IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.34075 OF 2017
AND
W.M.P.NOS.37817 & 37818 OF 2017

S.Ganesan .. Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Non-Corporate Circle, 15(1),
121, Nungambakkam High Road,
Chennai - 600 034. .. Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, quash the impugned notice issued u/s.148 of the Act in Pan No.AAZPG3716G/ACIT/NCC-15/A.Y.2010-11 dated 31.3.2017 and consequentially quash the proceedings in Pan : AAZPG3716G/Reply to objections/NCC 15(1)/2017-18 dated 22.12.2017 as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

ORDER

The Notice issued under Section 148 of the Income Tax Act, 1961 in proceedings dated 31.03.2017 and the reply to the objections given by the respondents for re-opening of assessment in the case of the petitioner in proceedings dated 22.12.2017 for the Assessment Year 2010-11 are under challenge in the present writ petition.

2. The petitioner was engaged in the business of investment advice to the clients in Mutual Funds, post office saving scheme, insurance companies and other deposits. He was assessed to tax under PAN No.AAZPG3716G on the file of the respondent. For the Assessment Year 2010-11, the petitioner had filed return of income on 30.07.2010, declaring a total income of

Rs.4,46,870/-. The return was processed under Section 143(1) on 08.04.2011. Subsequently, the assessment was taken up for scrutiny and notice under Section 143(2) of the Act was also issued together with calling for certain details. The petitioner states that the details called for by the petitioner under Section 143(2) were fully furnished to the satisfaction.

3. During the course of original assessment proceedings, the petitioner was asked to explain as to why in connection with the property sold during the Financial year 2009-10 for a consideration of Rs.5,67,30,000/-, the capital gains was not offered to tax in the return filed by him for Assessment Year 2010-11. The petitioner had submitted that the said property was transferred and possession was given to M/s.Vinayaga Land Developers, a partnership firm, for a consideration of Rs.1,07,18,000/- through a Sale agreement dated 15.12.2003 and a registered Power of Attorney was executed in favour of one Mr.B.Nagi Reddy, a partner in the firm, to sell the property.

4. The petitioner had furnished the copy of the sale agreement and Power of Attorney entered into. The Assessing Officer in order dated 12.03.2013 has drawn reference to Paragraph 7 of the Sale agreement, which is dealing with the capital gains.

5. During the Original assessment proceedings under Section 143(3) in response to the summons issued to Mr.B.Nagi Reddy, appeared before the Assessing Officer as per the sale agreement entered into between the petitioner and Sri Vinayaga Land Developers. The petitioner had disowned the rights in the said property after receiving the consideration of Rs.1,07,18,000/- and the Power of Attorney was given in his favor to own, develop and sell the property. It was demonstrated before the Assessing officer that upon ultimate sale of the property for a consideration of Rs.5,67,30,000/-, the whole income was offered as business income in the books of accounts of M/s.Vinayaga Land Developers. In this regard, Mr.B.Nagi Reddy submitted the Books of Accounts of the Firm for the Financial Year 2009-10 and the copy of the return of income in which the said income is included as business income and offered to tax under the head "Profits and gains from business or profession".

6. It is contended that all the above facts have been clearly brought out in the assessment order dated 12.03.2013 under Section 143(3) of the Act. The respondent having considered the above facts and upon being satisfied by order dated 12.03.2013 under Section 143(3) held as follows:

> "Since it is verified that the said consideration has suffered tax in the hands of Mr.Nagi reddy and it

is also verified that the assessee has not received any amount other than the consideration he received during financial year 2003-04 amounting to Rs.1,07,18,000/- which was offered to tax during the Assessment Year 2004-05, the assessee's submission that the consideration will not amount to be taxed in the hands of the assessee is accepted.”

7. Pursuant to the scrutiny assessment made under Section 143(3), the respondent on 31.03.2017, issued a notice under Section 148 for reopening the assessment for the Assessment Year 2010-11. The assessment, which has become final under Section 143(3), was reopened under Section 147 by issuance of the Impugned notice dated 31.03.2017.

