



W.P.Nos.23676 of 2021 & 9198 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 26.08.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.23676 of 2021 & 9198 of 2022

&

W.M.P.Nos.24921 of 2021

& 8953 & 8954 of 2022

Express News Papers Private Limited
Rep by its Managing Director,
Kavitha Y Singhania,
2, Express Estates, Club House road,
Mount Road, chennai-600 002

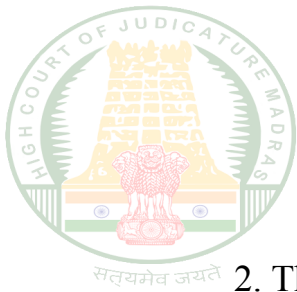
... Petitioner in both petitions

Vs.

The Assistant Commissioner Of Income Tax
Corporate circle-2(1),
Chennai-Wanaparthy Block, Aayakar Bhavan,
No.121, Mahatma Gandhi Road,
Nungambakkam, chennai-600 034

... Respondent in W.P.No.23676 of 2021

1. The Income Tax officer
National Faceless Assessment Centre,
Income tax department, Ministry of Finance,
Room No. 401, 2nd Floor, E-Ramp,
Jawaharlal Stadium, Delhi 110 003



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2. The Assistant Commissioner of Income tax
Corporate Circle -2(1), Chennai
Wanaparthi Block, Aayakar Bhavan,
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 34

... Respondent in W.P.No.9198 of 2022

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari,

calling for the records in DIN and Letter no.ITBA /COM/ F / 17 /
2021-22 / 1034444029 (1) dated 27.7.2021 on the file of the Respondent
relating to the A.Y.2014-15 and quash the same

calling for the records in DIN- ITBA/AST/ S/147/ 2021-
22/1042145504(1) dated 30.03.2022 the file of the 1st respondent
relating to the A.Y 2014- 15 and quash the same

For Petitioner
in both petitions : Mr.Ajay Vohra, Senior counsel,
Assisted by Mr.P.J.Rishikesh,
Ms.M.Pavithra, Mr.Deepesh Jain
& Mr.Amit Agarwal

For Respondent
in both petitions : Mr.B.Ramanakumar, Sr.St.counsel
& Mr.Avinash Krishnan Ravi,
Jr.St.counsel



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COMMON ORDER

The writ petition in W.P.No.23676 of 2021 has been filed against the impugned proceedings dated 27.07.2021, pertaining to the rejection of objection filed by the petitioner to the show cause notice issued by the respondent under Section 148 of the the Income Tax Act, 1961 (hereinafter referred to as “Act”).

2. The writ petition in W.P.No.9198 of 2022 has been filed against the assessment order dated 30.03.2022 passed by the respondent under Section 147/144B of the Act.

3. Petitioner's submission:

3.1 The learned Senior counsel appearing for the petitioner would submit that in this case, the notice, under Section 148 of the Act, was issued on 30.03.2021, for which, the objections were filed by the petitioner on 13.05.2021. However, without considering the said objections on the legal aspect, the assessment pertaining to the AY 2014-

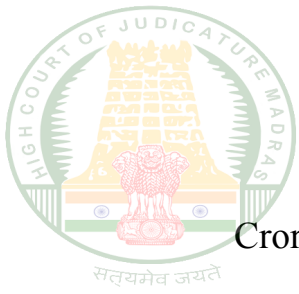


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2015 was reopened by the respondent on 27.07.2021, against which, the
aforesaid WP.No.23676 of 2021 was filed by the petitioner.

3.2 Pending the said writ petition, the assessment order was hurriedly passed by the respondent in violation of principles of natural justice. While passing the said assessment order, the respondent had provided only one day time for filing the reply to the show cause notice dated 26.03.2022. Thereafter, without granting any opportunity of personal hearing, the impugned assessment order came to be passed by the respondent on 30.03.2022.

3.3 He would submit that in this case, the petitioner had sold the land ad-measuring 4.76 acres to its wholly owned subsidiary company namely, Express Exclusive Developer Private Limited (hereinafter called as “subsidiary company”), which is now known as E-Residences Private Limited, for sale consideration of Rs.290 Crores, by executing the sale deed dated 13.02.2014. After the sale of property, at the time of filing the ITR for FY 2013-2014, the petitioner had disclosed the fact that the asset, viz., petitioner's property, was sold for a sale consideration of Rs.290



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Crores to its wholly owned subsidiary company and thus, they are entitled for exemption from payment of capital gains tax in terms of Section 47(iv) of the Act.

3.4 After thorough scrutiny, the respondent had accepted the returns filed by the petitioner and also it was approved by the respondent that the petitioner's sale transaction would fall under the purview of Section 47(iv) of the Act and hence, the petitioner is not liable to pay any capital gain tax.

3.5 Thereafter, to discharge, the sale consideration of Rs.290 Crores, the subsidiary company had allotted shares to the petitioner and by virtue of the sale of the said shares, the entire consideration will be paid to the petitioner by the subsidiary company.

3.6 On 28.03.2016, the subsidiary company entered into a Joint Development Agreement (JDA) with the Express Infrastructure Private Limited (hereinafter called as "EIPL/Developer") for construction and



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sale of residential apartments.

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3.7 As per the said Joint Development Agreement, the Developer will enter into a separate agreement with the allottees, for the purpose of construction and the price fixed for the purpose of construction will go to the Developer. As far as the subsidiary company is concerned, the market value of sale of undivided share will go to them.

3.8 Further, he would submit that the subsidiary company is selling the undivided share from time to time during various assessment years by treating it as “capital assets”, for which, the capital gain tax was determined and accordingly, the same was paid. Thus, at no point of the time, the subsidiary company had ever shown the land of 4.76 acres as “stock in trade” and sold the property.

