of the reasons recorded, was Rs.17,77,74,387/-.

29.1 Thus, having taken into account the full value of the consideration, which was the circle rate i.e., Rs. 20,26,60,280/- after adjusting the transfer expenses of Rs. 1,25,000/-, the long-term capital gain on the subject lands which the petitioner arrived at was Rs. 2,47,60,893/-.

29.2 The petitioner also sought a deduction against the said figure under Section 54EC of the Act, which was pegged at Rs.1 crore. Thereafter, the petitioner arrived at, as noted above, a long-term capital gain of Rs. 1,47,60,893/-.

30. As against this, the AO pegged the cost of acquisition at Rs. 21,05,552/-. Thus, the real difference in the capital gains emanated from the difference in the cost of acquisition, as taken by the petitioner and that which was arrived at by the AO.

31. The AO's cost of acquisition was based on the input which he claimed and received from the DCIT (Central Circle), Dehradun *via* letter

dated 27.01.2015. The extract of that communication is noted by the AO in his reasons for reopening the assessment.

31.1 The crucial aspect of that input is that the DCIT, in turn, seems to have relied upon a communication received from the Sub-Registrar, Tehri *via* a letter dated 25.01.2014, which enclosed a letter dated 26.07.1980 written by the District Magistrate, Tehri, Garhwal.

31.2 This letter was, apparently, addressed by the District Magistrate to Secretary, Uttar Pradesh, wherein market rates of land for the period spanning between 1980 and 1983 were referred to.

31.3 This extract of the DCIT's letter also referred to the various types of land and the rate for the said lands, both urban and rural. The highest rate for the type of land which is referred to in tabular chart i.e., "talau" is Rs. 2000 per "naali", which is an urban and motorable land. Each naali is equal to 20 "muthis", which is equivalent to 200 square meters. Therefore, the highest rate qua each parcel of land would be approximately Rs.10 per square metre.

31.4 This very extract goes on to note that as on 01.04.1981, the cost of acquisition of land sold by the petitioner should have been Rs.2000/- per 250 square meters, which would work out to Rs.8 per square metre.

31.5 The AO, based on this reasoning arrived at the cost of acquisition, which is, in effect, the market value of land as on 01.04.1981, by multiplying Rs.8 per square meter with the total land area sold by the petitioner i.e., Rs.2,63,194/-. The product of which is Rs.21,05,552/-.

32. Counsel for the parties agree that the AO had to index the cost of acquisition, which is what the petitioner did.

33. Notwithstanding the above, the AO, as noticed above, has not applied his mind to the input received by him from the DCIT via letter dated

27.01.2015. It appears that the AO did not indicate as to why Rs.8 per square metre was taken as the rate, as against Rs.10 per square metre, while ascertaining the cost of acquisition.

34. Mr Gupta also says that the AO did not have the relevant material in his possession. This aspect has been emphasized by Dr Gupta by referring to assertions made in paragraphs 11 and 24 of the writ petition, wherein it is averred that the AO did not have relevant material in his possession before triggering the reassessment proceedings.

34.1 This plea is supported by Dr Gupta by referring to the counter-affidavit, where there is no denial qua the assertion made in the writ petition.

35. What makes matters worse is that the Principal Commissioner of Income Tax [in short, "PCIT"], while granting approval, has adopted an almost nonchalant approach. This is evident from a perusal of the following extract:

> *"I have gone through the entire material on record, in the case of SH.MANUJENDRA SINGH (ABMPS6821N) for A.Y. 2011-12. The AO, i.e. CIRCLE-52(1), New Delhi has sufficient information in her possession which leads to reasons to believe that the Assessee would have Income exceeding maximum amount not chargeable to Tax and Has Income which has escaped assessment which exceeds Rs.1 Lakh.*
>
> *I am satisfied on the reasons recorded by the AO that it is a fit case for the issuance of Notice u/s 148 of the IT Act, 1961. Sanction u/s 151(1) of the Income Tax Act, 1961 is granted for issuance of Notice u/s 148 of the Act."*

36. As noted above by us, several issues arose, which the PCIT had to examine: (i) Whether Section 50C of the Income Tax Act, 1961 [in short, "Act"] is, at all, applicable in the present case? (ii) Whether the cost of acquisition arrived at by the AO, while calculating that capital gains, as disclosed by the petitioner, was correctly scaled down?

37. We may also note that the AO, while putting a probative value with regard to the capital gains in the reasons recorded by him, somehow has also missed adjusting the deduction claimed by the petitioner under Section 54EC of the Act. As noted hereinabove, the petitioner had claimed deduction of Rs.1 crore in this regard.

38. Therefore, for the foregoing reasons, there has been complete non-application of mind by the AO, both with regard to the provision which was applicable in the instant case and also insofar as his failure to secure the material that was available with the DCIT in arriving at the market value of the land as on 01.04.1981, which, as noticed above, forms the basis of the cost of acquisition.

39. The PCIT i.e., the authority granting approval for reopening the reassessment proceedings, did not do better. PCIT, in fact, rubber-stamped the attempt of the AO to reopen the assessment.

40. Courts have, time and again, held that such an approach is to be abjured. [See ***Synfonia Tradelinks Pvt. Ltd. v Income Tax Officer, Ward-22(4),*** 2021:DHC:1142-DB].

41. Accordingly, the prayer made in the writ petition is allowed.

42. Resultantly, notice dated 29.03.2018 issued under Section 148 of the Act is quashed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 18, 2023/pmc