8. The petitioner filed a letter dated 21.04.2017, requesting the respondent to treat original return filed by them vide Acknowledgment No.002245 dated 30.07.2010, as the return filed in response to the notice under Section 148 of the Act. The petitioner had requested the respondents to furnish reasons to believe that income liable to tax had escaped assessment within the meaning of Section 147 of the Act. The respondent by their letter dated 06.10.2017, furnished reasons for re-opening the assessment for the Assessment Year 2010-11.

9. In response to the reasons for re-opening of the completed assessment, the petitioner by letter dated 21.10.2017, furnished detailed reply along with annexure, requesting the respondent to drop the proceedings, since there was no reason to believe that the income liable to tax is escaped assessment. The petitioner has raised an objection regarding the jurisdiction of the authority for reopening of the assessment for 2010-11 and further, considered the other grounds and supportive judgments cited by the petitioner. In view of the fact that the respondent has not considered the objections, the petitioner is constrained to move the present writ petition.

10. The counter filed by the respondent reveals that objection raised against the reasons recorded under Section 148 (2) for issue of notice under Section 148 of the Act, were carefully perused and considered by the Department. It is stated that the ownership of the property could not be transferred between persons by way of executing the Power of Attorney or a sale agreement, as they do not come within the purview of Transfer of Property Act. The decision taken in consequence of part performance of the Act under Section 53-A of the Transfer of Property Act is subject to the conveyance of the ownership through registered document under Section 54 of Transfer of Property Act. It is stated that the petitioner has given only Power of Attorney and the property is not transferred through

registered sale deed. These conditions does not provide or vest any discretion or power with Assessing Officer to accept the claim of the appellant that the transferor has relinquished the rights in the property during the A.Y.2004-2005 itself, without fulfilling the conditions. Therefore, by no stretch of reasoning, it can be said that Assessing Officer had accepted the claim of the assessee in his discretion and now, the change of opinion has entailed into re-opening of assessment, because Assessing Officer was not vested with such discretion.

11. The respondents have stated that it is difficult to accept the claim of the appellant that the Assessing Officer was statutorily incorrect and no income had escaped of income, since he had received the entire sale proceeds arising out of this transaction and admitted LTCG in A.Y.2004-05 itself. This escapement thereby called for invoking of provisions of Section 147 not due to the change of opinion, but for not correctly applying the prescribed conditions.

12. Further, the respondent has relied on the case of M/s.Suraj Lamps and Industries, wherein the Apex Court held that "a transfer of immovable property by way of sale can only be by a deed of conveyance and in the absence of a deed of conveyance (duly stamped and registered as required by law), no right title or interest in an immovable property can be transferred."

13. In the backdrop of the above facts, the plea that change in the opinion is the cause of invoking provisions of Section 147 was devoid of any merit and hence, objections raised by the appellant was not accepted against the re-opening the assessment.

14. The objections raised by the petitioner against the reopening proceedings were disposed of by written communication issued by the respondent on 22.12.2017 and it was a speaking order. Reliance on the ruling of the Apex Court were also categorically mentioned in support of the reopening proceedings.

15. The petitioner had failed to justify as to how the provisions of Transfer of Property Act did not apply to him, so as to establish that no sale of property was made in the Assessment Year 2010-11.

16. It is a settled law that a transfer of immovable property could be only by way of sale through a register deed of conveyance. In other words, no rights, title or interest in an immovable property could be transferred in absence of a duly registered deed of conveyance. Reliance in this regard is placed on the decision of the Apex Court delivered in the case of M/s.Suraj Lamps and Industries. In the instant case, the sale deed was executed in Assessment Year 2010-11. Accordingly, the

transfer has taken place in the said year only. Hence, the LTCG is to be determined in Assessment Year 2010-11.