3.9 Even if the allegation of the respondent is accepted, i.e., if the subsidiary company had shown the assets as “stock in trade”, then the provisions of Section 47A of the Act will come into operation against the



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petitioner and automatically, the exemption granted, under Section 47(iv) of the Act, would have been withdrawn. Thereafter, by invoking Section 155(7B) of the Act, the respondent shall issue a notice for the purpose of recomputation of income and amendment of the returns filed by the petitioner for the relevant AY, during which the sale was made. However, without doing so, in non-application of mind, the respondent had initiated proceedings under Section 147 of the Act and issued a notice under Section 148 of the Act to the petitioner.

3.10 Upon receipt of the said notice under Section 148 of the Act, the objection was filed by the petitioner, however, the same was rejected by the respondent. Thereafter, only one day time was provided for filing the reply to the show cause notice dated 26.03.2022 and subsequently, even without providing any opportunity of personal hearing, the reassessment order came to be passed under Section 147/144B of the Act on 30.03.2022, which is illegal and in violation of principles of natural justice.

3.11 Further, he would contend that as stated above, even if the



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respondent's contention is accepted, the right course to be adopted by the respondent was to recompute the income and amend the returns by invoking the provisions of Section 155(7B) of the Act. However, in this case, the respondents had committed a serious error by invoking Section 147/148 of the Act. When the Law provides a way to do certain things in certain manner based on the happening of events, it is the duty of the respondent to follow the same. However, by ignoring the said Rules, the respondent had issued notice by wrongly invoking the provisions of Section 147/148 of the Act, which is liable to be quashed.

3.12 He would also submit that in this case, the question of treating the Assets sold by the subsidiary company as “stock in trade” would not arise. The invocation of the provisions of Section 47(iv) and 155(7B) would be depend upon as to how the subsidiary company, i.e., transferee company, treated the assets and sold it. If the subsidiary company shown the assets by treating the same as if it is purchased as “stock in trade”, the above provision will apply automatically. However, in this case, as stated above, at no occasion the transferee company treated the property as “stock in trade”. In other words, the transferee company had all along



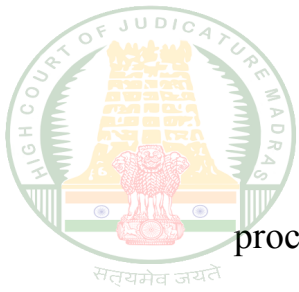
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treated the purchase of the asset from the petitioner as “Capital Asset”.

Thereafter, whenever the sale has been effected, the same was shown as “sale of asset” in the returns filed for the relevant assessment year. The capital gain was calculated and accordingly, the tax has also been paid. The self assessed ITR of the transferee company was also accepted by the respondent without any demur. Hence, it is clear that at no point of time, they treated the assets as “stock in trade” and sold the property. Therefore, the operation of Section 47(iv) and 155(7B) would not arise.

3.13 Further, he would submit that the Jurisdictional Assessing Officer, for both the transferor/petitioner and the transferee/subsidiary company, are one and the same, i.e., the very same Assessing Officer had accepted the returns filed by the transferee, wherein the sale of asset was treated as “capital asset”, for which, they had quantified the capital gain tax and paid the same. Having accepted the returns, filed by the transferee company, by treating the sale of the assets as “capital assets”, now the respondent is coming forward with the present notice, which is issued against the petitioner/transferor company under Section 147/148 of the Act, by treating the very same transaction as “stock in trade” and

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proceeded to re-open the assessment. Hence, he would contend that the entire proceeding is liable to be quashed.

3.14 Further, by referring Section 49(1)(iii)(e) of the Act, he would submit that any transfer between the holding company and its subsidiary company would not be considered as transfer for the purpose of capital gain tax. Ultimately, if the said property was sold by the transferee company to anybody else, the cost of acquisition of the asset shall be deemed to be the cost for which the holding company acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be. Therefore, if the assets are sold as capital asset by the transferee company, no capital gain loss would occur to the exchequers.. The object of introduction of this provision was to protect the revenue of the Department.

3.15 In this case, while filing various returns from time to time, the transferee company had calculated the capital gain by treating the asset as “Capital Asset” and in terms of Section 49(1)(iii)(e) of the Act, they had taken the cost of acquisition of his vendor, i.e., the petitioner-company,

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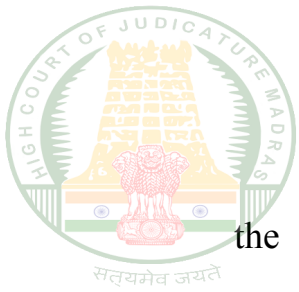
by adding appropriate index, which would come around a sum of Rs.89

crores (approx).

3.16 When the transferee company treated the property as “Capital Asset” and accordingly, sold the same, the sale consideration would not be treated as business income and therefore, the capital gain is required to be calculated by invoking the provisions of Section 49(1)(iii)(e) of the Act. On the other hand, if the transferee company treated the purchase of asset as “stock in trade” and sold the same as business assets towards achieving the object of business, then whatever consideration earned shall be treated as “business income” and the same will not come under “capital gain”.

3.17 The Law has been enacted in such a way not to lose tax in the event of violation of terms and conditions of the provisions of Section 47(iv) of the Act. Therefore, as stated above, ultimately there will not be any revenue loss for the Department.

3.18 Without understanding the aforesaid concept of Law, due to



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the non-application of mind and wrong interpretation of law, the respondent had invoked Section 147/148 of the Act, which is not at all warranted in this case. Hence he prayed this Court to quash the entire proceedings, which was initiated against the petitioner.

4. Respondent's submissions:

4.1 Per contra, though the learned Senior Standing counsel appearing for the respondent made very many submissions with regard to the merits of the case for issuance of notice under Section 148 of the Act, he would fairly submit that if this Court come to a conclusion that the issuance of Section 148 notice is illegal, then there will be no requirement for this Court to decide with all the other issues raised by the petitioner.

