IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7056 OF 2024

Hrishikesh s/o Ajit Deshpande,
Aged about 49 years,
Occupation – Advocate,
Resident of West Park Road, Dhantoli,
Nagpur. .... **PETITIONER**

VERSUS

1) The Principal Commissioner of
Income-Tax-I, Nagpur, having
address at BSNL Building, Seminary
Hills, Nagpur.

2) Deputy Commissioner of Income-Tax-
Assistant Commissioner of Income-Tax,
Circle-1, Nagpur, having an address at
BSNL Building, Seminary Hills, Nagpur.

3) The National Faceless Assessment Centre,
New Delhi, through its Director General. .... **RESPONDENTS**

Mr. A.A. Naik, Senior Counsel a/b. Mr. Atharva S. Manohar, Counsel for the petitioner,
Mr. Anand Parchure with Mr. B.N. Mohta, Counsel for the respondents.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE : 09-05-2025

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **RULE.** Heard finally with the consent of the learned Senior Counsel, Mr. A.A. Naik, for the petitioner and the learned Counsel, Mr. Anand Parchure, for the respondents.

2. The petition questions the issuance of the notice dated 22-03-2024 and passing of the consequential order dated 30-03-2024 by respondent No.2 against the petitioner under Section 148A (b) and 148A (d) of the Income-Tax Act, 1961 (for short, "***IT Act***") respectively. It also seeks to quash the notice dated 30-03-2024 issued under Section 148 of the IT Act by respondent No.2 and the show cause notice dated 08-11-2024 issued by respondent No.4 to the petitioner against the proposed variation in income. Similarly, it challenges the order dated 27-11-2024 and the notice dated 28-11-2024 issued and passed by respondent No.3, thereby rejecting the objections raised by the petitioner to the notice dated 08-11-2024 as well as proposing a variation in his assessment for the assessment year 2020-21.

3. The facts relevant for considering the challenge raised in the writ petition are that :

(a) On 11-09-2019, the petitioner and his wife had jointly purchased the agricultural land bearing Khasra No.90, admeasuring 03.64 H.R., Mouza Khumari, Tahsil Ramtek for a consideration of Rs.14,40,000/- (for short,- '***the land***'). However, the petitioner had paid the stamp duty as per the ready reckoner value of the said land of Rs.21,03,000/-.

(b) Respondent No.2-Deputy Commissioner of Income Tax/Assessing Officer had received the information which suggests that the income chargeable to tax for the assessment year 2020-21 to the petitioner had escaped assessment, which can be deduced from the sale-deed dated 11-09-2019 and, therefore, respondent No.2 issued notice on 22-03-2024 under Section 148A (b) of the IT Act to the petitioner calling upon him to submit his reply to the notice.

(c) On 30-03-2024, an order under Section 148A of the IT Act was passed by respondent No.2 with prior approval of Principal Commissioner-I, Nagpur, but the said order of approval by the Principal Commissioner was not supplied to the petitioner. On the same day, a notice under Section 148 of the IT Act was also issued to the petitioner by respondent No.2.

(d) In response to the notice dated 30-03-2024, the petitioner filed his return on 09-05-2024 along with the relevant documents. Thereafter, notices under Section 142(1) came to be issued to the petitioner on 22-05-2024, 24-06-2024 and 25-10-2024, which were duly replied to by the petitioner.

(e) On 08-11-2024, a show cause notice was issued to the petitioner as to why the difference of Rs. 6,63,000/- between the purchase price and stamp duty value of agricultural land/property should not be added to the tax to his total income. The petitioner replied the same on 11-11-2024, raising a principal objection that the notice issued by the Jurisdictional Assessing Officer (for short, "***JAO***") on 22-03-2024 is without jurisdiction and insofar as the notice under Section 148A of the IT

Act can be issued in a faceless manner. Secondly, it was contended that agricultural land is not a capital asset and, therefore, the deeming provisions of Section 56(2)(x) of the IT Act cannot be invoked. The similar notice issued to his wife was discharged, considering that the land in question is agricultural land and no tax could be levied on it. However, the petitioner's objection was rejected by the order dated 27-11-2024.

(f) On 28-11-2024, another show cause notice regarding the proposed variation was issued to the petitioner, who was directed to file his reply by 05-12-2024.

