



W.P.(MD)No.8010 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.8010 of 2022

and

WMP.(MD).Nos.5999 of 2022 and 6000 of 2022

Kausalya Maruthachalam

... Petitioner

Vs.

The Deputy Commissioner of Income Tax Circle-1(1),
2nd Floor, Trichy-Main Building, Williams Road,
Contonment, Trichy-620 015.

... Respondent

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Respondent with regard to the impugned notice dated 31.03.2015 passed under Section 148 of the Income Tax Act, 1961, issued by the Respondent to the petitioner (bearing PAN:AAGPM1386D) read with the order passed by the Respondent dated 20.04.2022 for the assessment year 2008-09 bearing DIN in order No.ITBA/COM/F/17/2022-23/104287708(1) read with Show cause notice dated 20.04.2022 in ITBA/AST/F/147(SCN)/2022-23/1042787471(1), passed by the Respondent herein, and quash the same as unreasonable, illegal and wholly without jurisdiction.

For Petitioner : Mr.Vaibhav R.Venkatesh
for M/s. Nithyaesh and Vaibhav

For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel



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ORDER

WEB COPY The writ petition has been filed challenging the impugned notice dated 31.03.2015, issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") read with the order dated 20.04.2022 rejecting the objections filed by the petitioner in response to the reasons provided for reopening under Section 147 of the Act for the Assessment year 2008-2009.

The impugned proceeding is challenged insofar as it treats a sum of Rs. 4.73 Crores as representing the sale consideration of land liable to Capital Gains tax, rejecting the petitioner's objection that the land in question / subject land/ is agricultural land and thus outside the purview of Section 45 of the Act. The present writ petition is filed challenging the impugned order rejecting the petitioner's objection invoking Section 147 read with 148 of the Act on the premise that reopening of assessment is made on a mere change of opinion and that the impugned proceedings also stands vitiated inasmuch as there is no finding that the assessee/ petitioner had failed to disclose fully and truly the material particulars while invoking the extended period of limitation.



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2. According to the petitioner, the issue as to whether the subject land is agricultural in nature and thus outside the purview of Section 45 of the Act has been considered on two earlier occasions vide assessment order under Section 143(3) of the Act dated 24.12.2009 and assessment order under Section 147 of the Act dated 23.12.2011. The impugned proceedings is the third occasion when the very same issue is being revisited and thus bad for want of jurisdiction.

3. I shall now set out briefly the history of assessment / statutory proceedings leading to the present writ petition:

a. The Petitioner is an individual assessee under the Act and falls within the jurisdictional limits of the Respondent. The petitioner filed her return of income for the Assessment year 2008-09, admitting a total income of Rs.17,49,630/- and paid a sum of Rs.5,32,951/- as taxes.

b. There was a search on 29.08.2007 in terms of Section 132 of the Act of "Rohini Housing Developers Pvt. Ltd.", in which the petitioner was one of the directors.

c. On completion of the above search, a notice was issued under Section 153C of the Act to the petitioner on 13.01.2009 followed by a



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notice dated 29.09.2009 and a questionnaire dated 05.10.2009. The petitioner responded to the same on 02.11.2009. Importantly, the queries raised included one relating to the sale of agricultural land by the petitioner during the assessment year 2008-09. Thereafter, a show cause notice dated 13.11.2009 was issued seeking explanation as regards the consideration of Rs.4,73,80,000/- received towards sale of land admeasuring 4.12 Acres situated at Thaiyur Village, Chengalpattu Taluk, Kanchipuram District while proposing to treat the same as liable to capital gains tax. The notice also called upon the petitioner to demonstrate that the above land was only agricultural land and thus not liable to tax under the Income Tax Act, 1961.

d. The petitioner submitted a reply dated 07.12.2009 stating that the land which was sold was only agricultural land and thus not liable to capital gains tax. The petitioner also submitted evidence/ records in the form of copies of Chitta and Adangal issued by Village Administrative Officer and endorsed by Tahsildar to substantiate that the land in question was only agricultural land. The certificate issued by Village Administrative Officer was also submitted to show that the land in issue is situated beyond the limit of municipality/municipal corporation, Town Area or Cantonment Board and was situated almost 23 Kms away from Tiruporur Panchayat, the



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certificate also contained details regarding the population of the village.

e. Thereafter, an order of assessment under Section 143(3) of the Act dated 24.12.2009, came to be passed wherein after referring to Group case search under Section 132 of the Act, it was stated that the income returned is accepted and assessment completed accordingly. Importantly, the assessment under Section 143 of the Act was completed after raising queries relating to the nature of the land and which as stated above was responded to by the petitioner along with documents/ evidence.

f. Thereafter, a notice dated 19.11.2010 was issued under Section 148 of the Act, along with reasons for reopening, wherein the question as to whether the land sold by the petitioner was agricultural land or otherwise was raised again on the premise that evidence was not produced to show that the land was agricultural in nature. Reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of ***Sarifabibi Mohammed Ibrahim and others vs. CIT*** reported in ***204 ITR 631 (SC)***, while proposing to levy capital gains tax on the sale of the said land in terms of Section 45 read with 2(47) of the Act, read with Section 53A of the Contract Act.

g. The petitioner submitted its objection by stating that she had vide



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letter dated 07.12.2009 furnished the Sale Agreement, Adangal Extract and VAO Certificate, while reiterating that the subject property was 23 kms away from Tiruporur Panchayat and is agricultural land. It was submitted that the proceedings are bad as it is made on mere change of opinion which is impermissible. It was submitted that the decision of the Hon'ble Supreme Court in *Sarifabibi's case* is inapplicable to the facts of the present case, inasmuch as the Apex Court found as a matter of fact that the land sold by the assessee therein was not agricultural land on the date of sale. To the contrary, the documents produced by the assessee would show that the land in question is agricultural in nature on the date of sale.

h. The Respondent proceeded to pass an order of assessment dated 23.12.2011 under Section 143 (3) read with Section 147 of the Act, wherein it was found that the lands were agricultural in nature and not liable to capital gains tax under Section 45 of the Act. Importantly, the assessment was made after obtaining and on the basis of the report of Deputy Director of Income Tax (hereinafter referred to as "DDIT"), which found that the lands are agricultural in nature and situated beyond Municipal limits and not liable to Capital gains Tax under Section 45 of the Act. Thus, the authorities under the Act have examined the issue of nature of the land for the second