4.2 The respondent had filed his counter and would submit that in this case, there are two writ petitions, one is against the rejection of objection filed by the petitioner and another one is against assessment order passed by the respondent under Section 147/144B of the IT Act.

4.3 He would submit that in this case, the transferee company had



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all along treated the assets purchased from the petitioner as “stock in trade”. The business of the transferee company is buying and selling the property. Therefore, they sold the property in the course of their business by treating the purchase of the property as “stock in trade”. He would also submit that in this case, the transaction made by the transferee company with the developer by virtue of agreement dated 28.03.2016 was treated as “stock in trade” and accordingly, the exemption was withdrawn in terms of Section 47A of the Act and the tax liability was quantified to a sum of Rs.45 Crores along with interest of Rs.36 Crores, i.e., total demand amount is a sum of Rs.81 Crores.

4.4 Therefore, he would submit that to recover the aforesaid demand amount, without any other option, the respondent had proceeded for reassessment and issued notice under Section 148 of the Act, which is permissible to be issued within a period of 6 years. He would also submit that now, the assessment order has been passed and hence, the petitioner can very well challenge the same in the manner known to law by way of filing an appeal against the said assessment order. However, instead of doing so, the petitioner had approached this Court vide the present

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4.5 As far as the invocation of Section 155(7B) is concerned, he would submit that in this case, the conversion had occurred at the time of entering of Joint Development Agreement dated 28.03.2016 and hence, in terms of Section 155(7B)(ii) of the Act, the respondent should have initiated proceedings under the aforesaid provision within a period of 4 years from the end of previous relevant year. However, being unaware of the said conversion, the respondent had failed to initiate such proceedings against the petitioner within the time limit. Under these circumstances, without any other option, the respondent had invoked Section 147 and issued a notice under Section 148 of the Act, for which, they have time limit of 6 years from the end of relevant assessment year.

4.6 In support of his contention, he referred the judgment rendered by the Hon'ble Division Bench of this Court in ***Commissioner of Income Tax vs. EID Parry Limited*** reported in ***(1996) 86 TAXMAN 300 (Mad.)*** and submitted that the respondent can very well initiate proceedings under Section 148 of the Act. Hence, he prays for dismissal of these

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petitions.

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5. Petitioner's reply:

5.1 In reply, the learned Senior counsel appearing for the petitioner would submit that in this case, even if the submission made by the respondent is taken into consideration, the tax due demanded by the respondent was only around a sum of Rs.81 Crores as on the date of issuance of notice. On the other hand, as on today, by virtue of selling the property as “capital asset”, the transferee company had remitted the capital gain tax to the extent of Rs.106 Crores, which came out of the sale consideration of 46% of land and the remaining 54% of the land is yet to be sold.

5.2 Further, he would submit that in this case, the question of non-disclosure or suppression of material facts would not arise. Initially, vide communication dated 23.08.2016, the transferee company had informed the respondent with regard to the entire transaction and Joint Venture Agreement along with all the supporting documents. In such case, if at all if there is anything, the respondent was supposed to have initiated the proceedings against the transferee company and not against the petitioner,

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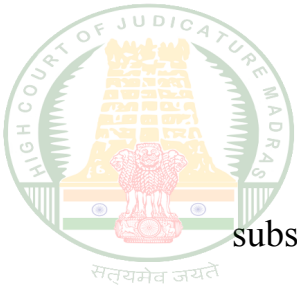
who is transferor company. Hence, he requests this Court to quash the entire proceedings.

6. I have given due consideration to the submissions made by the learned Senior counsel appearing for the petitioner and the learned Senior Standing counsel appearing for the respondent and also perused the entire materials available on record.

Brief Facts of the case:

7. In the cases on hand, the petitioner, being the holding company, had sold the property to an extent of 4.76 acres of land to its wholly owned subsidiary company for the sale consideration of a sum of Rs.290 crores by virtue of sale deed dated 13.02.2014. The said subsidiary company was incorporated on 16.01.2014. The sale consideration was paid by the subsidiary company by virtue of allotment of shares to its holding company, i.e., petitioner herein.

8. Thereafter, the subsidiary company had entered into a Joint Development Agreement with the Developer on 28.03.2016 and



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subsequently, it was modified from time to time. The details with regard to the entire transaction and the Joint Development Agreement was intimated to the respondent by the transferee company vide communication dated 28.03.2016.

9. In terms of the said Joint Development Agreement, the transferee company is entitled to sell the undivided share of land and receive the entire sale consideration in their account. As far as the Developer is concerned, they will develop the property by constructing the superstructures, for which, they had entered into a Construction Agreement and accordingly, they are entitled to receive the consideration mentioned in the Construction Agreement for construction of the said superstructures in the respective flats.

10. In this case, the transferee company had invariably sold the undivided shares of land, so far, to each and every allottees based on the market value of the property, which will always be higher than the guideline value of the land.



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11. A perusal of sale deed executed in the year 2020 makes it clear that the value of per ground (2400 square feet) would come around a sum of Rs.5.25 crore. In such case, the total sale consideration of the land of 4.76 acre (85 grounds) would be approximately around a sum of Rs.446.25 crore, if it is sold in entirety in the year 2020 itself.

12. Now, it was submitted by the petitioner that the transferee company has sold about 46% of the total extent of land, by treating the assets as “Capital Assets” and accordingly, they have been paying the capital gain tax for the respective sale occurred during the relevant assessment year. The returns, filed by the transferee company, were accepted by the Assessing Officer without any demur as on date since 2016. Therefore, without taking any stand against the transferee company to treat their sale of asset as “stock in trade”, now the respondent have no *locus standi* to take any such stand against the petitioner-transferor company.