17. The learned counsel appearing on behalf of the writ petitioner relied upon the sale agreement between the petitioner and Sri Vinayaga Land Developers dated 15.12.2003, solicited the attention of this Court regarding the consideration paid for the Sale agreement. Admittedly, the Sale agreement was an unregistered document. Perusal of the consideration column, the same reveals that the consideration fixed as under this agreement is Rs.1,07,18,000/- for conveying the Schedule 'B' mentioned property. The details of the Banker's Cheq.No., Bank, Date and amounts are also furnished in the sale agreement itself. Further, the petitioner relied on the possession column in the said agreement, held that the possession itself was granted to said Sri Vinayaga Land Developers, a registered Partnership Firm and full satisfaction memo was also incorporated in the agreement. Relying on these clauses in the unregistered agreement, the learned counsel for the petitioner reiterated that for all purposes, the property belonged to the petitioner was sold in favour of Sri Vinayaga Land Developers and a general irrevocable Power of Attorney was also given in favour of Mr.B.Nagi Reddy, who is a Partner of the Firm M/sSri Vinayaga Land Developers. Therefore, the petitioner, for all purposes, received the total consideration for the sale of his property i.e., Rs.1,07,18,000/- and based on the consideration received through the said sale agreement, the petitioner filed returns in the Assessment Year 2004-05 and all the particulars were also furnished to the Assessing Officer at the time of original assessment. The general Power of Attorney was given in favour of the Partner Mr.B.Nagi Reddy, who in turn, executed a Registered Sale Deed in the year 2010.

18. It is further contended that M/s.Vinayaga Land Developers also furnished all these particulars and shown the sale consideration of Rs.5,67,30,000/- as business income in the Books of Accounts. In this regard, Mr.B.Nagi Reddy, submitted the Books of Accounts of the Firm for the Financial Year 2009-10 and the copy of the return of income, in which, the said income is included as business income and offered to tax under the head “Profits and gains from business or profession”.

19. Thus, there is no irregularity or illegality regarding the transaction between the petitioner and M/s.Vinayaga Land Developers and therefore, there is no reason to believe for reopening of assessment under Section 147 of the Act.

20. The learned counsel for the petitioner relied on the Assessment Order issued under Section 143(3) dated 12.03.2013

and relied on the scrutiny proceedings, wherein the details regarding the agreement of sale and the Power of Attorney given by the petitioner in favour of Mr.B.Nagi Reddy and the execution of sale by Mr.B.Nagi Reddy as well as the sale consideration received were recorded. By narrating the entire facts and circumstances, the petitioner pleaded innocence of the transfer of the property during the Financial Year 2009-10. In fact, the petitioner Mr.Swaminathan Ganeshan disowned the rights of the property after receiving the consideration of Rs.1,07,18,000/- and the Power of Attorney was given in favour of Mr.Nagi Reddy as the authorized agent to own and sell the property and subsequently, the property was sold for a consideration of Rs.5,67,30,000/- and the whole income was offered as business income in the Books of Accounts of M/s.Vinayaga Land Developers. Relying on the said findings, the learned counsel for the petitioner has stated that when there is no dispute regarding the factual matrix presented by the petitioner before the Assessing Officer with supporting documents, then any further notice for reopening of assessment is nothing but "change of opinion" and cannot be construed as "reason to believe". The facts adjudicated with reference to the documents and the tax paid already with reference to the sale consideration received by the petitioner pursuant to the agreement for sale dated 15.12.2003, there is no reason to believe for reopening of assessment and thus, the entire opinion formed by the respondents are nothing but change of opinion and not reason to believe.

21. The learned counsel for the petitioner is of an opinion that the Audit objections were taken into consideration. The Audit objection is found in proceedings dated 06.10.2017, wherefrom the reasons for reopening of the case of the petitioner for the Assessment Year 2010-11 was issued. The Audit objections raised regarding the execution of Power of Attorney and sale agreement for the purpose of transfer of property is relied on by the respondents for the purpose of reopening of assessment. The Audit objections raised with reference to Section 53-A of the Transfer of Property Act by holding that ownership of the property cannot be transferred between persons by way of executing the Power of Attorney or a sale agreement, as they do not come within the purview of Transfer of Property Act. As per Section 54 of Transfer of Property Act, any tangible asset can be transferred only by way of properly registered deed. However, Power of Attorney is given by the petitioner and the property is not transferred through registered sale deed is an admitted fact.