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time and concluded that the lands are in fact agricultural lands and thus not liable to Capital Gains Tax under the Act.

i. Whiles, the petitioner was visited with one more notice under Section 148 of the Act dated 31.03.2015 followed by a notice under Section 143(2) of the Act, calling upon the petitioner to produce documents, accounts and other evidence while stating that the case was selected for scrutiny. On 18.02.2016, a notice was issued wherein it was stated that the Adangal contained the remark “puncture” for the Fasli Years 1418 and 1419 which denotes that no agricultural activity had taken place during the said period and that no prudent agriculturist would invest such huge sums on land for agricultural purpose and that the petitioner has sold the land to a building promoter who was not an agriculturist and relying upon the judgment of the Hon'ble Supreme Court in *Sarifabibi's* case, it was once again proposed to treat the sale proceeds from the land as liable to capital gains tax under the Act.

j. The petitioner submitted its objection vide its letter dated 25.02.2016 *inter alia* submitting that all the reasons set out now has been already examined and assessments completed finding that the property in question is agricultural land and not liable to Capital Gains tax under



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Section 45 of the Act on two earlier occasions. Thus, the reassessment proceedings is made on a mere change of opinion which is impermissible.

k. A writ petition in W.P.(MD)No.5110 of 2016 was filed challenging the notice dated 31.03.2015 and the consequential communication dated 18.02.2016, primarily on the ground that there is no new tangible material to exercise the powers of reassessment and the same stands vitiated for being initiated on mere change of opinion. The writ petition in W.P.(MD)No.5110 of 2016 was disposed of vide its order dated 18.03.2021 stating that it was only the stage of notice and that it was open to the petitioner to raise all contentions before the authority.

1. Thereafter, another notice under Section 142 (1) of the Act was issued, wherein it was stated that the assessee has not offered to tax any agricultural income nor claimed any agricultural rebate, it was thus observed that no agricultural operation had been carried on the said land and thus the transfer of the said land would attract capital gains tax under Section 45 of the Act.

m. The petitioner submitted its objection on 23.11.2021 and reiterated that the above issue viz., whether the land which is the subject matter of transfer is agricultural land or non-agricultural land, had been considered



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both at the time of making the assessment under Section 143 (3) vide order dated 24.12.2009 and again while making an assessment under Section 143(3) read with 147 vide order 23.11.2021 and 17.12.2021, thus the proceedings for reassessment is clearly without jurisdiction. Further, reliance was sought to be placed on the judgment of this Court reported in 292 ITR 481 wherein it was held that to decide the nature/character of the land, it does not matter as to how the subsequent purchaser intends to use the same. Rejecting the above objections order of assessment came to be passed holding that the lands transferred by the petitioner was not agricultural land but one which is liable to capital gains tax vide order dated 20.12.2021.

n. Aggrieved by the above orders of assessment, the petitioner filed a writ petition in W.P.(MD). No. 2053 of 2022, *inter alia* raising the plea that the procedure contemplated in terms of the judgment of the Hon'ble Supreme Court in *GKN Drive Shafts* was not followed. This Court, set aside all proceedings post the petitioner's objections dated 23.11.2021, solely on the ground that the principle laid down in the case of *GKN Driveshafts* has not been strictly adhered to. The relevant portion of the order dated 03.02.2022 is extracted hereunder:-



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"10. The conclusion is, all proceedings post petitioner's /assessee's objections dated 23.11.2021 are set aside solely on the ground that GKN Driveshafts principle has not been strictly adhered to. The first respondent Assessing Officer shall proceed from this 23.11.2021 objection stage, pass a speaking order, complete the re-assessment as expeditiously as his business would permit and in any event within 12 weeks from today i.e., on or before 28.04.2022."

o. Thereafter, the impugned proceedings rejecting the objections raised by the assessee was made on 20.04.2022, wherein the objections raised by the assessee with regard to the jurisdiction to make reassessment was rejected *inter alia* for the following reasons viz.,

i) Perusal of Village Adangal Extract, revealed no agricultural operation during the years 2006-09 and that the petitioner was not an agriculturist nor any agricultural income offered in the return.

ii) That the very purchase of land against such huge consideration itself would reveal that it was not meant for agricultural purpose and that the subsequent sale to a builder also revealed that the land was not agricultural land.

iii) Reliance was again sought to be placed on the judgment of the Hon'ble Supreme Court in *Sarifabibi's* case.



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Pursuant to the rejection of the objections a show cause notice was issued on 20.04.2022. It is this order rejecting the petitioner's objection and consequential issuance of show cause notice which is challenged in this writ petition.

3. Case of the petitioner:

The writ petition has been filed challenging the initiation of the impugned proceeding *inter alia* on the following grounds:

i) That the re-opening of the assessment proceedings is barred by limitation inasmuch as the impugned notice seeking to reopen the assessment proceedings under Section 148 of the Act dated 31.03.2015 is contrary to Section 147 of the Act, wherein it is stipulated/provided that a notice under Section 148 of the Act has to be issued within a period of four (4) years from the end of relevant assessment year and it is permissible to invoke the extended period of 6 years if the assessee had failed to disclose fully and truly all material facts. It is the case of the petitioner that failure to disclose fully and truly all material facts is a jurisdictional fact/condition



precedent to invoke the extended period and failure to render a finding on the above aspect vitiates the impugned proceeding invoking Section 147 read with Section 148 of the Act.

ii) That the impugned order has failed to consider the objections submitted by the petitioner that reopening of assessment proceedings on mere change of opinion is impermissible and frowned upon by the Hon'ble Supreme Court on several occasions including the case of *Commissioner of Income Tax, Delhi vs. Kelvinator India* reported in 2010 187 Taxman 132 (SC).

iii) That the impugned notice under Section 148 of the Act suffers from the vice of lack of jurisdiction inasmuch as the original assessment orders were passed by the Assistant Commissioner of Income Tax, while the impugned notice for reopening of assessment under Section 148 of the Act has been issued by an Income Tax Officer.

4. In response, the learned Senior Standing Counsel for the Respondent made the following submissions:

i) That pursuant to the orders of this Court in W.P.(MD) No.2053 of 2022, and after considering the objections raised by the petitioner, the

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Respondent rejected the objections and issued a show-cause notice consequent thereto and it is open to the petitioner to respond/ resist the show-cause notice.

ii) It was further submitted that the petitioner must participate in the assessment proceedings and if any adverse order is passed, the same can always be challenged by way of an appeal.

iii) That the impugned order was passed in compliance with the general guidelines/ principles laid down in the judgment of the Hon'ble Supreme Court in the case of *GKN Driveshafts*.

iv) That the re-opening of assessment proceedings was done in compliance with the procedure as contemplated under the Act and after obtaining the approval of the competent authority viz., the Principal Commissioner of Income Tax holding jurisdiction over the case for reopening the assessment beyond four years.

