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

+ W.P.(C) 17527/2022 & CM APPL. 55918/2022 (Stay)

BHATIA PROPCON PRIVATE LIMITEDPetitioner

Through: Mr. Vikas Jain, Mr. Aviral Saxena, Ms. Shrawani, Mr. Piyush Thanvi & Mr. Hardik Jayal, Advs.

versus

**DEPUTY COMMISSIONER OF INCOME
TAX AND ANR.Respondents**

Through: Mr. Vipul Agrawal, SSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

14.01.2025

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1. The instant writ petition has been preferred seeking the following reliefs:-

“a. That this Hon'ble Court may issue a writ in the nature of Certiorari, or any other writ for quashing the notice U/s 148A(b) dated 20.05.2022 passed by the Respondent No. 1.

b. That this Hon'ble Court may issue a writ in the nature of Certiorari, or any other writ for quashing the Order U/s 148A(d) dated 29.07.2022 passed by the Respondent No.1.

c. That this Hon'ble Court may issue a writ in the nature of Certiorari, or any other writ for quashing the notice U/s 148 dated 29.07.2022 passed by the Respondent No. 1.

d. To call for / direct the respondents to produce the records pertaining to the present case.”

2. The challenge is to the initiation of reassessment action for **Assessment Year¹ 2017-18**. From the record we gather that although

¹ AY



proceedings for the aforementioned AY had been initiated under the regime which prevailed prior to the introduction of Finance Act, 2021, taking a cue from the observations and directions rendered by the Supreme Court in **Union of India and Ors. vs. Ashish Agarwal**², the respondents in terms of a communication dated 20 May 2022 apprised the petitioner of the original notice being liable to be treated as one referable to Section 148A(b) of the **Income Tax Act, 1961**³.

3. Along with the said notice they also provided to the petitioner the reasons for reopening and which had been taken into consideration. Those reasons which appear at pdf pages 88 and 89 of our digital record are reproduced hereinbelow:-

“Reasons for reopening of the assessment in case of M/s Bhartia Propcon Private Limited for AY 2017-18 u/s 147 of the Act.

1. Brief details of the Assessee: The assessee M/s Bhartia Propcon Private Limited PAN AAECB6803B filed return of income for AY 2017-18 on 23.10.2017 at returned income of Rs. 85,00,320/-.

2. Brief details of information collected/ received by the AO: In this case, information was received from DIT (Intl. & Cri. Inv.), New Delhi vide letter F. No. DIT (I&CIT)/Sec.269(SS)[u/s. 271 D/2018-19 dated 04.02.2019 containing the following information:

" ... The directorate during the course of inspection has also identified some cases where the sale consideration of property was much less than the Stamp Duty valuation. Such transaction attract the deeming provisions of section 50C/43CA of the I.T. Act, 1961...."

3. Analysis of information collected/ received: From the contents of information, it is clear that since the actual sale consideration is shown less compared to the stamp duty value, the difference of Rs. 71,51,033/- (Sale Consideration of Rs. 3,70,00,000 minus Circle Rate of Rs. 4,41,51,033/-) is attracting provision of section 50C of Income Tax Act, 1961, and accordingly this amount may be added back to the total income of M/s Bhartia Propcon Private Limited for A.Y. 2017-18.

4. Enquiries made by the AO as sequel to information collected/received: As per the provisions for full value of consideration in Section 50C of the Act:

² (2023) 1 SCC 617

³ Act



(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

5. Findings of the AO: In view of above, the assessee has escaped due tax on difference LTCG amount of **Rs. 71,51,033/-** may be added to the income of the assessee for the A.Y. 2017-18 since the same has escaped from assessment.

6. Applicability of the provisions of section 147/151 to the facts of the case:

In this case a return of Income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above. Since, 4 years from the end of the relevant year has not expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment.

In view of the above facts, the amount of **Rs. 71,51,033/-** has escaped assessment. Therefore, I have reason to believe that an amount to the extent mentioned above chargeable to tax has escaped assessment and I am satisfied that it is a fit case for initiating proceedings u/s. 147/148 of the Act.

This case is within four years from the end of the assessment year under consideration. Hence necessary sanction for issue the notice u/s 148 is to be obtained separately from Addl./ Joint Commissioner of Income Tax as per the provisions of section 151 of the Act.

Submitted for kind perusal and approval.”