22. The learned counsel for the petitioner has stated that under the Tax Law, such technicalities are not permissible, in

view of the fact that the authorities are bound to ensure, whether the tax is paid for the consideration received by the owner of the property or not. It is contended that even in the sale agreement, the petitioner had transferred the property in favour of M/s. Vinayaga Land Developers and the terms and conditions in the sale agreement would reveal that the petitioner received the total sale consideration fixed in the agreement and further, the possession was also handed over. Thus the assessee produced all the documents and offered tax already. Tax offered was assessed and now, based on the sale deed executed by the Power holder Mr.B.Nagi Reddy, the assessment of the petitioner cannot be reopened under Section 147 of the Act.

23. The learned counsel appearing on behalf of the petitioner further contended that the requirements under Section 147 of the Act has not been fulfilled. The petitioner contended that in the present case, the reopening of assessment is made after four years, but before lapse of 6 years. In such cases, Section 147 proviso contemplates that only on the failure of the assessee to disclose full and true income and the material facts necessary for assessment reopening of assessment is permissible and not otherwise. In the present case, the element of non-disclosure of full and true income is absent and therefore, the impugned notice itself is liable to be set aside.

24. The learned counsel for the petitioner strenuously contended that Section 147 is a self-containing provision, wherein the requirements for reopening of assessments are elaborately provided. Within four years, the authorities competent is to reopen on any circumstances, if any income escaped from assessment is identified or noticed. However, beyond four years, only if the authorities found that the assessee has not furnished true and full disclosure of his income, then alone, the reopening of assessment is permitted and not otherwise. Therefore, the impugned order does not meet out the requirement of Section 147 of the Act and therefore, the entire reopening is to be scrapped.

25. In support of his contention, the learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, reported in (2010) 2 SCC 723, wherein the Apex Court observed as follows:

> "5.On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the assessing officer to make a back

assessment, but in Section 147 of the Act (with effect from 1-4-1989), they are given a go-by and only one condition has remained viz. that where the assessing officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1-4-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

6.We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place."

26. In the case of Fenner (India) Ltd., Vs. Deputy Commissioner of Income Tax, reported in (1999) 107 Taxman 53 (Mad), the High Court of Madras held as follows:

"On writ, the petitioner averred, inter alia, that it had fully and completely disclosed, at the time of assessment, all the material facts necessary for the assessment and had also filed the returns required and that it had nowhere been recorded that the petitioner had failed to set out all the material facts necessary for its assessment and, therefore, the power under the proviso to section 147(1) was being invoked. It was, therefore, submitted that the pre-conditions required for the issuance of notice under the proviso to Section 147 were not fulfilled and the respondent should be prohibited from taking any further proceedings.

The pre-condition for the exercise of the power under section 147 within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the Assessing Officer that any income chargeable to tax has escaped assessment for that assessment year. In cases where the initiation of the proceedings is beyond the period of four years from the end of the assessment year, the Assessing Officer must necessarily record not only his reasonable belief that income has escaped assessment but also the default or failure committed by the assessee. Failure to do so would vitiate the notice and the entire proceedings. Mere escape of income is insufficient to justify the initiation of action after the expiry of four years. Such escapement must be by reason of the failure on the part of the assessee either to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for the assessment. Thus, the duty of an assessee is limited to fully and truly disclosing all the material facts. The assessee is not required thereafter to prepare a draft assessment order. If the details furnished by the assessee were in conformity with the requirements of all applicable laws and known accounting principles, it is for the Assessing Officer to reach such conclusions as he considered was warranted from such data and any failure on his part to do so cannot be regarded as the assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the Assessing Officer in understanding the details placed before him cannot confer a justification for reopening the assessment, long after the period of four years had expired. Further, If the Assessing Officer chooses to entertain the belief that the assessment has been made in the background of the assessee's failure to disclose truly and fully all material facts, it is necessary for him to record that fact and in the absence of a record to that effect, it cannot be held that the notice is capable of being regarded as a valid notice."