5. Heard both sides. Perused the materials available on record.

6. I shall now proceed to deal with the two grounds on the basis of which it was submitted that the impugned proceedings lacks jurisdiction



viz.,

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i) There is no finding that there has been a failure on the part of the assessee to fully and truly disclose material particulars.

ii) The reassessment has been made on change of opinion.

a. Absence of finding of failure on the part of the assessee to fully and truly disclose material particulars:

Before I proceed to address the above issues, it may be relevant to refer to the relevant portions of Section 147 of the Act, as it stood during the relevant period:

"147. Income escaping assessment.— If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142.



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or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

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A reading of the above provision would show that while it is open to the Assessing Officer to invoke Section 147 of the Act within a period of four years, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, subject to the provisions of Sections 148 to 153 of the Act. The proviso to Section 147 of the Act, enables the Assessing Officer to make reassessment even after the expiry of four years from the end of the relevant assessment year but within six years from the relevant assessment year, if the income chargeable to tax has escaped assessment under the following circumstances, viz.,

- a. Failure of the assessee to make a return under Section 139 of the Act.
- b. Does not make a return in response to a notice issued under Sub-Section (1) to Section 142 or Section 148 of the Act.
- c. Failure of the assessee to disclose fully and truly all material facts necessary for assessment.

In the present case, admittedly, the extended period of six years is being invoked not under clause (a) or (b) set-out above but only in view of clause 15/51



(c) i.e., failure to disclose fully and truly all material facts necessary for assessment. The jurisdictional fact to invoke the extended period is failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Existence of "jurisdictional fact" is a *sine qua non* for the exercise of power. Absent the jurisdictional fact the proceedings would stand vitiated. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Arun Kumar v. Union of India** reported in (2007) 1 SCC 732, which reads as under:

"74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may



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be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.”

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.”

(emphasis supplied)

The Hon'ble Supreme Court in the case of *Arun Kumar*, thereafter proceeded to rely upon the decision in the case of ***White & Collins vs. Minister of Health*** reported in ***(1939) 2 BK 838*** and observed as under:

“80. The Court relied upon a decision in White & Collins v.Minister of Health [(1939) 2 KB 838 : 108 LJ KB 768 : (1939) 3 All ER 548 (CA) sub nom Ripon (Highfield) Housing Order, 1938, Re] wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was



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a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.

81. Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated;

"The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order."

(emphasis supplied)

7. Keeping in mind the significance of existence of jurisdictional fact for the validity of any proceeding, it may be relevant to refer to the following judgments, wherein while dealing with Section 147 of the Income Tax Act, it was held that failure to render a finding as to the existence of the above circumstance viz., failure to disclose fully and truly all material facts, while invoking the extended period in terms of the proviso to Section 147 of the Act would vitiate the entire proceedings.

a) Duli Chand Singhania vs ACIT (269 ITR 192) (Punjab and Haryana High Court):

*...that the reasons recorded for issue of notice showed that the satisfaction recorded therein was merely about the escapement of income. **There was not even a whisper of an allegation that such escapement had occurred by reason of failure on the part of the***



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assessee to disclose fully and truly all the material facts necessary for his assessment. Absence of this finding which is a "sine qua non" for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, made the action taken by the Assessing Officer wholly without jurisdiction. The notice was not valid and was liable to be quashed. "

(Emphasis Supplied)

b) Commissioner of Income Tax vs. Elgi Ultra industries Ltd. (296 ITR 573):

"...the reopening of the assessment under s. 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. in this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts".

(Emphasis supplied)

c) Commissioner of Income-Tax v. Premier Mills Ltd., 2007 SCC OnLine Mad 1058 : (2008) 296 ITR 157 at page 160:

"6. In case where the assessment is completed under section 143(3) of the Income-tax Act, the reopening of the assessment under section 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts are available at the time of making original assessment. The Tribunal has correctly followed the principles enunciated in the Supreme Court judgment reported in CIT v. Foramer France, [2003] 264 ITR 566, as well as this court judgment reported in the case of CIT v. Elgi Finance Ltd., [2006] 286 ITR 674 and came to the correct conclusion."

(emphasis supplied)

d) Commissioner of Income-Tax v. A.V. Thomas Exports Ltd., 2007 SCC OnLine Mad 1078 : (2008) 296 ITR 603 : (2007) 212 CTR 164 at page 606

"6. The Tribunal has applied the correct principle of law and held as follows:

But whether recourse to section 147 could be made beyond four years is the real question in the present appeal. Circumstances for extending limitation beyond four years do not exist in the facts of the present case. As such on the ground of limitation assumption of jurisdiction



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under section 147 is bad. In the case of CIT v. Foramer France, [2003] 264 ITR 566 (SC), it was held that if there is no failure to file return or to disclose fully and truly all material facts, issuance of notice beyond the period of four years is barred by limitation. In the case of CIT v. Annamalai Finance Ltd., [2005] 275 ITR 451 (Mad) it was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. It is incumbent on the Assessing Officer to prove that there was a failure to disclose material facts necessary for the assessment for the issuance of notice beyond the period of four years."

(emphasis supplied)

e) Caprihans India Ltd. v. Tarun Seem, Deputy Commissioner of Income-Tax, 2003 SCC OnLine Bom 692 : (2004) 266 ITR 566 : (2003) 6 Bom CR 559 : (2003) 185 CTR 157 at page 569

"8. The Assessing Officer seeks to reopen the assessment after a period of four years from the end of the assessment year and in view of the judgment of this court in the case of IPCA Laboratories Ltd. v. Gajanand Meena, Deputy CIT (No. 2)[2001] 251 ITR 416, the Assessing Officer cannot act in the matter of reopening of assessment beyond four years, unless he has reason to believe that income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. He submitted that a bare reading of the reasons shows that reopening is sought to be effected only on the basis of the case records. He submitted that on two out of three points mentioned in the reasons, the Assessing Officer merely states "that the issue needs to be looked into". That, on those two issues regarding subsidy and provident fund being disallowed, the Assessing Officer does not even say that there is escapement of income from assessment. He therefore submits that the proviso to section 147 is not attracted. That, on the said two points, there is nothing to indicate escapement of income. That, on the said two points, there is nothing to indicate failure on the part of the assessee to disclose fully and truly all material facts. That, on these two points, there is nothing to show as to on what basis the Assessing Officer has formed his belief regarding escapement of income from assessment. It is submitted that on the face of the given reasons, there is a total non-application of mind on the part of the Assessing Officer.

