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

+ **W.P.(C) 7322/2023 & CM APPL. 28494/2023 (Stay)**

HARVINDER SINGH

.....Petitioner

Through: Mr. Shrey Ashat, Ms. Preetika
Mishra & Mr. Vicky Kumar,
Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME

TAX DELHI-12 DELHI AND ORS.

.....Respondents

Through: Mr. Sanjay Kumar, SSC with
Ms. Monica Benjamin & Ms.
Easha Kadian, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

12.02.2025

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1. The writ petitioner impugns the reassessment action which has been commenced by the respondents pertaining to **Assessment Year¹** 2019-20. The proceedings themselves were commenced pursuant to the following notice dated 14 March 2023 referable to Section 148A(b) of the **Income Tax Act, 1961²**. Since the contents thereof would have some bearing on the challenge which stands raised, the same is reproduced hereinbelow:

“Sir/Madam/M/s.

Subject: Online Service of Orders – Letter

**Sub: Notice u/s 148A(b) of the I.T. Act, 1961 for A.Y. 2019-20
alongwith information available with the department on insight
portal – regarding**

¹ AY

² Act



.....

As per the information available with the department you have made unexplained investment in immovable property of Rs.2,50,00,000/- and the information available with the department is as under:-

The information disseminated in the insight portal is as under:-

Actionable year	Result Type	Result description	Result value	Income represented by	Remarks
2019-20	Unexplained investment/ payment	Unexplained investment in immovable properties	2,50,00,000/-		

2. Information available with this office under risk management strategy formulated by CBDT suggest that income chargeable to tax has escaped assessment in the case of assessee during the relevant assessment year. The insight portal information is attached herewith in PDF file.

3. You are requested to submit your reply with documentary evidence in compliance to above notice by 22.3.2023. The reply is to be submitted on mail of this office or by speed post.

4. Your reply, if any, will be considered before passing order u/s 148A(d) of the IT Act and before issuance of notice u/s 148 of the IT Act. In case reply is not submitted before the given period, the order u/s 148A(d) shall be passed without the benefit or your explanation and on the basis of material available on records.”

2. As is manifest from the above, the solitary allegation on which the formation of opinion of income having escaped assessment was founded was of unexplained investments in immovable property of INR 2,50,00,000/-. The aforesaid information, as per the disclosures made by the respondents themselves, was gleaned from the Insight Portal information data base maintained by them.

3. The petitioner filed a response to the aforesaid notice in which it was categorically asserted that it had not entered into any transaction in immovable property in AY 2019-20. However, and in the course of



exchange of communications inter partes, it appears that certain further details in relation to the assets of the petitioner were also disclosed before the respondents. Ultimately, and by an order of 26 April 2023, the objections as preferred by the petitioner have come to be disposed of by the respondents in the following terms.

4. It would be apposite to firstly take note of the recitals which appear in the introductory part of that order and which are reproduced hereinbelow:

“On perusal of the information as reported in INSIGHT (High Risk CRIU/VRU under Non-PAN) Portal of the Income-Tax Department during the FY 2018-19 (relevant AY 2019-20). The following information has been received in the name of the assessee Sh. Harvinder Singh:

Assessment Year	Information Description with information value
2019-20	Investment of Rs. 250 Crs in Real Estate and 6 Crs. In Luxury Cars

It is alleged that in the last 2-3 years the assessee had bought properties in Delhi in Delhi-NCR worth Rs. 250 crores and 15 luxury cars worth 5-6 Crores in his and his company's name. He has a lot of places of keep his back money including his own residence ad other houses and his associates (here below) houses and invest on behalf of top officials/ bureaucrats/ judicial officers as well. His personal staff of work and residence is are aware of all his whereabouts of his black money and other illegal works. He is a partner in a company namely M/s AJS Builders. This company is involved in frauds and they both duped hundreds of investors. Today Ms. Madhu Singh (MD of the company) is in jail and the assessee has occupied the office of the company at 8, Shaheed Bhagat Singh Marg, Gol Market, New Delhi. Alongwith allegation, a list of properties values 256 Crs were also available.....”

5. As we view the aforesaid, it is manifest that the charge which ultimately came to be laid against the writ petitioner did not stand confined to investments in immovable properties but also inextricably stretched to the possession of luxury cars. The respondents also allege



that the petitioner facilitates the investment of undisclosed money on behalf of officials, bureaucrats and judicial officers. None of the allegations which are noticed above were even remotely mentioned or alluded to in the original notice under Section 148A(b).