27. In the case of D.Kasturi Vs. Commissioner of Income Tax, reported in (2012) 121 Taxmann 2 (Madras), the Court held as follows:

"Pursuant to a sale agreement in respect of her property, the assessee received its sale consideration and handed over the possession of the property to firm 'C', in August 1993, 'C' on the basis of power of attorney obtained from the assessee, sold the said property in parts to others on or after March, 1995, describing themselves as the assessee's agents. For the assessment year 1994-95, the assessee filed her return, admitting capital gains, by treating the transfer of possession in August, 1993, as having resulted in a transfer for the purpose of Section 2(47). Later, she claimed that there was no transfer during the assessment year 1994-95, and that the actual transfers were made in the assessment year 1995-96 when power of attorney holders executed registered sale deeds in favour of others. The assesses's claim was rejected by the Assessing Officer. A revision to the Commissioner under Section 264 also proved unsuccessful.

Every one of the ingredients of section 53A of the Transfer of Property Act was therefore satisfied when the firm was put in possession in August, 1993, at which time the assessee had also received the full consideration, of Rs. 25 lakhs. The subsequent act of the firm in selling portions of the property to other third parties, in the subsequent years and executing the sale deeds in favour of such vendees by utilising the powers of attorney granted to the partners by the assessee, does not in any manner militate against the operation of section 53A of the Transfer of Property Act. The petitioner herself recognised this fact, when she made her return and reported the capital gain on the basis that she had effected transfer of property in August, 1993.

After the assessee parted with possession of the property, such possession having been given only after payment of the agreed consideration for the sale, she could no longer assert possessory rights against the firm to which possession was given. The fact that the firm chose to sell the property in portions to others does not in any manner affect the fact that the petitioner had transferred the property to the firm and the firm had become entitled to invoke section 53A as against the assessee. The Commissioner was therefore right in rejecting the revision petition that was filed by the assessee."

28. The Hon'ble Supreme Court of India in the case of Larsen & Toubro Ltd., Vs. State of Jharkhand in Civil Appeal No.5390 of 2007 (SC), made the following observations:

"On being pointed out in audit, it was stated that since the goods had not been transferred to contractee co-under the provisions of works contract, but it had been consumed and so it does not come under the purview of taxation. The reply is not tanable in view of the above judgements and hence the case needed to be reviewed."

29. In the case of Cholamandalam Investment & Finance Co., Ltd., Vs. ACIT, reported in (2018) 89 taxmann.com 337 (Madras), the High Court of Madras held as follows in Paragraphs 5 and 6, which are extracted hereunder:

"5.What is interesting to note is that the reasons for reopening is verbatim repetition of the audit objections filed by the audit party. This position was clearly demonstrated by the learned counsel for the petitioner by comparing the audit objection and the reasons for re-opening. Thus, it is clear that the assessing officer did not have any independent material to re-open the assessment, but merely proceeded to re-open the assessment on the ground that there was an audit objection. Thus, two issues arise for consideration. Firstly, whether the re-opening proceedings have been made solely based upon the audit objection. Secondly, when CBDT had taken a stand that they do not accept the audit objection whether the respondent could proceed to initiate re-opening proceedings.