(emphasis supplied)

The above position is reiterated by a judgment of the Division Bench of this Court in the case of *Durr India Private Limited vs. Principal Commissioner of Income Tax and others* in W.A.Nos.1081 and 1083 of 2021

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dated 29.08.2022.

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8.1. The impugned proceedings invoking Section 147 read with Section 148 of the Act, under challenge suffers from the infirmity of not rendering any finding of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. This would be evident from a perusal of the following proceedings relating to the impugned proceeding for reassessment viz.,

- i) Notice under Section 148 of the Act dated 21.08.2015.
- ii) Reason for reassessment dated 18.02.2016.
- iii) Notice under sub-section (1) to Section 142 of the Act dated 12.11.2021.
- iv) Show cause notice under Section 147 of the Act dated 16.12.2021.
- v) Order of assessment dated 20.12.2021.
- vi) Impugned proceedings rejecting the petitioner's rejection in response to the reasons provided for reassessment dated 20.04.2022.
- vii) The show cause notice dated 20.04.2022 issued consequent to the rejection of the objection of the petitioner.



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8.2. In none of the above proceedings is there any finding that the assessee has failed to disclose fully and truly all material facts necessary for assessment. The above being a jurisdictional fact which would enable the assessing authority to invoke the extended period of limitation, failure to render a finding as to the existence of the above jurisdictional fact renders the impugned proceedings bad for want of jurisdiction and thus cannot be sustained.

b. Re-assessment on mere change of opinion – Impermissible:

It is trite law that the power to assess the escaped income under Section 147 of the Act, though stands broadened/expanded over the years through periodical amendments, one feature which has remained constant/unchanged and prevailed during the relevant assessment year is the limitation on the power to reassess on a mere change of opinion. Keeping the above position in mind, I find that the question as to whether the property/ land in issue is agricultural land or land which would attract capital gains tax has been considered by the assessing officer on two earlier occasions before the impugned proceedings for reassessment was initiated.

To appreciate the same it may be relevant to refer to the earlier proceedings in relation to the orders of assessments dated 24.12.2009,

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23.12.2011 and the impugned proceedings from its commencement until the impugned order.

I. Order of Assessment under Section 143 (3) of the Act – Passed after raising queries on the nature of the land:

The issue whether the subject land is agricultural land was examined even prior to the order of assessment under Section 143 (3) of the Act, dated 24.12.2009. A query was raised vide letters dated 02.11.2009 and 13.11.2009 as to whether the land was agricultural land, to which the petitioner responded vide letter dated 07.12.2009, relying upon relevant documents. The orders of assessment was made under Section 143(3) of the Act dated 24.12.2009, subsequent thereto, where there is no reference to the issue of sale of land attracting capital gains tax. The relevant portions of the proceeding are extracted below:

a. Letter by the petitioner to the Respondent dated 02.11.2009 wherein reference is made to the sale of the land in question, the relevant portion of the letter reads as under:

"6. The assessee has sold her agricultural lands at Thaiyur Village, Kanchipuram District of 4.12 acres for a sum of Rs. 4,73,80,000/- on 16.10.2007 and the payment was received by Cheque."



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b. Communication dated 13.11.2009 issued by the Respondent calling

for details / evidence to show that the land is agricultural land as could be

seen from the following extract:

"Assessment year 2008-09:

It is seen from the records that you have sold a property at Thaiyur Village, Chengalpattu Taluk, Kancheepuram District, measuring 4.12 acres out of

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1. 1106/1B	-	90 cents
2. 1106/2	-	51 cents
3. 1107/2	-	42 cents
4. 1106/1A	-	60 cents
5. 1107/2	-	54 cents
6. 1110/1	-	33 cents
7. 1110/5	-	22 cents
8. 1107/1	-	95 cents

TOTAL - -----
447 cents

for a consideration of Rs.4,73,80,000/-. You have claimed that this is an agricultural land and hence not offered any Capital Gains over the sale of the said land.

Please furnish evidence to claim that this land is agricultural and not being a land situate.

a) In any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal



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corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last proceeding census of which the relevant figures have been published before the first day of the previous year; or

b) In any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette."

c. Response of the assessee dated 07.12.2009:

"In this regard, the assessee submits that the agricultural land is situated beyond the municipal limit and population is also less than 10000. Further, the area is not notified by the Central Government. In support of the above claim the assessee encloses herewith copy of the chitta and adangal issued by Village Administrative Officer and endorsed by Tahsildar, Chengalput Taluk to prove that they are agricultural lands. The assessee also encloses certificate issued by Village Administrative Office with regard to total population. The assessee submits that the agricultural lands is situated beyond the limit of Municipality or municipal corporation, town area or cantonment board. It is situated 23 kms away from Thiruporur Panchayat in route of Thiruporur to Kancheepuram.

Hence, the assessee submits that the profit on sale of



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agricultural land is exempted from tax."

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d. Extracts from assessment order under Section 143(3) of the Act dated 24.12.2009:

After the enquiry with regard to the nature of the land viz., whether it is agricultural land, the order of assessment is passed after the petitioner had submitted his reply responding to the said query, the order of assessment dated 24.12.2009 was passed.

"In this group case, search under Section 132 was conducted on 29.08.2007. The assessee is the wife of Shri M.V.Maruthachalam and the assessee's residence was covered under Section 132 on 29.08.2007. In response to this office notice under Section 153 C dated 13.01.2009, the assessee has filed her return of Income for the assessment year 2008-09 on 22.09.2008 admitting the total income of Rs.17,49,630/-. The return was processed and the questionnaire dated 05.10.2009. Notice under Section 143(2) was served on the assessee on 29.09.2009. In response to the Notice, the Assessee's representative Shri V.Jayaraman, F.C.A., appeared on various dates. After discussing with him, the income returned by the assessee is accepted and assessment completed accordingly."