Aggrieved by the aforesaid notices and orders, the petitioner has approached this Court.

4. Mr. A.A. Naik, learned Senior Counsel for the petitioner, vehemently argued that considering the provisions of Section 2(14) of the IT Act, the property in question cannot be termed as a '*capital asset*'. Therefore, the issuance of notices and the passing of orders by the respondent authorities are contrary to the settled provisions of law and cannot be sustained in the eyes of the law. He further canvassed that the JAO has no jurisdiction to issue a notice under Section 148A of the IT Act, since the Law to that effect has been settled by this Court in the decision of ***Hexaware Technologies Ltd.*** v. ***Assistant Commissioner of Income Tax & others*** in ***Writ Petition No.1778/2023,*** by judgment dated ***03-05-2024.*** Therefore, further proceedings based on the said notice deserve to be quashed and set aside.

5. He further argued that the order dated 27-11-2024 passed by respondent No.3, relying upon the judgments of the Delhi High Court and the Calcutta High Court, while failing to consider the judgment of this Court in ***Hexaware Technologies Ltd.,*** *is erroneous.*

6. He drew our attention to the notice issued to the petitioner's wife under Section 137(6) of the IT Act and the observation of respondent No.4 in the order dated 05-06-2024. He submitted that the authorities have not considered the said order and passed an order contrary to it, which cannot be sustained in the eyes of the law.

7. Lastly, he propounded that the agricultural land was located beyond 8 km from the municipality's limits. The population of the village Khumari, where the land is situated, was 1518 at the time of the last census. Therefore, the land in question is not a taxable capital asset, and, therefore, the impugned order dated 27-11-2024 is liable to be quashed and set aside.

8. To buttress his submissions, he has relied on the judgments of this Court in **Arvind Sahdeo Gupta** v. ***Income Tax Officer, Ward-1, Akola and Ors., (2023) 6 Mh.L.J. 587,*** *(Pointed out paragraph Nos.6 to 10)****; Gandhibag Sahakari Bank Ltd. v. Dy. Commissioner of Income Tax and Ors., (2023) 458 ITR 157, particularly paragraph Nos.5(b), 5(c) and 8 to 12; Commissioner of***

Income Tax v. Chandan Magraj Parmar, (2022) 445 ITR 674 {pointed out para 5(b)& (c) and 8 to 12} and emphasized that 'capital asset' means the property of any kind held by the assessee whether or not connected with his business or profession but does not include the agricultural land in India, not being the land situated in any area within such distance, not being more than 8 km., 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 of, urbanization of that area and other relevant considerations specifying in this behalf by notification in the Official Gazette, and pointed out paragraph Nos.4 to 7 of the same. Therefore, he urged that issuance of the impugned notices and passing of orders are contrary to the settled position of law and the law laid down by this Court in the above judgments.

9. *Per contra*, Mr. Anand Parchure, learned Counsel for the respondents, opposes the petition on the ground that the petitioner has purchased the property for consideration of Rs. 14,40,000/-, of which the market value as per the ready reckoner was Rs. 21,03,000/-. Thus, the petitioner gains an amount of Rs. 6,63,000/-. However, he failed to pay the tax on the said amount for the assessment year 2020-21, and therefore, the issuance of notices and passing of orders by the respondent authorities are just and proper.

10. He further argued that the information received by the Assessing Officer was covered under Explanation (i) to Section 148 of the IT Act. Therefore, a notice dated 22-03-2024 under Section 148A (b) of the IT Act was issued to the petitioner calling upon him to submit his reply by 29-03-2024. However, the petitioner did not submit his reply to the said show cause notice within the stipulated time. Therefore, as per the material available on record, the respondent authorities held that the petitioner failed to declare the aforesaid income of Rs. 6,63,000/- under the provisions of Section 56(2)(x) of the IT Act, which was chargeable to tax, and had escaped assessment for the Assessment year 2020-21. He also pointed out the provisions of Sections 148 and 56(2)(x) of the IT Act. He further contended that in the assessment order, in respect of the petitioner’s wife, it was observed that though the sale deed was executed in the joint name of petitioner and his wife her name was included in the registered sale deed, but as the petitioner had paid the consideration amount his case was re-opened for assessment. Therefore, it was observed that property is not a capital asset of the petitioner’s wife, but it was certainly of the petitioner. Therefore, the relief granted to the petitioner's wife is hardly of any assistance in supporting his submission. Furthermore, he propounded that the petitioner had not established with the documentary evidence that the property in question could not be termed a ‘capital asset’. Therefore, the passing of the orders by the authorities is just and proper. Lastly, he argued that Section 263 of the IT Act is not