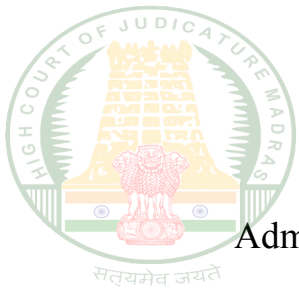


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13. The petitioner has also contended that at no point of time, the transferee company have ever purchased or sold the asset as “stock in trade”, so as to calculate the profit under the head “business income” and pay tax on the profits. The transferee company owns only the assets purchased from its holding company in the year 2014. Except the said asset, no other assets were purchased by them as on today.

14. As rightly contended by the learned Senior counsel appearing for the petitioner, in this case, the sale was made by the transferee company by treating the asset as “capital asset” and they had paid the capital gain tax. The same was also accepted by the respondent. In such case, now, the respondent cannot take a different stand and initiate proceedings against the petitioner for withdrawal of exemption under Section 47A of the Act. The respondent will not have any cause of action to withdraw the exemption by invoking aforesaid Section 47A of the Act. On the other hand, in the event, if the respondent had initiated any proceedings against the transferee company by treating the sale of asset as “stock in trade”, certainly, they will have *locus standi* to invoke Section 47A of the Act against the petitioner/transferor company.

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Admittedly, as on date, the respondent had not take any such stand against the transferee company. Per contra, they had accepted the capital gain tax paid by the transferee company to an extent of around a sum of Rs.106 Crores and there is no dispute on the said aspect. Under these circumstances, the respondent have no *locus standi* and authority to initiate any proceeding against the petitioner for withdrawal of exemption under Section 47A of the Act.

Consequences of withdrawal of exemption in terms of Section 47A of the Act:

15. As contended by the petitioner, even if the contention of the respondent is accepted, i.e., if the transferee company had sold the assets by treating the same as “stock in trade”, the recourse available to the respondent is to invoke Section 47A & 155(7B) of the Act.

16. At this juncture, it would be apposite to extract the provision of section 47A of the Act, which reads as follows:

47A. Withdrawal of exemption in certain cases.—

(1) Where at any time before the expiry of a period



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of eight years from the date of the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 147,—

(i) such capital asset is converted by the transferee company into, or is treated by it as, stock-intrade of its business; or

(ii) the parent company or its nominees or, as the case may be, the holding company ceases or cease to hold the whole of the share capital of the subsidiary company, the amount of profits or gains arising from the transfer of such capital asset not charged under section 45 by virtue of the provisions contained in clause (iv) or, as the case may be, clause (v) of section 47 shall, notwithstanding anything contained in the said clauses, be deemed to be income chargeable under the head “Capital gains” of the previous year in which such transfer took place.

(2) Where at any time, before the expiry of a period of three years from the date of the transfer of a capital asset referred to in clause (xi) of section 47, any of the shares allotted to the transferor in exchange of a membership in a recognised stock exchange are transferred, the amount of profits and gains not charged under section 45 by virtue of the provisions contained in clause (xi) of section 47 shall, notwithstanding anything contained in the said clause, be deemed to be the income



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chargeable under the head “Capital gains” of the previous year in which such shares are transferred.

(3) Where any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) of section 47 shall be deemed to be the profits and gains chargeable to tax of the successor company for the previous year in which the requirements of the proviso to clause (xiii) or the proviso to clause (xiv), as the case may be, are not complied with.

(4) Where any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible assets or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.



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17. From the above, it is clear that the provisions of Section 47A was conspicuously incorporated, so as, to withdraw the exemption, which was granted in terms of Section 47(iv) of the Act to the transferor company, at the time of transfer of its assets to its subsidiary company, in the event, if the transferee company transfers the capital assets within a period of 8 years from the date of its transfer by treating the same as “stock in trade”.

18. For ready reference, the provisions of Section 47(iv) of the Act is extracted hereunder:

*“47. Transactions not regarded as transfer.—
Nothing contained in section 45 shall apply to the
following transfers:—*

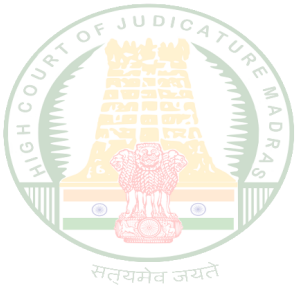
(i).....

(ii).....

(iii).....

*(iv) any transfer of a capital asset by a company to
its subsidiary company, if—*

*(a) the parent company or its nominees hold the
whole of the share capital of the subsidiary company, and*



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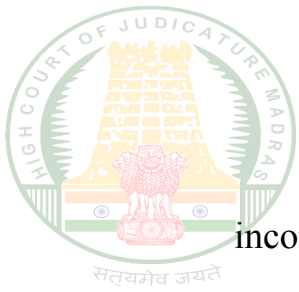
(b) the subsidiary company is an Indian company;”

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19. In terms of the above provision, in the event of transfer of a capital asset by a company to its subsidiary company, the company is exempted from the payment of capital gain tax in terms of the provisions of Section 47(iv) of the Act.

20. In the event, if the transferee company sold the said capital asset as “stock in trade” within a period of 8 years from the date of transfer of capital asset by the holding company to its subsidiary company, then the exemption, which was granted under Section 47(iv) of the Act, will be withdrawn in terms of the provisions of Section 47A of the Act.

21. After the withdrawal of exemption in terms of Section 47A of the Act, the respondent can very well invoke the provisions of Section 155(7B) of the Act to recompute the total income of the transferor company for the relevant years and make necessary amendment in



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income tax returns filed by the petitioner/ transferor company for the relevant assessment year.