8.3. The assessment having been completed after raising queries



relating to the nature of the land sold viz., whether agricultural land or otherwise and the petitioner having responded to it and the orders of assessment having been made without any additions, the same is indicative of the fact that the Assessing officer applied his mind and dropped the proposal. Once a query is raised during the assessment proceedings and an assessee submits its reply/responds to it and assessments are completed thereafter, it follows that the said issue has been considered by the Assessing Officer. Mere fact that the assessment order may not contain reference / discussion with regard to the same would not dilute or take away the fact that the issue was in fact examined and decided upon by the assessing officer. It is not necessary that an assessment order should contain reference and / or discussion to disclose its satisfaction in respect of the query raised. Thus, a revisit/reassessment on such issues would constitute change of opinion which is impermissible. In this regard, it may be relevant to refer to the following decisions:

a) CIT vs. Usha International Limited [2012] 25 taxmann.com 200. (Delhi (FB)):

The Full Bench of the Hon'ble Delhi High Court had held that "reassessment proceedings will be invalid in case an issue or query is



raised and answered by assessee in original assessment proceedings and the assessing officer does not make any addition in the assessment order."

b) Aroni Commercials Ltd., vs. Deputy Commissioner of Income-Tax.
and Another reported in [2014] 362 ITR 403 (Bom):

16. Be that as it may, even if one examines the audit report dated September 29, 2011, from the internal audit department, it would be noticed that the basis of the audit report is the interpretation/inference drawn by the auditors from the accounts submitted by the petitioner to the Department during the course of its assessment proceedings. The reasons, as indicated in the audit report, are similar to the reasons as set out in the grounds for reopening the assessment by the Assessing Officer. Neither the audit report nor the ground for reopening assessment disclose any tangible material for the purpose of reopening the assessment but relies upon opinion/inferences drawn by the internal audit department on the existing material and these inferences/opinion differ from the one drawn by the Assessing Officer while passing the assessment order dated October 12, 2010. Tangible material would mean factual material and not inference/opinion on material already in existence and considered during the assessment proceedings. This is not a case of any new fact being available by virtue of the internal audit which could lead to a reasonable belief that income chargeable to tax has escaped assessment. The internal audit report



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dated September 29, 2011, is an opinion/inference on facts, i.e., the accounts and, therefore, would not be tangible material to reopen an assessment."

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(emphasis supplied)

II. Second re-assessment proceedings dated 23.12.2011 :

9. I shall now proceed to deal with the second assessment order dated 23.12.2011 and the proceeding preceding thereto wherein the question of the land being an agricultural land was once again raised. The relevant extracts from the proceedings in relation to the reassessment order under Section 147 of the Act are set-out below:

(i) Reasons for reopening of assessment under Section 148 of the Act dated 19.11.2010:

a. For the assessment year 2008-09, Return of Income was filed on 22.09.2008 admitting a total income of Rs.17,49,630/-. In the schedule filed along with the return of income under "Agriculture land sale A/c", a sum of Rs.4,73,80,000/- was shown. In the letter dated 02.11.2009 filed in response to notice under Section 143(2), it was claimed in Para 6, that "the assessee sold Agriculture lands at Thaiyur village, Kanchipuram District of 4.12 acres for a sum of Rs.4.73 crores on 16.10.2007.

b. The profit made out of the sale of agriculture land was not offered for tax. No evidence to prove that the said lands were agriculture in nature were produced during the course of assessment



proceedings, even though assessee was asked to furnish details of:

- i) Whether the said lands are lying within the municipal limits*
- ii) Copy of the sale Deed.*
- iii) Who is the purchaser.*

Assessment under section 143(3) was completed on 24.12.2009 accepting the return on the strength of Adangal copies received from Tahsildar, Chengalpattu Taluk, Kancheepuram District.

c. Now, after perusal of the sale deed received from Sub-Registrar, Thiruporur and in view of the Supreme Court decision in the case of "Sarifabibi Md.Ibrahim and others vs. CIT 204 ITR 631 (SC), the profit of Rs.4.738 crores made out of the sale of agriculture land at Thaiyur village is liable to "Capital Gains" under Section 45 read with Sections 2(47) of I.T.Act and Section 53 A of Contract Act."

(emphasis supplied)

ii) Reply to the reasons for reassessment:

"According to the reasons for reassessment under Section 147 communicated to me I did not produce any evidence to prove that the lands are agricultural lands and also did not furnish the following details/ document in support thereof:

- 1. Whether the said lands are lying within the municipal limits*
- 2. Copy of sale deed.*
- 3. Who is the purchaser.*



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The above details were required through your letter dt 16.11.2009. In response to your above letter, a detailed reply was filed vice my letter dt 07.12.2009 furnishing inter alia the following:

- 1. Copy of sale agreement deed and power of attorney.*
- 2. Copy of Adangal Extract.*
- 3. VAO certificate.*

In support of the fact that the lands are situated beyond the limit of any municipality or notified area the lands are 23 km away from Thiruporur Panchayat and the lands are agricultural lands. So your observation in the Annexure on reasons for reassessment proceedings U/s.147 that no evidence was filed when asked for is not factually correct.

It can be seen from the Adangal certificate that paddy has been raised in the agricultural lands and the lands are assessed to land revenue on the date of sale.

I also invite your kind attention to the schedule of property forming part of the sale agreement deed of the lands filed before you on 07.12.2009. The schedule of property clearly manifests that the property covered by the deed is agricultural lands admeasuring 4.12 acres.

Thus, I have filed necessary documentary evidences in proof of my claim. Therefore, the profit from the sale of my agricultural lands at Thaiyur Village have been rightly claimed and accepted as exempt in the assessment that was made U/s.143 (3) after considering my explanation and evidence. Hence the reassessment proceedings U/s.148 have been taken on the wrong premise and is



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against the evidence submitted by me before your good selves on 07.12.2010.

.....

I am given to understand that the Supreme Court has held in the case of Smt. Sarifabibi Mohmed Ibrahim & Ors. Vs CIT him and others Vs CIT (204 ITR 631) (SC) on facts that the lands by the assessee in that case were not agricultural lands on the date of sale. It may kindly be appreciated that the adangal extract copy of sale deed etc filed before you on 07.12.2009 show clearly that the lands sold by me have been agricultural lands all along and also on the date of sale. So, it is submitted that the above decision of the Supreme Court is not applicable to my case....."