applicable. Therefore, the contentions of the petitioner are on the wrong footing. In view of Explanations 1 and 2 of Section 148 of the IT Act, the JAO has jurisdiction to issue a notice under Section 148A. Hence, the ground raised by the learned Counsel for the petitioner is without any basis. Thus, the JAO is statutorily obliged to assess and evaluate information gathered from the assessment at the first instance.

To substantiate his submissions, he has relied on the judgment of Delhi High Court in ***Writ Petition (C) No.1968/2023 (T.K.S. Builders Pvt Ltd. v. Income Tax Officer, Ward 25(3), New Delhi***; judgment of Gujarat High Court in ***R/Special Civil Application No.13198/2024 with R/Special Civil Application No.13225/2024 (Talati and Talati LLP v. Office of Assistant Commissioner of Income Tax, Circle 4(1)(1), Ahmedabad***; as well as the judgment of Punjab and Haryana High Court in ***Anshul Jain v. Principle Commissioner of Income Tax and Anr. dated 02-6-2022,*** which was confirmed by the Hon'ble Apex Court in ***Petition(s) for Special Leave to Appeal (C) No(s). 14823 of 2022 and IA No. 121106 of 2022 & IA No. 121109 of 2022, on 02.09.2022***; and ***Raymond Woollen Mills Ltd. v. ITO, Centre Circle XI, Range Bombay & Ors. (2008) 14 SCC 218***, and submitted that in view of the law laid down in the aforesaid judgments, the issuance of notices and passing of the orders by the respondent authorities are just and proper, and the correctness of the order under Section 148A (d) cannot be challenged in writ jurisdiction. Hence, he urges dismissing the petition.

11. We have appreciated the rival contentions of Mr. A.A. Naik, learned Senior Counsel for the petitioner, and Mr. Anand Parchure, learned Counsel for the respondents and perused the record and the judgments relied upon by the parties in support of their submissions. We have also gone through the relevant provisions of the Law.

12. At the outset, it appears that the petitioner with his wife have jointly purchased the land by sale deed dated 11-09-2019 for a consideration of Rs.14,40,000/- and as per the ready reckoner, the Government valuation of the said land was shown as Rs.21,03,000/- and the petitioner failed to pay the tax on the said difference of the amount of Rs.6,63,000/- for the assessment year 2020-21. The Assessing Officer had information which suggested that the petitioner had not paid the tax on the said difference amount, which was chargeable to tax, and, therefore, the notice under Section 148A (b) of the IT Act was issued to the petitioner. According to the petitioner, the agricultural land was located beyond 8 km. aerial distance from nearest municipality and the population of the village Khumari was below 10000 and, therefore, the land in question cannot be termed as the '*capital asset*' as contemplated in terms of Section 2(14) of the IT Act and, therefore, the petitioner is not liable to pay the tax on the said difference amount of Rs.6,63,000/-.

13. To ascertain the said controversy, it would be proper to reproduce Section 2(14) of the IT Act as under :

*"2(14). "**Capital Asset**" means -*

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b) ---------

(c) -------

***but does not include** -*

(i) ------

(ii) ------

*(iii) **agricultural land** in India, **not being land situated***

*(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal 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;** or*

(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

*(III)**not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.***

*Explanation.—For the purposes of this sub-clause, "**population" means the population according to the last preceding census** of which the relevant figures have been published before the first day of the previous year;*

(iv) to (vi) ----------"

A bare perusal of the definition of '***capital asset'*** means the property of any kind held by an assessee, whether or not connected with his business or profession. ***However, it does not include*** agricultural land in India, situated beyond 8 km from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may specify in this behalf by notification in the Official Gazette and which has a population not exceeding ten thousand. Hence, in view of the aforesaid position of the law, certainly the land which is the subject matter of this proceeding does not fall within the ambit of 'capital asset' as it is located beyond 8 km from the local limits of municipality or cantonment board which has a population of not more than ten thousand, which factuality is not disputed by the respondents.