6. Faced with the denial of the petitioner of having undertaken any transaction pertaining to immovable property in the AY in question, the **Assessing Officer**³ has ultimately observed as follows:

“6. The reply of the assessee is considered carefully and but found not tenable in the present case as per facts and circumstances of the case. It is stated that in his reply the assessee accepted all the properties belonging to either himself or his relatives, except five properties. The assessee has denial any purchase of property during A.Y. 2019-20. The assessee was asked to furnish details like sale-purchase agreement etc. Instead of submitting the requisite document assessee has shown all the transaction before 2014-15. It is pertinent to mention that assessee has oppose the request on the ground that documents need not to be kept beyond 6 years. This logic has its own flaws. The sale-purchase agreement related to properties could not be disposed after 6 years. The Assessee denial of any documents pertaining to sale and Purchase of immovable properties makes it difficult to verify his own claim. Therefore it can not be assumed that no income has escaped assessment. Regarding purchase of luxury cars assessee provided a list of 6 years luxury cars and failed to submit any document with respect to purchase. In absence of the document it is difficult to verify the claim of assessee.

Further, in his reply assessee alleged that department is conducting fishing and roving in query, which is completely baseless allegation. The assessee is trying to take shelter of non-significant issue to evade scrutiny of transactions by department. The issue is being flagged by insight and assessee was confronted with the allegations and no roving inquiring was made.”

7. We find ourselves unable to sustain the commencement of reassessment action for AY 2019-20 in light of the abject failure on the part of the AO, even at this stage and before us, to have placed any material which may have even remotely indicated or sustained the

³ AO



formation of belief that income pertaining to AY 2019-20 had escaped assessment. While the AO does appear to have also doubted the acquisition of various other assets in the previous years, that surely would not sustain or commend to us as constituting material that would be pertinent or relevant to AY 2019-20.

8. While the other material which has now come or fallen into the hands of the AO may, hypothetically speaking, constitute information which may warrant examination as to whether a concluded assessment for any previous AY is liable to be reopened, surely that material which was wholly unconnected with AY 2019-20, would not sustain the invocation of Section 148 for that year.

9. We bear in mind the well-settled position that the reasons for the formation of opinion cannot be of changing hues. We bear in consideration the following passages that appear in our decision in **ATS Infrastructure Ltd. vs ACIT**⁴:

“6. Our Court in *Commissioner of Income Tax-II v. Living Media India Ltd.* had pertinently observed that additional reasons cannot be provided or recorded by the Assessing Officer subsequent to the issuance of a notice under Section 148 of the Act. We deem it apposite to quote the following passage from that decision:—

“13. With regard to the additional reasons which were recorded subsequent to the issuance of notice under section 148 of the said Act, we have already observed that this could not have been done by the Assessing Officer. The validity of the proceedings initiated upon a notice under section 148 of the said Act would have to be judged from the stand point of the reasons which existed at the point of time when the section 148 notice was issued. The additional reasons cannot be provided or recorded subsequent to the issuance of notice under section 148. It is, of course, open to the Assessing Officer, if some other information comes within his knowledge to issue another notice under section 148 for different reasons. But that is not the case here. On the basis of the very same notice

⁴ 2024 SCC OnLine Del 5048



issued under section 148, the Assessing Officer has recorded additional reasons subsequent to the issuance of notice and this is impermissible in law.”

7. It becomes pertinent to observe that the validity of the proceedings initiated upon a notice under Section 148 of the Act would have to be adjudged from the stand point of the reasons which formed the basis for the formation of opinion with respect to escapement of income. That opinion cannot be one of changing hues or sought to be shored upon fresh reasoning or a felt need to make further enquiries or undertake an exercise of verification. Ultimately, the Court would be primarily concerned with whether the reasons which formed the bedrock for formation of the requisite opinion are tenable and sufficient to warrant invocation of Section 148 of the Act.

8. We in this regard find the following pertinent observations which appear in a decision of the Bombay High Court in *Indivest Pe. Ltd. v. Additional Director of Income-tax*⁵.