22. At this juncture, it would be apposite to extract the provisions of Section 155(7B), which reads as follows:

155(7B) Where in the assessment for any year, the capital gain arising from the transfer of a capital asset is not charged under section 45 by virtue of the provisions of clause (iv) or, as the case may be, clause (v) of section 47, but is deemed under section 47A to be income chargeable under the head "Capital gains" of the previous year in which the transfer took place by reason of—

(i) such capital asset being converted by the transferee company into, or being treated by it, as stock-in-trade of its business; or

(ii) the parent company or its nominees or, as the case may be, the holding company ceasing to hold the whole of the share capital of the subsidiary company

at any time before the expiry of the period of eight years from the date of such transfer, the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the transferor company for the relevant previous year and make the necessary



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amendment; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the capital asset was so converted or treated or in which the parent company or its nominees or, as the case may be, the holding company ceased to hold the whole of the share capital of the subsidiary company.]

23. By virtue of Section 155(7B), after withdrawing the exemption under Section 47A of the Act, the respondents will recompute the income and amend the ITR of the transferor company for the relevant assessment years, during which the sale of the property was occurred, and then, the respondent will call upon the petitioner to pay the said capital gain tax along with the interest, if any.

24. Therefore, in the event if the transferee company sold the property before the expiry of the period of 8 years from the date of transfer of “capital asset” by treating the same as “stock in trade”, then the respondent shall withdraw the exemption, granted under Section 47(iv), in terms of Section 47A of the Act.

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25. The object of the said provision is to ensure that there was no loss of revenue for the Department towards remittance of the capital gain tax.

Proceedings under Section 154 Vs. Section 155(7B) of the Act:

26. After the withdrawal of exemption under Section 47A of the Act, the respondent shall invoke the provisions of Section 155(7B) of the Act to recompute the income and make necessary amendments. The “recomputation” in terms of Section 155(7B) cannot be equated with the “rectification” as provided in Section 154 of the Act. The amendment made under Section 155(7B) cannot be treated as rectification of returns in terms of Section 154, since the said rectification will be made only if there was any error apparent on record as on the date of filing the ITR. However, in this case, there was no such error as on the date of filing of the returns for the relevant assessment year by the transferor company and it is nobody's case also. In this case, the recomputation takes place only due to the reason of subsequent events, which was said to have happened on 28.03.2016.

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27. Initially, at the time of transfer of property, the petitioner was granted an exemption from payment of capital gain tax under certain conditions. When the said conditions are not complied with by the petitioner, the exemption will be withdrawn. The said aspect would not mean that there was an error apparent on record as on the date of filing the returns. The petitioner had filed their returns correctly, however, due to the subsequent events, there was withdrawal of exemption. When such being the case, the respondent is supposed to have invoked Section 155(7B) of the Act for recomputation of income and amendments of returns filed by the petitioner.

Case law referred by the respondent:

28. The learned Senior Standing counsel had referred to the law laid down by the Hon'ble Division Bench of this Court in ***EID Parry Limited*** (referred supra), wherein at paragraph No.15, it has been stated as follows:

15. We do not propose in this case, however, to deal any further as the existence of the information for the



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belief that income chargeable to tax has escaped assessment is the sine qua non for reopening the assessment under Section 147(b) and discovery of an error apparent on the record is the sine qua non for rectification under Section 154 of the Act. The provisions for rectification of error apparent on the record and for taking proceedings regarding escapement are common features in the tax laws and they are to be invoked in different circumstances. The ITO can have recourse to one or the other, but he must have recourse to the appropriate provision having regard to the facts and circumstances in each case. In cases where the two appear to overlap, the ITO must choose one in preference to the other and proceed. He should not take one as the appropriate proceeding and give it up at a later stage to have recourse to the other, since such proceedings are quasi-judicial and adjudication after notice is intended for the same purpose. In such a case of overlapping, constructive res judicata and not the statutory inhibition, should make the ITO desist from using one proceeding after the other instead of using one of the two with due care and caution. We have, however, felt in the instant case that in respect to most of the items, the ITO has exhibited ignorance of law and the Tribunal, for good reasons, has held about them that no case of error



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apparent on the record was made out.”

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29. By referring the above, he would submit that the provisions for rectification of error apparent on record and taking proceedings regarding escapement are common feature in tax laws. Further, time period of 6 years from the date of end of relevant assessment year, in which the “capital asset” was converted into “stock in trade”, is available for issuance of notice under Section 148 of the Act. Thus, the alleged conversion of “stock in trade” can be considered in both Sections, viz., under Section 154 of the Act- “rectification of error” as well as under Section 147 of the Act - “escapement of assessment” as held by the Hon'ble Division Bench of this Court.

30. There is no disagreement on the law laid down by the Hon'ble Division Bench of this Court. However, in the present case, as stated above, there was no error apparent on record at the time of filing the returns by the petitioner, so as to invoke Section 154 of the Act. To tackle the said situation, the legislation had consciously invoked the provisions of Section 155(7B) of the Act.



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Validity of initiation of proceedings under Section 147/148 of the Act:

31. The invocation of the provisions of Section 147/148 of the Act will come into picture only if there is any income escapement of assessment in the relevant assessment year, in which the ITR was filed by way of misstatement or suppression of material fact, etc., at the time of filing the returns. In such case, the respondent has to satisfy the ingredients of Section 147 of the Act, which reads as follows:

“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)



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

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily



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amount to disclosure within the meaning of the foregoing proviso.

Explanation 2-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E

(c) where an assessment has been made, but-

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act: or

(iv) excessive loss or depreciation allowance or any other allowance under this



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Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maxi-mum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.-For the purpose of assessment or reassessment under this Section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4-For the removal of doubts, it is hereby clarified that the Provisions of this section, as



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amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012”

32. A reading of the above provisions would show that in the event if any income chargeable to tax has escaped assessment for such assessment year and if the Assessing Officer has reasons to believe the said escapement, certainly, he can very well issue notice under Section 148 of the Act. The said escapement will be ascertained based on the information furnished by the assessee in their returns. In other words, at the time of filing the returns, if there is any evasion of tax by the assessee by virtue of any mis-statement, mis-declaration, or suppression of fact, etc., the invocation of Section 147 will come into picture.