6.On the first issue, Courts have held that the assessing officer cannot blindly follow the opinion of an audit authority. In this regard, it is beneficial to refer to the decision of the Hon'ble Supreme Court in the matter of Indian & Eastern Newspaper Society v. CIT reported in [1979] 119 ITR 996. This decision was followed in the decision of the High Court of Bombay in the case of ICICI Home Finance Co. Ltd., vs. Assistant Commissioner of Income-tax reported in [2012] 25 taxmann.com 241 (Bom.). The operative portion of the order reads as follows:

> "6.The power to reopen a completed assessment under Section 147 of the Act has been bestowed on the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. However, this belief that income has escaped assessment has to be the reasonable belief of the Assessing Officer himself and cannot be an opinion and/or belief of some other authority. In fact, the Supreme Court in the matter of Indian & Eastern Newspaper Society vs. CIT [1979] 119 ITR 996/2 Taxman 197 has held that whether an assessment has escaped assessment or not must be determined by the Assessing Officer himself. The Assessing Officer cannot blindly follow the opinion of an audit authority for the purpose of arriving at a belief that income has escaped assessment. In the present facts, it would be noticed that the reasons for which the

assessment for the assessment year 2006-2007 is sought to be reopened by communication dated 12.10.2011 are identical to the objection of the audit authority dated 29.12.2009. The reasons do not rely upon any tangible material in the audit report but merely upon an opinion and the existing material already on record. This itself indicates that there was no independent application of mind by the Assessing Officer before he issued the impugned notice. On this ground alone, the assumption of jurisdiction by the Assessing Officer can be faulted."

30. It is contended that in the case of Asianet Star Communications P.Ltd., Vs. Assistant Commissioner of Income Tax, Non-Corporate Circle, reported in [2019] 106 taxmann.com 293 (Madras), this Court passed the following observations:

"36. Mr.Narayanaswamy next relies on Explanation (1) to section 147, which states that production of account books or other evidence from which material evidence could, with due diligence have been discovered by the Assessing Officer, will not necessarily amount to disclosure within the meaning of the foregoing proviso.

37. However, I do not believe that the explanation is at all applicable in the present case. The Explanation targets those situations where relevant details are camouflaged in some part of the voluminous documents filed so as to lead to the inference that the Assessing Authority would be justified having in missing the same. This is, however, a case where the assessee has staked its claims and has produced all documentation in support thereof transparently and conclusively, right from the start.

40. Finally, and in addition to my reasoning as aforesaid for assessment year 2011-12, the placement of the Explanation, after the Proviso to Section 147 is also, in my view, relevant. This indicates the scheme of the section and the interplay of the components thereof. To my mind, the application of the Explanation would be subject to, and post the application of the Proviso itself. Thus, in cases, where the benefit of the Proviso is claimed by the revenue, it would first have to satisfy the condition under the proviso and validate the assumption of jurisdiction beyond four

years. Only thereafter can the Revenue seek application of the Explanation to Section 147. In order of sequence, the Proviso comes first and only thereafter, does the Explanation. In the present case, where the Revenue has not satisfied the statutory condition imposed by the Proviso, the door to re-assessment remains conclusively shut. There is no occasion left for the Revenue to look any further, either at the Explanation or otherwise, to justify the proceedings for re-assessment, and the assumption of jurisdiction falls, at the very threshold."

31. In the case of Calcutta Discount Company Ltd., Vs. ACIT, reported in MANU/SC/0113/1960, the Hon'ble Supreme Court of India held as follows:

> "10. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example — "I have produced the account books and the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to "omission to disclose fully and truly all material facts necessary for his assessment". Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them — including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

> 11. Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else — far less the assessee — to tell the assessing authority what inferences whether of facts or — law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences — whether of facts or law he would draw from the primary facts.
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> 12. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?"

32. The learned Senior Standing counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the petitioner by stating that in the present case, there is a "reason to believe" as rightly provided in the reply to objections for reopening of assessment for the Assessment Year 2010-11. Change of opinion and the reason to believe are now settled by the Courts. In the event of any informations or materials made available or if the authority found that the income chargeable to tax has been under assessed, then the same can be construed as escaped assessment and the assessment can be reopened by invoking Section 147 of the Act. The learned Senior Standing counsel for the respondents relied on Section 147, Explanation to Sub Clause (c) (i), where an assessment has been made to income chargeable to tax has been under assessed, then the same is to be treated as escaped assessment for the purpose of Section 147 of the Act. In the present case, admittedly, the Sale deed was not registered. Unless the sale deed was registered, the Assessing Officer would not form an opinion that the transaction had concluded.