“11. Reading the reasons of the Assessing Officer, it is evident that there is absolutely no tangible material on the basis of which the assessment for the assessment year 2006-2007 could have been reopened. Upon the return of income being filed by the assessee both in the electronic form and subsequently in the conventional mode, the assessee received an intimation under section 143(1). The Assessing Officer would have been legitimately entitled to issue a notice under section 143(2) within the statutory period. That period has expired. We must clarify that the non-issuance of a notice under section 143(2) does not preclude the Assessing Officer from reopening the assessment under section 147. For that matter, as has been held by the Supreme Court in *Asst. CIT v. Rajesh Jhaveri Stock Brokers P. Ltd.*, (2007) 291 ITR 500 (SC), the failure of the Assessing Officer to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when an intimation under section 143(1) has been issued. But it is also a settled principle of law that when the Assessing Officer issues a notice under section 148, at that stage the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief (*Rajesh Jhaveri* (supra)). At that stage, an established fact of the escapement of income does not have to be proved, since it is not necessary that the Assessing Officer should have finally ascertained that income has escaped assessment. The nature of the jurisdiction of the Assessing Officer which was dealt with by the judgment of the two



learned judges of the Supreme Court in *Rajesh Jhaveri's case* was revisited in a decision of three learned judges in *CIT v. Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC). The Supreme Court has held that though after April 1, 1989, a wider power has been conferred upon the Assessing Officer to reopen an assessment, the power cannot be exercised on the basis of a mere change of opinion nor is it in the nature of a review. The Supreme Court has laid down the test of whether there is tangible material on the basis of which the Assessing Officer has come to the conclusion that there is an escapement of income. The Supreme Court held thus (page 564):

“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. 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. 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 April 1, 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.

12. If the test of whether there exists any tangible material were to be applied in the present case, it would be evident



that the Assessing Officer has not acted within his jurisdiction in purporting to reopen the assessment in exercising the powers conferred by section 148. There was a disclosure clearly by the assessee that it is a body corporate incorporated in Singapore, the principal business of which is to invest in Indian securities; that the assessee is a tax resident of Singapore and that the profits which the assessee realised from its transactions in securities constituted its profits from business. The assessee stated that it had no permanent establishment in India as defined in article 5 of the DTAA and that based on the provisions of article 7 the profits of Rs. 131.70 crores from transactions in Indian securities were not liable to tax in India. The only basis on which the assessment is sought to be reopened is on the assumption that the provisions of section 115AD would stand attracted. That is on the assumption that the assessee is an FII. Though the attention of the Assessing Officer was drawn to the fact that the assessee is not an FII and that the provisions of section 115AD would not be attracted, the Assessing Officer persisted in rejecting the objections to the reopening of the assessment. In the order disposing of the objections which were raised by the assessee, the succeeding Assessing Officer has clearly attempted to improve upon the reasons which were originally communicated to the assessee. The validity of the notice reopening the assessment under section 148 has to be determined on the basis of the reasons which are disclosed to the assessee. Those reasons constitute the foundation of the action initiated by the Assessing Officer of reopening the assessment. Those reasons cannot be supplemented or improved upon subsequently. While disposing of the objections of the assessee, the Assessing Officer has purported to state that the assessee had filed only sketchy details in its return filed in the electronic form. As we have noted earlier, the relevant provisions expressly make it clear that no document or report can be filed with the return of income in the electronic form. The assessee has an opportunity to do so during the course of the assessment proceedings if a notice is issued under section 143(2). The Assessing Officer was, in our view, not entitled, when he disposed of the objections to travel beyond the ambit of the reasons which were disclosed to the assessee. For all these reasons, we are of the view that the exercise of the jurisdiction under section 147 and section 148 in the present case is without any tangible material. The notice of reopening does not meet the requirements as elucidated in the judgment of the Supreme



Court in *Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC) For these reasons, we make the rule absolute by quashing and setting aside the notice dated March 16, 2011, and the order passed by the Assessing Officer on December 20, 2011.”

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11. We also find merit in the submission of Mr. Kantoor who drew our attention to the First Proviso to Section 148 which reads as under:—

“148. Issue of notice where income has escaped assessment-Before making the assessment, reassessment or recomputation under Section 147, and subject to the provisions of Section 148A,-

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Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.”

12. As is manifest from the above, the Proviso again ties the initiation of action to the existence of information which already exists or is in the possession of the AO and on the basis of which it comes to form the opinion that income liable to tax has escaped assessment. The provision thus fortifies our view that the foundational material alone would be relevant for the purposes of evaluating whether reassessment powers were justifiably invoked. Accordingly, and for all the aforesaid reasons we find ourselves unable to sustain the impugned reassessment action.”

10. We, accordingly, and for all the aforesaid reasons, allow the instant writ petition and quash the order under Section 148A(d) as well as the notice under Section 148 of the Act, both dated 26 April 2023.

11. This order, however, shall be without prejudice to the right of the AO to commence reassessment in respect of any other AY that



may be considered fit and appropriate and if otherwise permissible in law.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J
FEBRUARY 12, 2025/kk