33. In this case, initially, the transfer was made by the holding company to its subsidiary company and there was no question of escapement, as on the date of filing the ITR for the relevant assessment year, while computing the capital gain and availment of exemption under



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Section 47(iv) of the Act by the transferor company. When such being the case, the question of initiating the proceedings under Section 147, would not arise at all.

Limitation to initiate proceedings under Section 155(7B) of the Act:

34. In the present case, there was a withdrawal of exemption in the transferor company, due to the Joint Development Agreement dated 28.03.2016, which was entered into between the transferee/subsidiary company and the Developer. According to the respondent, the sale of assets was made by the transferee company by treating the said assets as “stock in trade”. Even if the stand taken by the respondent is accepted, the only recourse available is to withdraw the exemption under Section 47A of the Act and thereafter, to recompute in terms of Section 155(7B) of the Act within a period of 4 years from the relevant previous year. In this case, the said period of 4 years ends on 31.03.2020. However, due to COVID pandemic, the time limit was extended till 30.06.2021 by virtue of the Taxation and Other Laws (Relaxation and Amendments of Certain Provisions) Act, 2020. In spite of the said extension, no action was taken



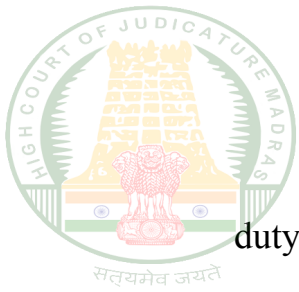
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by the respondent to invoke the provisions of Section 155(7B) of the Act.

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Duty of the Assessing Officer of the transferee company in furnishing the information to the Assessing Officer of the transferor company:

35. Once if the Assessing Officer of the transferee company comes to know that the Assets are transferred by the transferee company within a period of 8 years by treating it as “stock in trade”, which would ultimately result in withdrawal of exemption in term of Section 47A of the Act, it is the duty of the said Assessing Officer of the transferee company to inform the same to the assessing officer of the transferor company. In this case, the assessing officer is taking a stand that though he is the assessing officer of both the transferor and transferee company, the information received is only with regard to the nature of transaction, pertaining to the transferee company and hence, the same cannot be applied for the transferor company, unless and otherwise any information is received by him, independently, from the transferor company. However, this Court does not find any force in the said contention and thus, the same cannot be accepted. If there is any change in the terms and conditions, i.e., if the assets were sold within a period of 8 years, it is the



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duty of the Assessing Officer of transferee company to inform the same to the Assessing Officer of the transferor company. However, in this case, inspite of the receipt of information from the transferee company, the respondent, who is the Assessing Officer for both transferee and transferor company, is now taking a plea of ignorance, which is totally unacceptable. That too, in the case on hand, there is nothing for the transferee company to inform to the respondent, since the assets were sold by them as “capital assets”, for which they had duly paid the capital gain tax and the same was also accepted by the respondent.

36. When a Statute mandates the Authority, to do, certain act in a particular manner, based on the happening of certain events, the said Authority is bound, to do, the said act in accordance with the provision of the Statute. Hence, the deviation in initiating the proceedings by any Authority under the wrong provision of law is *per se* illegal.

Method of calculation of capital gain tax when the asset is sold as “capital asset” by the transferee company:

37. In the event if the transferee company sold the asset by treating



it as “capital asset” at any point of time subsequent to the transfer of
asset, the transferee company shall take the cost of acquisition in terms of

Section 49(1)(iii)(e) of the Act, which reads as follows:

49. Cost with reference to certain modes of acquisition.—

(1) Where the capital asset became the property of the assessee—

(i)

(ii).....

(iii)

(a) to (d)

(e) under any such transfer as is referred to in clause (iv) [or clause (v)] [or clause (vi)] [or clause (via)] [or clause (viaa) or clause (viab) or clause (vib) [or clause (vic)] or clause (vica) or clause (vicb) or clause (vicc)] [or clause (xiii) or clause (xiiib) or clause (xiv) of section 47]; [(iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,] the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

[Explanation.—In this 2 [sub-section] the expression



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“previous owner of the property” in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or 3 [clause (ii) or clause (iii) or clause (iv)] of this 2 [sub-section].

38. A perusal of the above provision would show that if the property was sold by the transferee company as “capital asset”, the capital gain tax has to be arrived at, after deducting the cost of acquisition of the transferor company. For this purpose, the cost of acquisition of the asset shall be deemed to be the cost for which the transferor company (previous owner) of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be.

39. In this case, initially, an exemption was granted under Section 47(iv) of the Act since the transfer was occurred between the holding company and its subsidiary company. Any transfer between the holding company and its subsidiary company would not be considered as transfer



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for the purpose of capital gain tax in terms of Section 47(iv) of the Act.

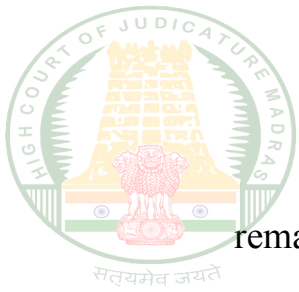
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Ultimately, if the said property was sold by the transferee company to anybody else at any point of time as “capital asset”, the cost of acquisition of the asset shall be deemed to be the cost for which the holding company acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee as the case may be. Therefore, if the assets are sold as capital asset by the transferee company, no capital gain loss would occur to the exchequers only in the event if the said capital asset was sold, within a period of 8 years from the date of transfer, as “stock in trade”, in which case, the exemption will be withdrawn under Section 47A of the Act.