33. Through an unregistered sale agreement, the title of the property cannot be transferred nor such an agreement can be treated as a valid document under Section 54 of the Transfer of

Property Act. Thus, the very contention raised on behalf of the petitioner that the reopening of assessment initiated under Section 147 is without jurisdiction, is incorrect and the authorities competent invoked jurisdiction under Explanation to Sub Clause (c) (i) of the Act, wherein income chargeable to tax had been under assessed, is also contemplated as a ground to invoke Section 147 of the Act for reopening of the assessment. Thus, the jurisdiction point raised is untenable.

34. Regarding the facts, it is admitted by the petitioner that he transferred the property by way of an unregistered Sale agreement dated 15.12.2003 in favour of M/s.Vinayaga Land Developers. Further, it is admitted that General Power of Attorney was executed in favour of one Mr.B.Nagi Reddy dated 19.12.2003, who in turn, executed a registered Sale Deed in favour of another person in the year 2010. Based on these admitted facts, the authorities competent found that during the Assessment Year 2004-05, the Sale deed was not registered and there was an Audit objections that an unregistered Sale agreement cannot be a valid sale nor be considered as a document under Section 54 of the Transfer of Property Act, and initiated action for reopening of assessment. The Audit objections also raised that the ownership of the Property, cannot be transferred between persons by way of executing a Power of Attorney or a Sale agreement as they do not come under the purview of the Transfer of Property Act. The decision taken in consequence of part performance of the Act under Section 53-A of the Transfer of Property Act is subject to the conveyance of the ownership through registered document under Section 54 of Transfer of Property Act. Thus, it is an admitted fact in the present case, neither of the provisions of the Transfer of Property Act has been complied with. Thus, it cannot be considered as valid sale for the purpose of considering the case of the petitioner.

35. Further, it is admitted that only Power of Attorney was given by the assessee to Mr.B.Nagi Reddy and no property was conveyed during the relevant point of time in the year 2004-05. Therefore, the assessee is ultimate owner of the property and he has executed the sale deed of the said property to M/s.Malabar Diamond Gallery Private Limited in the P.Y.2009-10 relevant to A.Y.2010-11 only. Based on these facts, the respondent formed an opinion that there is a reason to believe that the income chargeable to tax has been under assessed by the assessee.

36. This Court is of the considered opinion that the learned counsel for the petitioner in reply, articulated his case by saying that the petitioner had transacted the sale of his property in a genuine manner and therefore, he handed over the possession soon after the Sale agreement dated 15.12.2003. The petitioner had received the entire sale consideration and the

said income was already assessed and the particulars regarding the sale agreement, the Power of Attorney were also furnished to the Assessing Officer during the Assessment Year 2004-05. Thus, the petitioner has genuinely transacted and therefore, the ground reason to believe is non-est and initiation of reopening of assessment is untenable.

37. This Court is of the considered opinion that any transaction, which is not within the parameters of the legality, cannot be considered as a valid transaction for the purpose of Income Tax Act. Assessees are doing many transactions in a calculated manner and at the advice of legal and account any brains. Therefore, the complex nature of transactions, which all are made, not within the parameters of the provisions of any law of the land, then the Income Tax department cannot consider such transactions as a valid transactions for the purpose of accepting the informations provided or the transactions made. In other words, any illegal or irregular transactions made by an assessee cannot be considered as a valid transaction for the purpose of assessment, though the said transaction appears to be genuine, as far as the assessee is concerned. Make it more clear, in the context of the case on hand, Sale agreement can never be considered as completion of sale nor Sale agreement does not provide title to the purchaser. Power of Attorney is given by the assessee in the present case is in favour of Mr.B.Nagi Reddy and power is given on behalf of the owner of the property. Thus, for all purposes, the sale transactions were not completed and the mere Sale agreement or the Power of Attorney would not confer any title to the purchaser nor can be construed as completion of sale transaction. Therefore, the reasons stated by the Assessing Officer for reopening of assessment is to be considered. This apart, the Audit party also raised an objection, which is legally correct and in consonance with Sections 53-A and 54 of the Transfer of Property Act. Sale deed admittedly was not executed and the sale deed was executed by the Power holder on behalf of the petitioner / assessee in favour of M/s.Malabar Diamond Gallery Private Limited in the P.Y.2009-10 relevant to A.Y.2010-11 only. Thus, the Department formed an opinion that the entire capital gains of Rs.5,67,30,000/- has to be taxed in the case of the assessee in the Assessment Year 2010-11. This apart, the Department has considered that the party to the Sale agreement of M/s.Vinayaga Land Developers, submitted the Books of Accounts of the firm for the Financial Year 2009-10 and the copy of the return of income in which the said income is included as business income and offered to tax under the head "Profits and gains from business or profession". Thus, the said M/s.Vinayaga Firm in their Books of Accounts as stated that it is a business income. Thus, the Department has got every reason to believe that the income chargeable to tax has been under assessed.