(emphasis supplied)

g. Assessment order under Section 143(3) read with Section 147 of the Act dated 23.12.2011:

".....Hence, the Capital gain arose on Sale of agricultural lands has to be brought to tax based on the case of Sarifabibi Mohammed Ibrahim and others vs. CIT in 204 ITC 631 (SC).

..... In order to verify whether the lands situated at Thaiyur village, Chengalpattu Taluk, Kancheepuram Dt, were agricultural in nature, the matter was referred to the Deputy Director of Income-tax (Inv.), Unit-1, Trichy vide this office letter dated 19.03.2010 to send a report in this regard. Further a letter was send to the Sub-Register, Thiruporur, Kancheepuram Dt on 02.11.2010 u/s 133(6) of the



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Income Tax Act to furnish the copy of the sale deed/power attorney/agreement for the sale executed by the assessee. The Sub-Registrar has send the copy of the agreement for sale dated 17.10.2007. The Deputy Director of Income-tax (Inv.), Unit-1, Trichy has send a report dated 14.12.2011 describing the location of the land, nature of the land and also enquiries with VAO regarding land records. The report shows that the lands situated at Thaiyur village are agricultural lands situated in Kancheepuram District and do not fall under the Chennai Urban Agglomeration area and also filed map taken from Google in support of his report. Further he has that the lands were traditionally agricultural lands irrigated by the Thaiyur Big Tank (Thaiyur Peria Yeri) and on his visit it is found that the grass and water had dried up hut the water distribution channel from the tank were visible in the area and has also stated that though no agricultural operation was visible in the area, the channel which criss-crossed the lands in the area showed and these were agricultural lands To the recent past. Further he has stated that in some of the nearby lands agricultural operations were being carried on. Even during the earlier assessment proceeding extract of the Chitta and adangal were obtained from the Tashildar Chengalpattu Taluk, Kancheepuram Dt and the perusal of the same sourced that the lands for agriculture nature and paddy were cultivated in the fasli year 1412 to 1415(July 2002 to June 2006) and the land were possession of the assessee from the fasli year 1411 to 1417. During the fasli year 1416 & 1417, the records shows that lands are under puncture which denotes to agriculture activities. The case has been posted for hearing on various dates The assessee



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representative attended and stated that the explanation furnishes and document produced vide 02/12/2010 prove that the land are in agriculture in nature and the profit on sale of agriculture Land is not liable to tax under capital gains After, considering the report of the DDIT, the details already collected during the assessment proceedings and the explanation furnished by the assessee, it is found that the lands are agricultural in nature and hands are situated beyond the municipal limits. Therefore, the profit on sale of agriculture land of the assessee are not liable to capital gain tax u/s 45 of the Income Tax Act. After discussion, with the assessee representative and considering the various details filed by the assessee and report of the DDIT, Trichy and available records the income returned by the assessee is accepted and the assessment is completed u/s 143(3) r.w.s. 147 accordingly. "

(emphasis supplied)

9. The order of assessment invoking Section 147 of the Act is passed treating the land in question to be agricultural land and thus not liable to capital gains tax. Importantly, the above conclusion in the re-assessment proceedings are arrived at after considering the following issues:

- a. Relevance of Sarifabibi's case.
- b. Examining the sale deed after calling for the same from the Sub-Registrar, Tiruporur, thus the parties involved in the transaction was known.
- c. Calling for DDIT to submit a report as to the nature of the land, and

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the Report found that the lands were under puncture, nevertheless the same, was found to be agricultural land.

III. Impugned Assessment proceedings:

10.1. After the Revenue has found on two earlier occasions the subject land to be agricultural land, the assessing officer has proceeded to invoke Section 147 of the Act, on the same ground that consideration in respect of sale of subject land was liable to capital gains tax vide notice dated 31.3.2015. The following extracts from the different stages of the impugned proceedings are relevant in this regard:

i. Reasons for reopening dated 18.02.2016:

"Whereas, as per the VAO certificate, the land was in your possession from Fasli year 1411 to 1417. The same was in cultivation between the Fasli years 1412 to 1415 (July, 2002 to June, 2006). In Fasli year 1417, the column denoting cultivation is blank which means no agricultural activities. As per the VAO, the remark 'puncture' denotes no agricultural activity. Thus from the certificate of the VAO, it is clear that from July, 2006 to November, 2007, i.e., for almost one and a half years prior to the transfer no agricultural activities were carried out by you.

Further, no prudent agriculturalist will buy the land for agricultural purpose for such a huge value of Rs.4,73,80,000/-.



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Further, you have sold it to a company who is a building promoter not an agriculturalist. Thereafter, it is evident that the land sold by you is neither agricultural land nor sold for agriculture purpose. Even assuming the land were agricultural land, in view of the decision of the Hon'ble Supreme Court in the case of M/s.Sarifabibi Mohammed Ibrahim and others, the sale proceeds should be taxed as capital gain.

Thereafter, you are requested to show cause why the sale proceeds cannot be taxed as capital gain on or before 29.02.2016. If you fail to show cause by the said date, it is presumed that you have no cause/ reason and the assessment will be completed accordingly."

ii. Show cause notice dated 16.12.2021:

"5.2. Further, the Village Adangal Extract for 2001-2009 for the said lands issued by the Tahsildar, Chengalpattu (vide RC8715/2009 B.3 dt. 11.09) revealed that there was no agricultural operations from the year 2006-2009 on the land. Hence, it is construed that assessee had not carried out any agricultural operations upto the date of sale of the lands.

5.3. It is also seen that assessee has sold the land to company "Hiranandani Township Private Limited" and not an agriculturalist. It is evident that land sold by you is neither agricultural nor sold for agricultural purpose."

After referring to the case in Sarifabibi's case, it was observed as under:



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"..... Therefore, it is construed that assessee has sold the land for agricultural purpose which attracts the capital gains on sale of land.

5.4. During the assessment proceedings under Section 143(3) of the Income Tax Act, this aspect was not examined thus this is not a mere change of opinion as the AO than had not examined this particular aspect of the transaction as per law settled by the Hon'ble Supreme Court in the case of M/s.Sarifabibi Mohammed Ibrahim and others."

iii. Response of the assessee dated 17.12.2021:

"1. It has been contended that the assessee has not shown any agricultural income in ITR Filed for the AY 2002-03 to AY 2008-09. In this regard, it is submitted that though the assessee has bought the land for purposes, the assessee has derived agricultural income which has not exceeded Rs.5,000/- and hence the assessee has neither shown any agricultural income nor claimed agricultural rebate in her return of income.