Loss of Revenue:

40. In this case, the transferee company had treated the sale of asset as “capital asset” and paid the capital gain tax to the respondent. As accepted by the petitioner as well as respondent, so far the transferee company had sold to an extent of 46% of the total property, out of the said sale consideration, the capital gain tax of a sum of Rs.106 Crores was paid up to the year 2020. If the same yardstick is applied for the

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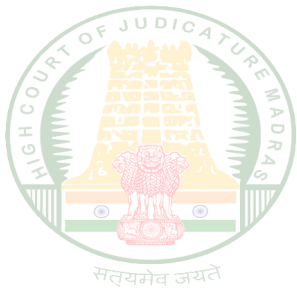
remaining 54% of property, it would come approximately around a sum of Rs.120 Crores. Thus, in total, a sum of Rs.226 Crores would have been remitted towards capital gain tax by the transferee company.

41. In the event, if the respondent's stand is accepted, the respondent can collect the capital gain tax only to the extent of a sum of Rs.45 Crores. Therefore, in this case, it is apparent that the exchequer will lose approximately around a sum of Rs.181 Crores by virtue of the stand taken by the respondent. Thus, it is crystal clear that the impugned proceedings were initiated by the respondent in non-application of mind, apart from, without any jurisdiction and hence, the same is liable to be quashed.

Findings:

42. To put in a nutshell, this Court summarises the entire aspects and pass the following order:

(i) Withdrawal of exemption by invoking Section 47A of the Act would arise only in a situation, where the



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transferee company sold the asset by treating it as “stock in trade”. In this case, in the books of account of the transferee company, the sale of asset was treated as sale of “capital asset”, for which, they had remitted the capital gain tax to the extent of Rs.106 Crores out of the sale of 46% of the total land. The respondent had also accepted the stand of transferee company and allowed them to pay the capital gain tax. When such being the case, now the respondent cannot take a different stand in the transferor company and initiate proceedings against them by treating the very same sale of asset by the transferee company as “stock in trade” in the books of account of the transferor company.

(ii) To initiate the proceedings under Section 147 and issue notice under Section 148, the Assessing Officer must have “reasons to believe” that an income chargeable to tax has escaped assessment for any particular assessment year. In the present case, the proposal to sell the land by the transferee company was through the Joint Development Agreement (JDA) dated 28.03.2016, which is an incident that occurred subsequent to the filing of ITR for the AY 2014-15. In the event if the JDA enables the transferee company to make the sale of land by treating it as “stock in trade”,



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then it would ultimately result in withdrawing the exemption in terms of Section 47A of the Act for the AY 2014-15. The consequences of the same would lead to recomputation and amendment of ITR in terms of provisions of Section 155(7B) of the Act. Such recomputation and amendment of ITR of the transferor company cannot be treated as income escaping assessment in terms of the provisions of Section 147/148 of the Act. In other words, notice under Section 148 of the Act can be issued only if there is any escapement of income, due to the mis-statement, mis-declaration, or suppression of fact, etc., while filing the returns for relevant assessment year. However, it is nobody's case that there was an escapement of income in the ITR filed as on the date of filing the same by the petitioner for the AY 2014-15. As long as the respondent was not in a position to find out any escapement or error or deliberate omission or commission of offence in the returns for relevant assessment year, there is no *locus standi* for the respondent to initiate proceedings under Section 148 of the Act. In this case, as stated above, admittedly, there was no escapement of income in the ITR filed by the petitioner for the assessment year 2014-2015 and there was no suppression of material fact as well.



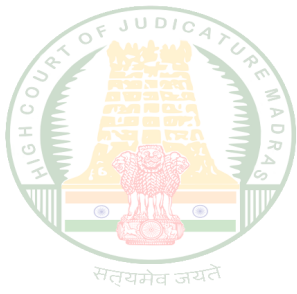
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(iii) At the time of transfer of assets, the petitioner had claimed the exemption under Section 47(iv) of the Act, which is permissible in law, since the said assets were transferred from the holding company to its subsidiary company. On 28.03.2016, a Joint Development Agreement was entered between the transferee company and its Developer, due to which, the respondent took a stand that the sale of land was made by the transferee company by treating it as “stock in trade”. Even in such case, the income has to be recomputed for the assessment year 2014-15 and the returns has to be amended. The said amendment is only due to the subsequent events and as stated above, the same cannot be construed as escapement of income, so as to invoke Section 147 of the Act. Even in the 1st proviso to Section 147 of the Act, it has been stated that if there was no escapement of income at the time of filing ITR for the relevant assessment year, then no proceedings can be initiated under Section 147 of the Act after the expiry of 4 years period from the end of relevant assessment year.

(iv) Normally, if the transferee company sold the assets by them by treating it as “stock in trade” within the period of 8 years, then, the said information should have passed on to the Assessing Officer of the transferor



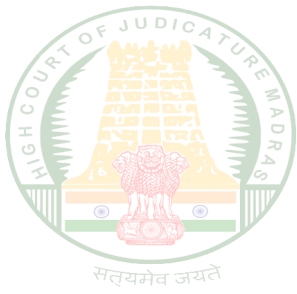
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company by the Assessing Officer of transferee company. In this case, the information was provided by the transferee company to its Assessing Officer as early as on 28.03.2016 itself. In such case, the respondent, who is the Assessing Officer for both transferor and transferee company, was supposed to have initiated the proceedings under Section 155(7B) of the Act. Without doing so, the respondent herein had accepted the returns filed by the transferee company for the relevant assessment year, whereby they had treated the sale of asset as “capital asset”. When such being the case, certainly, the respondent cannot have any *locus standi* to initiate proceeding against the petitioner/transferor company by treating the very same transaction as “stock in trade”.

(v) Even if the respondent's contention is accepted, they are supposed to have invoked proceedings in terms of Section 155(7B) within a period of 4 years from the end of previous relevant year, in which the conversion was made. In this case, according to the respondent, the conversion was made on 28.03.2016 and hence, they are supposed to have initiated proceedings on or before 31.03.2020. Subsequently, due to COVID pandemic, the said time limit was extended till 30.06.2021 by virtue of



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the Taxation and Other Laws (Relaxation and Amendments of Certain Provisions) Act, 2020. In spite of the said extension, no action was taken by the respondent to invoke the provisions of Section 155(7B) of the Act. Thus, the proceeding is also barred by limitation.