38. Certain irregular transactions between the parties with some idea or motive, can never be construed as legal transactions for the purpose of recognizing the same under the provisions of the Income Tax Act. Law expects that all transactions are to be made in accordance with the provisions of the Statutes and the rules in force. Any such illegal or irregular transactions, which all are not in consonance with the Statutes cannot be construed as valid transaction for the purpose of making an assessment and even, if the petitioner pleads that his transactions are genuine, there is every reason to believe that there is a possibility of under assessment, in view of the fact that sale transaction completed by registering a sale deed only during the Assessment Year 2010-11. All such intricacies are to be scrutinized only by re-opening the assessment, and through adjudication.

39. This Court is of the considered opinion that Section 147 is an initiation for reopening of assessment. As per the ratio laid down by the Hon'ble Supreme Court of India in the case of DKN Driveshafts (India) Limited Vs. ITO and others, [2003] 259 ITR 19(SC), the procedures were followed in the case of the petitioner. The reasons for reopening of assessment in the case of the petitioner was furnished by the Department. The objections raised by the petitioners were also dealt with and reply to the objections for reopening of the Assessment Year 2010-11 is also furnished in proceedings dated 22.12.2017. In the said proceedings itself, the Assistant Commissioner of Income Tax relied on the judgment of the Apex Court in the case of M/s.Suraj Lamps and Industries, wherein it was held that "a transfer of immovable property by way of sale can only be by a deed of conveyance and in the absence of a deed of conveyance (duly stamped and registered as required by law), no right title or interest in an immovable property can be transferred."

40. Thus, the petitioner has to avail the opportunity to be provided for the purpose of reassessment. Section 147 is an initiation of proceedings and if the Department could able to establish that there is reason to believe, then the Courts are expected to be slow in interfering with such notices as the assessee would be provided with an opportunity to contest their case by producing documents and establishing the genuinity of the transactions. Courts cannot venture into the adjudication of disputed facts, which all are to be verified and adjudicated with reference to the documents and evidences to be produced by the respective parties. Further, under Article 226 of the Constitution of India, High Court is empowered to scrutinize the process, through which, a decision is taken by the competent authority in consonance with the Statute and certainly, not the decision itself. The only consideration would be to form an

opinion, whether the pre-conditions as contemplated under the provisions of the Act are complied with or not.

41. In the present case, the admitted facts as well as the reasonings given by the respondent are unambiguous that there is “reason to believe” the income chargeable to tax has been under assessed, in view of certain sale transactions, which all are not recognizable under the provisions of the relevant Statutes. Thus, the petitioner is bound to participate in the re-assessment proceedings by availing the opportunities to be provided by the competent authorities and established his case in the manner known to law.

42. Thus, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Kak

To

The Assistant Commissioner of Income Tax,
Non-Corporate Circle, 15(1),
121, Nungambakkam High Road,
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.25391

W.P.No.34075 of 2017

SRA(CO)
CS/06/07/2021