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

+ **ITA 741/2023 & CM APPL. 19588/2025**

SUKHBIR S. DAGAR

.....Appellant

Through: Mr Ved Jain, Mr Nischay Kantoor,
Ms Soniya Dodeja, and Mr Sarthak
Abrol, Advocates.

versus

INCOME TAX OFFICER, WARD 24(3)

.....Respondent

Through: Mr Sunil Kumar Agarwal, SSC, Mr
Shivansh B Pandya, Mr Viplav
Acharya, JSCs and Mr Utkarsh
Tiwari, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

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21.04.2025

1. The appellant [Assessee] has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated 10.08.2023 [**the impugned order**] passed by the learned Income Tax Appellate Tribunal [ITAT] in ITA No.2757/Del/2019 captioned *ITO v. Sukhbir Singh Dagar*, in respect of the Assessment Year [AY] 2006-07.
2. The Revenue had preferred the aforementioned appeal before the learned ITAT against an order dated 14.09.2018 passed by the Commissioner of Income Tax (Appeal) [CIT(A)] whereby the Assessee's appeal in respect of an order dated 24.03.2014 passed under Section 147/144 of the Act was allowed.
3. The Assessee had filed its return of income for AY 2006-07 on 30.10.2006. Thereafter, the Assessee filed its revised return for the said AY



2006-07 on 21.09.2007.

4. The Assessee's return was selected for scrutiny and a notice under Section 143(2) of the Act was issued by the Assessing Officer [AO] on 19.07.2007. One of the issues examined during the assessment proceedings related to the capital gains disclosed by the Assessee from the sale of the agricultural land. The Assessee had disclosed that it had sold certain agricultural land belonging to him and his brother and had declared the consideration received for his fifty per cent share at ₹21,87,500/-. It was also submitted that a valuation report dated 23.12.2008 was furnished from a registered valuer in respect of the cost of the acquisition.

5. The AO examined the documents furnished by the Assessee and passed the assessment order dated 30.12.2008 under Section 143(3) of the Act accepting the Assessee's returned income.

6. On 22.03.2013 the AO issued the notice under Section 148 of the Act seeking to reopen the assessment of the Assessee's income for AY 2006-07 on the basis of certain incriminating information that was revealed during a search conducted under Section 132 of the Act, in respect of a 'third party'. The notice was issued with the prior approval of the Joint Commissioner of Income Tax [JCIT] under Section 151 of the Act.

7. The Assessee filed his response to the notice under Section 148 of the Act and also furnished his computation of income. He requested that his return filed under Section 139 of the Act be treated as return filed pursuant to the notice under Section 148 of the Act. Thereafter, the AO furnished the reasons for issuance of the notice under Section 148 of the Act and the Assessee filed his objection to the said reasons.

8. The proceedings culminated in the assessment order dated 24.03.2014



whereby the AO had made an addition of ₹5,18,27,005/- on account of long term capital gain. The AO had substituted the consideration received by the Assessee from the sale of the agricultural land at ₹5,46,23,012/- as against ₹21,87,500/- as declared by the Assessee. This was premised on an excel sheet, which was recovered from the device of the searched person reflecting part payment in cash for the acquisition of the agricultural land in question.

9. The Assessee appealed the said assessment order before the CIT(A) raising several grounds. The CIT(A) accepted the Assessee's contention and deleted the additions made by the AO principally on the ground that the Assessee was not confronted with the material and evidence on the basis of which the additions were made. The CIT(A) also noted that no statement was recorded by the Directorate of Revenue Intelligence [DRI] to the effect that part consideration of the agricultural land had been paid in cash.

10. The Revenue appealed the decision before the learned ITAT, which was disposed of by the impugned order. The learned ITAT has set aside the order passed by the CIT(A) and upheld the decisions made by the AO.

11. The present appeal was listed before this court on 11.12.2023 and was admitted on the following questions of law: -

- (i) Whether the Income Tax Appellate Tribunal [in short, "Tribunal"] misdirected itself on facts and in law in reversing the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] sustaining the addition of Rs.5,18,27,005/- on account of capital gains under Section 45 of the Income Tax Act, 1961 [in short, "Act"]?
- (ii) Whether the order of the Tribunal suffers from perversity?
- (iii) Whether the reassessment proceedings were



without jurisdiction as it did not have the approval of the statutory authorities, as mandated under Section 151 of the Act?”

12. One of the principal questions that arises for consideration is whether the initiation of the reassessment proceedings is invalid for want of necessary approval.

13. It is relevant to refer to Section 151(1) of the Act as was in force at the material time. The same is set out below: -

“Sanction for issue of notice.

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], unless the [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the [Joint] Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]
Explanation. For the removal of doubts, it is hereby declared that the Joint Commissioner, the



Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself]”

14. In the present case, there is no dispute that the original assessment proceedings had culminated into the assessment order dated 30.12.2008 passed under Section 143(3) of the Act. Therefore, in terms of the proviso (1) to Sub-section (1) of Section 151 of the Act, no notice under Section 148 of the Act could be issued unless, the Commissioner of Income Tax [CIT] or the Chief Commissioner of Income Tax [CCIT] was satisfied on the reasons recorded by the AO that it was a fit case for issuance of such notice.

15. Admittedly, in the present case, no approval was obtained from the CIT or the CCIT. The notice under Section 148 of the Act was issued with the approval of the JCIT and not CCIT or CIT.

16. Clearly, the notice under Section 148 of the Act was invalid as issued contrary to the provisions of Section 151(1) of the Act. Any proceedings continued pursuant to said notice including the assessment order passed under Section 147 of the Act cannot be sustained.

17. In view of the above, question number (iii) – whether the reassessment proceedings are without the jurisdiction as it did not have the approval of the statutory authority as mandated under Section 151 of the Act – is answered in favour of the Assessee and against the Revenue.

18. Since the assessment order is not sustainable for the aforesaid reason, it is not necessary to address other questions of law, on which the present appeal was admitted.

19. The impugned order as well as the assessment order are set aside.



20. The appeal is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 21, 2025

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Click here to check corrigendum, if any