14. The petitioner along with reply to notice under Section 133(6) of the IT Act submitted the Certificate issued by the Sarpanch of the Gram-Panchayat Khumari, certifying that as per the census of 2011, the population of the village Khumari was 1518. The certificate denotes that the population of the village of Khumari was less than ten thousand, and the land is located in the village. Therefore, as contemplated under Section 2(14) of the IT Act, the said land does not fall in the ambit of 'capital asset'. Hence, the dictum laid down in the ***Commissioner of Income Tax*** (supra) case would apply to the case at hand regarding determining the question of '***capital asset'***.

15. In ***Arvind Sahdeo Gupta*** (supra), this Court, after considering the various judgments of this Court as well as the Hon'ble Apex Court, has held that **:--**

> "No statutory remedy is available to challenge the notice U/s 148 of the Act, so *it can be challenged in writ jurisdiction.*
>
> *Also, if the statutory authority has not acted in accordance with the provisions of the enactment in question, extraordinary jurisdiction could be exercised".*

16. Similarly, in ***Gandhibag Sahakari Bank Ltd.*** (supra), this Court, after considering various judgments of this Court as well as the Hon'ble Apex Court, has observed as under :

> *"While the objection to 'maintainability' goes to the root of the matter, and if such objection is found to be of substance, the Court would be rendered incapable of receiving the lis for adjudication. On the other hand, the question of 'maintainability' is within the realm of discretion of the High Court since writ remedy is discretionary in nature. The dismissal of the writ petition on the ground that the petitioner has not availed of the alternate remedy without examining as to whether an exceptional case has been made out for such entertainment would not be proper. If a jurisdictional issue is raised and controversy is purely a legal one that does not involve any disputed question of fact, then the writ petition does not deserve to be thrown out at the threshold."*
>
> *(emphasis supplied)*

> **It further summarises the principles that emerge from the various decisions.**

> *"Existence of the reason to believe that income chargeable to tax has escaped assessment is a jurisdictional condition for invoking the power under Section 147 of the IT Act, 1961, both within and beyond a period of four years from the end of the relevant assessment year. The Assessing Officer is enjoined to record reasons before a notice to reopen the assessment under Section 148 of the Act is issued. In case, the assessment was completed under Section 143(3) of the*

> *Act, an additional condition that the income must have escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment is required to be fulfilled. The existence of reason to believe is further qualified by the fact that it should be based on tangible material. Firstly, it cannot be the product of mere ipse dixit of the Assessing Officer. Secondly, it should not partake the character of a mere change in opinion as regards the same material and facts, which were considered at the time of original assessment, for the power is of reassessment and not review. Once the primary facts necessary for assessment are fully and truly disclosed and the Assessing Officer takes a conclusive view thereon, it is not permissible to reopen the assessment based on the very same material on the premise that it is susceptible to a different opinion favourable to the Revenue."*
>
> (*emphasis supplied*)

17. On perusal of the notice dated 22-03-2024 (Page No.66) issued under Section 148A of the IT Act coupled with the reasons assigned by the respondents for seeking to reopen the proceedings, it becomes clear that it is based on information uploaded in insight portal about the sale transaction has prompted to the Assessing Officer to observe that "*the petitioner failed to pay the tax on the difference amount of Rs.6,63,000/- chargeable to the tax under the provisions of the IT Act and thereby had escaped assessment for the year 2020-21*." Except for stating that such information was available on the insight portal, no material has been brought on record to show the existence of a reason to believe by the Assessing Officer that the income of Rs. 6,63,000/- had escaped assessment in respect of the petitioner. The reasons disclosed by the assessing office do not indicate that any exercise of independent

verification thereafter was undertaken, resulting in consideration of the same with due application of mind by the Assessing Officer so as to reopen the completed assessment. Similarly, the Assessing Officer did not verify whether the agricultural land, i.e., the property in question, can be termed as 'capital asset' or not in view of Section 2(14) of the IT Act. Only by stating that information was available on the insight portal did the Assessing Officer form a belief that the indicated amount had escaped assessment at the hands of the petitioner.