4. As is manifest from the above, the sole allegation was of the petitioner having received sale consideration in connection with the conveyance of an immovable property at a price below the circle rate as notified by the competent government. In view of the aforesaid, the **Assessing Officer⁴** came to form the prima facie opinion that the

⁴ AO



provisions of Section 50C of the Act were attracted.

5. Responding to the aforesaid notice, the petitioner firstly explained the circumstances which had constrained it to sell one of the floors of the property under development for a consideration below the circle rate which applied. Before us, quite apart from it being asserted that the AO has failed to adequately engage with and consider the response which was submitted, it was contended that the AO clearly erred in resorting to Section 50C since the presumption which that provision raises is in respect of the transfer of a capital asset. It was contended that the petitioner was a property developer and thus the various floors which were developed by it were in the nature of stock-in-trade and thus Section 50C would not even apply.

6. Reverting back to the proceedings as they unfolded before the AO, we note that after the submission of the objections which had been preferred by the writ petitioner, the AO asserted that the provisions of Section 148 had been rightly proposed to be invoked and rendered the following conclusions:-

“6.2 Assessee in its submission has stated that the property in question is the second floor of Property no. A-247 , New Friends Colony, New Delhi and said that while the basement, ground floor, first floor and third floor were sold at price above circle rate, it could not find any buyer for second floor which was then sold at sale consideration less than circle rate. These grounds of assessee are not found justified since a property cannot be sold a sale consideration less than circle rate by citing non-availability of willing buyers.

6.3 Further assessee’s contention that the entire sale consideration of Rs. 3,70,00,000/- was offered to tax does not rule out the fact that the property has been sold at consideration less than the circle rate.

6.3 Section 50C of the Income tax Act states:

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or



both, is less than the value adopted or assessee or assessable by any authority of a State Government (hereafter in this section referred to as the "Stamp Valuation Authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48 , be deemed to the full value of the consideration received or accruing as a result of such transfer.

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8. In view of the above, it emerges that the income to the extent of Rs.71,51,033/- has escaped assessment. Hence, the case of Bhatia Propcon Private Limited PAN AAECB6803B in respect of the, A.Y. 2017-18 is a fit case for issuance of notice u/s 148.”

7. Mr. Agrawal, learned counsel who represents the respondents, while controverting the aforementioned submissions, argued that even if it were assumed that the property which formed the subject matter of the conveyance was not a capital asset, it would have always been open for the AO to have resorted to Section 43CA of the Act in cases where an asset, other than a capital asset, constituting land or building were sold at a value less than that adopted or assessable in accordance with the rates that may be notified by the appropriate government. According to Mr. Agrawal, the mere mentioning of Section 50C would not constitute a fatal jurisdictional error which would justify this Court interfering with the invocation of Section 148.

8. In order to evaluate the rival submissions which were addressed before us, we extract Sections 50C and 43CA hereinbelow:-

“50C - Special provision for full value of consideration in certain cases.

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be



deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in



any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed 95[or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

43CA - Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.

(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer:

Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:

Provided further that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent", the words "one hundred and twenty per cent" had been substituted, if the following conditions are satisfied, namely:—

- (i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;
- (ii) such transfer is by way of first time allotment of the residential unit to any person; and
- (iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.]

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).



(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of the asset.

Explanation.—For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household."

9. We find merit in the contentions raised by learned counsel for the respondent and find that a combined reading of the provisions of Section 50C read with Section 43CA would lead us to conclude that if the consideration received or accruing to an assessee from the transfer of an asset, in the nature of a capital asset or otherwise, be less than the value ascribed to the said asset as per the circle rate then for the purposes of computation of profit or loss, the value of the asset in question shall be deemed to be the full value of the consideration accruing or received from such a transfer basis the rates prescribed by the competent government.

10. Thus, both provisions contain a 'deeming provision' which seeks to impute to the asset so transferred a value ascribable to that asset even if it be sold by the assessee at a value below the circle rate. The AO therefore had sufficient reason to believe that income has escaped assessment when the assessee had shown that the sale



consideration received by it for the asset, whether it be a capital asset or not, was below that of the circle rate and a misapprehension of whether the assessee had presumably escaped income under either Section 50C or 43CA would not, in our view, constitute a jurisdictional error so as to render the Section 148 proceedings invalid.

11. Accordingly, and for all the aforesaid reasons, the writ petition fails and shall stand dismissed.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J
JANUARY 14, 2025/kk