(vi) The recomputation and amendment in ITR in terms of provisions of Section 155(7B) for the relevant assessment year, due to the subsequent events would not be a ground for reopening of the assessment in terms of the provisions of Section 147/148 of the Act. In this case, the Assessee and the Assessing Officer are well aware of the fact that as on the date of filing the returns, the ITR was filed by the petitioner with due compliance in all the aspects and there is no dispute on the aspect of correctness of the ITR for the relevant AY 2014-15. However, due to the subsequent events, the exemption granted under Section 47(iv) of the Act was said to have withdrawn in terms of Section 47A of the Act by the respondent. Such withdrawal of exemption would not be considered as escapement of income to invoke Section 147/148 of the Act, but it would pave way for recomputation and amendment of ITR of the relevant assessment year, in terms of the provisions of Section



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155(7B) of the Act.

(vii) In this case, as long as the respondent treating the transfer of asset as “capital asset” in books of the transferee company and having accepted the capital gain tax paid by them to an extent of Rs.106 Crores, now, they have no *locus standi* to take a different stand against the petitioner/transferor company and treat the very same transaction of asset as “stock in trade” in the transferor company. Taking a contrary view and treating the very same transaction as “Capital Asset” for the buyer/transferee company and as “stock in trade” for the seller/transferor company is impermissible in law.

(viii) There is no prohibition to initiate independent proceedings against the transferor company for violation of the conditions, under which the exemption was granted in terms of Section 47(iv) of the Act, while transferring the asset from the transferor company to the transferee company, provided if the assets are sold as “stock in trade” by the transferee company, in which case, if any stand is taken or any proceedings are initiated in the transferee company by treating the sale of asset as “stock in trade”, then the respondent can take action in the transferor company to



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withdraw the exemption in terms of Section 47A of the Act by treating the sale of asset as “stock in trade”. However, in this case, the respondent took different stand in the transferor company as the sale of asset by the transferee company was “stock in trade”, while the stand taken in the transferee company was that sale effected by it was as “capital assets”, which is impermissible in law.

(ix) The “recomputation and amendment of ITR” in terms of Section 155(7B) of the Act cannot be equated with the “rectification of records” in terms of Section 154 of the Act. The scope of recomputation and amendment of ITR made in terms of Section 155(7B) of the Act is due to non-compliance of the terms and conditions of exemption, which was already granted. On the other hand, if there is any error apparent at the time of filing the ITR, for which, the assessment was also completed, certainly the said error can be rectified by invoking Section 154 of the Act. In this case, no such error apparent on the date of filing the ITR, so as to apply the provisions of Section 154 of the Act. However, the recomputation and amendment is required to be made due to the subsequent events. Therefore, the proceedings for “rectification” under Section 154 of the Act is



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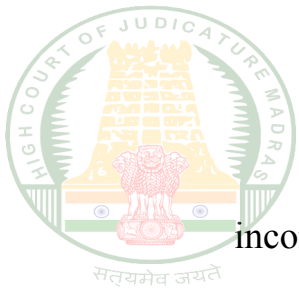


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entirely different from the proceedings for
“recomputation and amendment” under Section 155(7B)
of the Act.

Conclusion:

43. In such view of the matter, this Court is inclined to quash the impugned proceedings against the petitioner. While quashing the impugned proceedings, this Court once again reiterate that the revenue loss to the department would incur due to the initiation of present proceedings by the respondent against the petitioner. In the event if the sale of asset is treated as “stock in trade”, then the respondent can recover only a sum of Rs.45 Crores. On the other hand, by virtue of sale of capital asset to the extent of 46%, the transferee company had so far remitted a sum of Rs.106 Crore. If the same yardstick is applied for the remaining assets, a sum of Rs.226 will be paid towards the capital gain tax. Thus, as stated above, the wrongful initiation of proceedings by the respondent would pave way for loss to the Department to the extent of 181 Crores. Even if the property was treated as “stock in trade”, the only recourse available for the respondent is to withdraw the exemption in terms of Section 47A and invoked Section 155(7B) to recompute the



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income and amend the returns filed by the petitioner and recover only a sum of Rs.45 Crores. In this case, admittedly, no proceeding was initiated. As stated above, having accepted the stand of transferee company as sale of asset as “capital asset” and allowed them to pay the capital gain tax, now the respondent cannot take a different stand in the transferor company and treat the said sale as “stock in trade” as the same contradicts his stand from the stand taken in the transferee company, which is impermissible.

Result:

44. For all the reasons stated above, this Court is inclined to allow these petitions. Accordingly, these writ petitions are allowed. The entire impugned proceedings initiated by the respondent against the petitioner, including the impugned notice and the assessment order, is hereby quashed. No cost. Consequently, the connected miscellaneous petitions are also closed.

26.08.2025

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

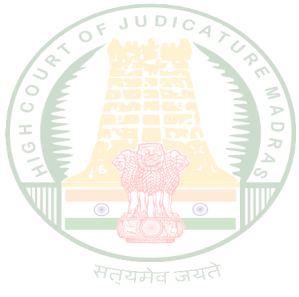
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WEB COPY To

1. The Income Tax officer
National Faceless Assessment Centre,
Income tax department, Ministry of Finance,
Room No. 401, 2nd Floor, E-Ramp,
Jawaharlal Stadium, Delhi 110 003
2. The Assistant Commissioner of Income tax
Corporate Circle -2(1), Chennai
Wanaparthi Block, Aayakar Bhavan,
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 34



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KRISHNAN RAMASAMY.J.,

nsa

W.P.Nos.23676 of 2021 & 9198 of 2022
and W.M.P.Nos.24921 of 2021 & 8953 & 8954 of 2022

26.08.2025