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

\+ **W.P.(C) 6376/2015 & CM No. 11603/2015**

SOS CHILDREN' S VILLAGES OF INDIA ..... Petitioner

Through: Mr. Satyen Seth and Mr. Arta Trana Panda, Advocates.

Versus

DY. COMMISSIONER OF INCOME TAX (EXEMPTION) & ANR. ..... Respondents

Through: Mr.P. Roychaudhuri and Ms.Vibhooti Malhotra, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 08.12.2016

1. The petitioner is aggrieved by reassessment notice under Section 148 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') issued on 28.03.2014. It is contended that it does not conform to the requirement of law, under the provisions itself and, therefore, it requires to be quashed.

2. The reassessment notice pertains to Assessment Year (AY) 2007-08 and is based upon a reappraisal of the valuation of the property purchased by the petitioner, i.e. 3 acres including a bungalow at Banglow Club Road, Nagapattium. According to the Assessment Officer (AO), there was a difference in sale consideration between what was disclosed by the petitioner and the sale realized valuation of the stamp authorities, which according to him was hit by Section 69 of the Act. The relevant portion of

the reassessment notice reads as follows:-

> *"As per report, during the course of verification of AIR - Non-Pan Data it was noticed that Land measuring 3 acres including Banglow building Banglow club Road Nagapattium was purchased by M/s. SOS Childrens village of India through his power agent Shri Sumanth Kumar Kar for a sale consideration of Rs.67,93,150/-. Though the SRO Nagapattium has assessed the property under the stamp valuation Act at Rs 4,38,50,000/- for the purpose of stamp duty from Mrs Jeenath Nachiyar Bte Lok Mohamand on 10.7.2006. Perusal of Sale deed revealed that Guideline Value of Rs.4,38,50,000/- against the sale consideration of Rs.67,93,150/- gives a difference of Rs.3,70,56,850/- under section 50C of the Income Tax Act, 1961 Income tax Act. This difference is hit by the provision of section 69 of the Act including of stamp duty.*
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> *Further, as per report the assessee has not filed the proof of filing of his return for the assessment year 2007-08.*
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> *In view of above, after proper perusal of the report and examination of the facts of the case as well as the legal position in this regard, I have reasons to believe that the income of above assessee which is chargeable to tax has escaped assessment, as per the provisions of section 147(a), (b) and (c) of the Income tax Act 1961."*

3. It is contended that the impugned notice neither refers to any tangible or fresh material nor even is based on correct facts. In this regard, it is pointed out that the assessee had, in fact, filed the return for AY 2007-08 and that the assessment was completed on 28.08.2009 under Section 143 (3) of the Act.

4. The respondents do not dispute that, in fact, the assessment was completed after a notice under Section 142 (2) of the Act was issued to the

petitioner for the concerned assessment year. They, however, seek to justify the impugned notice by stating that the valuation of the material justify the *prima facie* belief that there was escapement of income.

5. This Court is of the opinion that the impugned order cannot be sustained. *Ex facie* it discloses total non application of mind – the assessee contrary to the notice had, in fact, filed its returns and was assessed under Section 143(3) of the Act. Consequently and more importantly there is no reference to any tangible material or objective fact which triggered the reassessment notice – validating requests for reopening the assessment under Section 147/148 of the Act, in view of the judgment of the Supreme Court in CIT Vs. Kelvinator [2010] 320 ITR 561 and other judgments which have followed that ratio.

6. For the foregoing reasons, the impugned notice dated 28.03.2014 and all consequent proceedings are hereby quashed.

7. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 08, 2016
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