2. i) It has been stated that the Village Adangal Extract reveals that there was no agricultural operations on the said land during the period from 2006- 2009. In this regard, it is submitted that the fact that no agricultural activities were carried on in the land does not mean that the lands are not agricultural in nature. All the evidences namely

1. The Copy of the Pattas bearing Nos. 2165 and 2892



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2. copy of the A- Register which contains the survey number, name of the village, name of the district, nature of the land, name of the owner of the land downloaded as on 23.11.2021, as well as

3. the latest EC downloaded on 20.03.2021 from the e-portal of the Revenue Department of Tamil Nadu which describes the details of the said property in Schedule 1 as "Agricultural land" in the EC form.....

3. i) It has been stated that the land has been sold to the company Hiranandani Township Private Limited" who is not an agriculturalist. The buyer need not be an agriculturist. The assessee relies on the case law of CIT vs Rajshibhai Meramanbha iOdedra (2014) 222 Taxmann 72 (Guj) wherein it was held by the Gujarat High Court that

"If the rural agricultural land is transferred to a non-agriculturist,(which is in breach of the law prevailing in the concerned state) the character of the land will not be changed and the land will continue as agricultural land"

Further it was held in the case law of Srinivasa Naicker vs ITO (2007) 292 ITR 481 (Mad)

"where land is under agricultural operation on date of sale, it is taken as agriculture land and it matters very little how the subsequent purchaser intends the land in question to be put to use",

Which clearly implies that the intention of the buyer does not decide the nature of the land sold...."



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10.2. An order of assessment was passed rejecting the objection and the same was challenged before this Court in W.P.(MD)No.2053 of 2022. This Court on finding that the order was passed without following the guidelines issued by the Hon'ble Supreme Court in GKN Drive Shafts was pleased to set-aside the order with a direction to pass the order in compliance with GKN Drive Shaft. The relevant portions of the order reads as under:

“10. The conclusion is, all proceedings post writ petitioner's objections dated 23.11.2021 are set aside solely on the ground that GKN Driveshafts principle has not been strictly adhered to. The first respondent Assessing Officer shall proceed from this 23.12.2021 objection stage, pass a speaking order, complete the re-assessment as expeditiously as his business would permit and in any event within 12 weeks i.e., on or before 28.04.2022.”

iv. Rejection of the petitioner's objection dated 20.04.2022 :

Pursuant to the above directions of this court in W.P.(MD)No. 2053 of 2022, the impugned order rejecting the petitioner's objection came to be passed interalia for the very same reasons which was examined on the two earlier occasions while passing the order of assessment dated 2009 and 2011 as would be evident from the following extracts:



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"1. The Assessee has raised her first objection that if there is no agricultural activity, it cannot be assumed by AO that it is not an agricultural land:

In this regard, it is pertinent to point out that the Village Adangal Extract for the years 2001 to 2009 issued by the Tahsildar, Chengalpattu (vide RC8715/2009 B.3 DL 11.09), in the said lands, it revealed that there was no agricultural operations for the years 2006 to 2009 on the said lands. Further it is stated that the said lands were not used for agricultural purposes.

2. Assessee has raised an objection that "No prudent agriculturist will buy the land for agricultural purpose for such a huge value:

The assessee's objection is as to whether the sale of land requires to be treated as a transaction of a capital asset or for agricultural purpose, it is seen from the submissions, it is clearly seen that the sale of land was made to on "Hiranandani Township Private Limited" a real estate developer, therefore, the claim of the assessee that capital gain arising from this transaction is to be exempted as agricultural land cannot be accepted.

3. The assessee had further raised objection regarding the question of validity of notice issued u/s 148 of the Income Tax Act dated 31.03.2015:

In this regard, the Hon'ble Supreme Court in the case of Raymond Woollen Mills vs ITO (236 ITR 34) had held that reopening valid where there was a prima facie case of escapement of



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income. It was also observed that sufficiency of the material is not required to be considered at the stage of reopening.

Similar view has been expressed by Hon'ble Supreme Court in the case of *Asstt.CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.* [2007] 291 ITR 5002 (SC).

The Hon'ble Delhi High Court in the case of AGR Investment Ltd. vs. Additional Commissioner of Income Tax [2011] 333 ITR 146 (Delhi) held that the word 'reason' in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has a cause or justification to think or to suppose that income has escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words 'reason to believe' cannot mean that the 'Assessing Officer' should have finally ascertained the facts by legal evidence. The words mean that he forms a belief from the examination that he makes and if he likes, from any information he receives. If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he has reason to believe that such an income has escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision.

4. Further, the Asessee contended that she had not obtained any conversion order for sale of lands as non-agricultural land and the land was held for agricultural purpose:



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In this case, it can be clearly stated that the assessee who is not agriculturist and who did not conduct any agricultural activity on the said land as well as the sale of land was made to real-estate developer. Thus as per the decision of Hon'ble Supreme Court in the case of M/s Sarifabibi Mohammad Ibrahim, the assessee does not satisfy the necessary conditions for claiming exemption of capital gain for the land transaction."

From a perusal of the above extracts from the previous proceedings under Section 143 (3) of the Act viz., dated 24.12.2009 and assessment under Section 147 of the Act dated 23.12.2011, and the various stages of the impugned proceeding including the reasons for reopening on the basis of the notice issued on 31.03.2015 and culminating in the rejection of the petitioners objection vide order dated 20.4.22 and the issuance of the show cause notice. The following reasons have been considered earlier:

a. That the petitioner had not carried out any agricultural operations up to the date of sale of land -

The above fact was known to the Assessing Officer while framing the assessment under Section 143 read with 147 vide order dated 23.12.2011 and thus cannot constitute new material.

b. No prudent agriculturalist will buy the land for agricultural purpose



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for such a huge value –

This is neither a tangible material nor is it new, for it is only an inference which is drawn from the material facts which was already available and the same was also considered while making the assessment dated 20.12.2021.

c. That Sarifabibi's case has not been understood in its proper perspective insofar as it failed to appreciate that the assessee had sold the land for non-agricultural purpose which according to the Respondent will have a material bearing on the nature of the land and thus is not a mere change of opinion but non-examination of this particular aspect as per law laid down by the Hon'ble Supreme Court in Sarifabibi's case –

The above reason is again misconceived for the above judgment of the Hon'ble Supreme Court *Sarifabibi Mohammed Ibrahim and others vs. CIT* reported in 204 ITR 631(SC), was considered by the assessing officer while framing the assessment under Section 143(3) read with Section 147 dated 23.12.2011.