This Court in ***Gandhibag Sahakari Bank Ltd.***, has considered the mandate in ***Principal Commissioner of Income Tax v. Shodiman Investments (P) Ltd, (2020) 422 ITR 337 (Bom.)***, *whereby it was held that:*

> *"The words '**reason to believe**' would mean cause or justification. It can only be the basis of forming such a belief. However, the belief must be independently formed in the context of the material obtained that there was escapement of income.* The facts in the said decision indicate that the reasons made available to the assessee suggest that the information was received from the Director of the Income Tax about a particular entity entering into suspicious transactions. Hence, it was held that 'such action was in breach of the settled position of law that the reopening notice was required to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction'.

In view of the above mandate, this Court in ***Gandhibag Sahakari Bank Ltd.*** held that:

> *"Except for referring to the information available on the insight portal, the Assessing Officer has proceeded to*

reopen the assessment without indicating any independent application of mind to the said information that was available on the insight portal for satisfaction to be recorded. It would thus be a case of issuing the reopening notice on borrowed satisfaction, which is not permissible. Hence, quashed and set aside the impugned notice and order."

18. The dictum laid down in the above cases covers the controversy that arises in this petition. Therefore, the mandate in the said cases applies to the case at hand.

19. In the case of ***Anshul Jain*** **(**supra), the Punjab and Haryana High Court has held as under :

> *"Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ court should not interfere at such a premature stage. Moreover, it is not a case where, from a bare reading of the notice, it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of the order under Section 148A(d) is being challenged in the factual premise contending that jurisdiction, though vested, has been wrongly exercised. By now, it is well settled that there is a vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided.*
>
> *In the said case, the petitioner therein has not challenged the authenticity of the notice issued under Section 148-A of the IT Act. Therefore, the Court has held that there is no reason to warrant interference by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage."*

20. However, as discussed above, it is evident that the Assessing Officer, without satisfying himself and applying his mind, issued the impugned

notices and, therefore, the law laid down in ***Anshul Jain*** (supra) is of hardly any assistance to the respondents in support of their contentions. However, it does not appear that the Assessing Officer independently obtained the material and formed his opinion based on said material that there was escapement of the income. While drawing only inference, he has to know the connotation of 'capital asset' as per Section 2(14) of the IT Act, of which clause (iii) excludes the 'agricultural land' which is located beyond 8 km in aerial distance from the municipality and the population of the village is less than ten thousand does not fall within the purview of capital asset. Thus it is apparent that the Assessing Officer without applying his mind to the information that was available at the insight portal or recording his satisfaction to be recorded issued the impugned notice under Section 148A of the Act and thereby reopened the assessment. Therefore, in our view, the mandate in ***Gandhibag Sahakari Bank Ltd.*** and ***Arvind Sahdeo Gupta*** is applicable in the case at hand, rather the decisions in the ***Anshul Jain*** and ***Raymond Woollen Mills Ltd.*** as the facts in the said judgments are distinct than the case at hand. So, the mandate in the said judgments is not applicable.

21. For the reasons above, we find that the Assessing Officer in absence of verification of the information available on the insight portal has proceeded to reopen the completed assessment without indicating the basis for having a reason to believe that the difference of Rs.6,63,000/-

between the purchase price and the stamp duty value is chargeable to tax under the provisions of the IT Act and the tax paid by the petitioner had escaped assessment. Further reopening is based on grossly incorrect facts that the assessment had been completed under Section 143(1) of the Act and was hence no assessment under Section 2(40) of the IT Act of 1961, when in fact the assessment had been completed under Section 143(3) of the IT Act. The reopening was thus merely an outcome of a change of opinion of the Assessing Officer. Thus, the notice dated 22-03-2024 issued under Section 148A(b) of the IT Act and consequential order dated 30-03-2024 by respondent No.2; notice dated 30-03-2024 under Section 148 of the IT Act issued by respondent No.2, show cause notice dated 08-11-2024 issued by respondent No.4, and consequential order dated 27-11-2024 passed by respondent No.3, and notice dated 28-11-2024 issued by respondent No.3 would not survive and are liable to be quashed and set aside. They are accordingly quashed and set aside, having been issued in the absence of statutory jurisdiction in that regard. Consequently, steps taken in pursuance of the said notice issued under Section 148A(b) of the Act would not survive. As a result, the writ petition is allowed in the above terms. Rule is made absolute. No order as to costs.

(ABHAY J. MANTRI, J.) **(AVINASH G. GHAROTE, J.)**

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