Secondly, the assessing officer considered *Sarifabibi's* case and was aware that the purchaser viz., *Hiranandini*, was a builder as is evident from the fact that the agreement for sale and sale agreement was furnished to the assessing officer and the DDIT. Re-assessments was however made

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concluding that the land in question was agricultural land, upon consideration of the sale agreement. The above material viz., sale deed was available and referred to in the assessment order dated 23.12.2011 and thus is not new/ tangible material. In any view, it is not for the assessee to instruct the officer as to how to understand a particular judgment, more so, when the said judgment has been relied upon by the assessing officer himself on earlier occasions.

11. From the above narration of the earlier and the present assessment proceedings it would be clear that the question/issue whether the subject land is agricultural and thus outside the purview of Section 45 of the Income tax Act or land which would attract capital gains tax on its sale has been considered even prior to the original assessment being made under Section 143(3) of the Act. Further, a perusal of the order of assessment dated 23.12.2011, leaves no room for any doubt that the assessing officer had concluded that the land in question is agricultural land after examining the following viz.,

- a. Copy of the sale deed.
- b. Copy of the agreement for sale received from Sub-Registrar.



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c. Report filed by the Deputy Director of IT dated 14.12.2011 finding that the lands situated at Thaiyur Village are agricultural lands. The report also finds that a perusal of the extract of the Chitta and Adangal obtained from the Tahsildar, Chengalpet Taluk, Kancheepuram District would show that the lands were agricultural in nature and paddy was cultivated during the Fasli years 1412 to 1415. That during the Fasli year 1416 and 1417, the record shows that land was under “*puncture*” which denotes no agricultural activity. That the land is beyond the municipal limit and the profit on the sale of the agricultural land is not liable to capital gains tax under Section 45 of the Act. The VAO Certificate issued for the Fasli year 1401 to 1419 reveals there is agricultural activity and for the Fasli years 1418 and 1419 though it is stated as puncture however it was found that the above facts would not convert agricultural land into non-agricultural land.

12. The above would show that the impugned reassessment proceedings questioning the nature of subject land sold as to whether the same is agricultural land and thus outside the purview of Section 45 of the Income Tax Act or the sale would attract capital gains tax under the Income

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Tax Act, is nothing but mere change of opinion and thus impermissible. In this regard, it may be relevant to refer to the following judgments:

A. CIT v. Kelvinator of India Ltd., (2010) 2 SCC 723 :

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.

7. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of



income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words “reason to believe” but also inserted the word “opinion” in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words “reason to believe”, Parliament reintroduced the said expression and deleted the word “opinion” on the ground that it would vest arbitrary powers in the assessing officer.

(emphasis supplied)

B. CIT vs. Techspan India (P) Ltd., (2018) 6 SCC 685 :

“19.The fact in controversy in this case is with regard to the deduction under Section 10-A of the IT Act which was allegedly allowed in excess. The show-cause notice dated 10-2-2005 reflects the ground for reassessment in the present case, that is, the deduction allowed in excess under Section 10-A and, therefore, the income has escaped assessment to the tune of Rs 57,36,811. In the order in question dated 17-8-2005,..... Even the said show-cause notice suggested how proportional allocation should be done. All these things leads to an unavoidable conclusion that the question as to how and to what extent deduction should be allowed under Section 10-A of the IT Act was well considered in the original assessment proceedings itself. Hence, initiation of the reassessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the assessing officer is of the view that the deduction under Section 10-A was allowed in excess, was based on nothing.



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but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings.”

(emphasis supplied)

C. Woodward Governor India Ltd. v. Assistant Commissioner of Income-Tax, 2016 SCC OnLine Del 6632 :

“2..... It is urged that the two heads of income sought to be passed off as deductions and clubbed with the receipts that are legitimately admissible under section 80-IA, are contrary to the declaration of law by the Supreme Court in Pandian Chemicals Ltd. v. CIT,[2003] 262 ITR 278 (SC) and Liberty India v. CIT. [2009] 317 ITR 218 (SC).

.....

4. It is evident from a plain reading of the reasons furnished by the Revenue that there is no allusion to tangible material in the form of objective documents, information etc., outside of the concluded assessment and the documents pertaining to it. According to the binding ruling of the Supreme Court in CIT v. Kelvinator of India Ltd., [2010] 320 ITR 561 (SC), sans such documents, evidence or tangible material, there cannot be valid opinion leading to proper reassessment proceedings.

(emphasis supplied)

D. Great Eastern Energy Corporation Ltd. v. Income Tax, 2014 SCC OnLine Del 3856:



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“6. Thus, according to the AO, income is stated to have escaped assessment on four counts. The first being on account of depreciation claimed on computer software. In this respect, it is noted that the returns furnished by the assessee had been duly scrutinized by the AO. Undeniably, the amount of depreciation claimed by the assessee was examined by the AO. This is also apparent from the fact that the AO had disallowed depreciation to the extent of Rs. 5,85,078/-, which was claimed by the assessee in respect of the building and warehouse. The AO has now alleged that the depreciation on computer software was to be allowed only to the extent of 25% instead of 60% as admitted earlier.Be that as it may, it is apparent that the dispute raised with regard to rate of depreciation by the AO merely indicates a change of opinion and there has been no failure on the part of the assessee to disclose any material fact in this regard.

10..... It is now well settled that assessment cannot be reopened on mere change of opinion. The Hon'ble Supreme Court in the case of CITv.Kelvinator of India Limited: (2010) 320 ITR 561 (SC)affirmed the decision of the full Bench of this Court that a mere change of opinion cannot form the basis for reopening of assessment.

(emphasis supplied)



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13. For all the reasons stated above, the impugned notice dated

31.03.2015 and the order rejecting the objections vide order dated 20.4.2022

and the consequential show cause notice dated 20.4.2022 are set aside and

the writ petition stands allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

30.11.2022

Index: Yes/No

Speaking order: Yes/No

mka/nst

To:

The Deputy Commissioner of

Income Tax Circle-1(1),

2nd Floor, Trichy-Main Building, Williams Road,

Contonment, Trichy-620 015.

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MOHAMMED SHAFFIQ, J.

mka/nst

W.P.(MD).No.8010 of 2022
and
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