

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 994 of 2016**

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JAYESH GOVINDBHAI BALAR....Petitioner(s)

Versus

INCOME TAX OFFICER - WARD - 3 (2) (4) - SURAT....Respondent(s)

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Appearance:

MR B S SOPARKAR, ADVOCATE for the Petitioner(s) No. 1

MR SUDHIR M MEHTA, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 13/06/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged a notice dated 27.03.2015 issued by the respondent Assessing Officer by which he seeks to reopen the assessment of the petitioner for the assessment year 2008-09.

2. Brief facts are as under.

3. The petitioner is an individual. For the assessment year 2008-09, the petitioner had filed the return of income on 30.03.2009 declaring total income of Rs.2.44 lacs (rounded off). The return was taken in scrutiny. The Assessing Officer passed order of assessment on 22.12.2010 assessing income of the assessee at Rs.2.41 lacs (rounded off).

4. In the return of income, the assessee had

disclosed purchases of two immovable properties made by him during the relevant previous year at a cost of Rs.61.76 lacs (rounded off) and Rs.54.59 lacs along with two other persons. The assessee however, had also sold an immovable property under a deed dated 19.07.2007 for sale consideration of Rs.33.97 lacs (rounded off). He had not disclosed this sale in the return for the assessment year 2008-09, but, had done so in the return filed for the assessment year 2007-08.

5. In order to reopen the assessment for the said assessment year 2008-09, the Assessing Officer issued impugned notice, which as can be seen, was done beyond the period of four years from the end of relevant assessment year. In order to do so, the Assessing Officer recorded reasons which read as under:

"As per AIR Information received in this office, in this case Shri. Jayeshbhai Govindbhai Balar having transaction of purchase of two immovable properties valued at Rs.61,76,500/- and Rs.54,59,000/- with two other personas. Shri Jayeshbhai Govindbhai Balar had also sold the immovable property valued at Rs.33,97,858/-, it is also found that the assessee has filed his return of income for A.Y.-2008-09 showing income Rs.2,44,120/- where as the assessee indulged in transaction of purchase of two immovable properties valued at

Rs.61,76,500/- and Rs.54,59,000/- and also in transaction of sale of the immovable property valued as Rs.33,97,858/-. In view of the above I have reason to believe that the assessee has filed his return of income Rs.2,44,120/- only, whereas the assessee has earned much more income from his transaction.

In view of the above I have reason to believe that income to the extent of huge transaction of Rs.1,16,35,500/- and transaction of sale property valued at Rs.33,97,858/- has escaped assessment for A.Y. 2008-09, by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary in the return of income. Hence, notice u/s. 148 r.w.s. 147 of the I.T.Act 1961 is to be issued for the A.Y. 2008-09.

I am therefore, Satisfied that this is a fit case for invoking the provisions of section 147 of the Income - Tax Act, 1961 for A.Y.2008-09."

6. Learned counsel Shri Soparkar for the petitioner submitted that purchases of two immovable properties were duly reflected in the assessee's return. These transactions were noticed by the Assessing Officer in the original assessment proceedings. There was no failure on the part of the assessee to disclose material facts. He further pointed out that the assessee was not the sole purchaser and that the share of the assessee was of 49.65% of these two properties which was duly reflected in the return also.

7. With respect to the sale of the property by the petitioner, counsel submitted that though the sale deed was executed on 19.07.2007, on account of the transfer being an ongoing transaction, the petitioner had treated the effective sale falling within the assessment year 2007-08 and had accordingly declared the same in the return filed for the said year. The Assessing Officer had also examined the details of the sale.

8. On the other hand, learned counsel Shri Mehta for the department submitted that the assessee had not disclosed the sale of the immovable property made during the period relevant to the assessment year 2008-09 and had thus, not provided the correct information about the income. The Assessing Officer had therefore correctly reopened the assessment.

9. It is by now well settled that to support a notice for reopening of assessment, the justification must come from the reasons recorded by the Assessing Officer for issuing such notice. The Assessing Officer cannot rely on any material outside the reasons recorded in order to support his conclusion

that income chargeable to tax had escaped assessment or that the same was on account of failure on the part of the assessee to disclose truly and fully all material facts.

10. In this context, if we revert to the reasons recorded, they contain two elements. The assessee had purchased two immovable properties valued at Rs.61.76 lacs and Rs.54.59 lacs respectively, whereas, he had filed return disclosing income of Rs.2.47 lacs only. The Assessing Officer was of the opinion that when assessee had purchased two properties at such sizable cost, he could not have shown income of only Rs.2.44 lacs. He therefore, concluded that '*income to the extent of huge transaction of Rs.1,16,35,500/- ... had escaped assessment for AY 2008-09 ...*'. This reason completely lacks logic. There is no direct correlation between the purchase of properties by the assessee and his disclosure of the income during a particular period. The reason is vague and relies on the presumptions on the part of the Assessing Officer. He seems to be presuming that when the assessee had made purchase worth such huge amounts, he must disclose sizable income. Additionally, these

purchases had come up for discussion by the Assessing Officer in the original scrutiny.

11. With respect to the assessee's sale of land valued at Rs.33.97 lacs, it is true that the same was not disclosed in the returns filed. The assessee had however, shown the sale in the earlier assessment year 2007-08. Such transaction was examined and duly taxed during such period. Apart from this, with respect to this transaction also the Assessing Officer has not recorded any reasons pointing out as to in what manner he formed a belief that the income chargeable to tax had escaped assessment. He merely stated that the assessee had indulged in transaction of sale of immovable property valued at Rs.33.97 lacs, but shown income only of Rs.2.44 lacs and therefore, he had reason to believe that income concerning huge transaction cost had escaped assessment. Once again, the reasons are vague and imprecise and lack invalidity. If the Assessing Officer was *prima-facie* of the opinion that sale transaction invited capital gain which the assessee had avoided by non-disclosure, the same has not come on record in the reasons.

12. When notice for reopening for scrutinized assessment is issued beyond the period of four years, twin conditions to be satisfied are that the Assessing Officer has some tangible material to form a belief that income chargeable to tax has escaped assessment and further that such escapement was due to failure on part of the assessee to disclose truly and fully all material facts. When first of these conditions is not satisfied, merely because the assessee failed to disclose the sale transaction would not by itself give authority to Assessing Officer to reopen the assessment.

13. In the result, petition is allowed. Impugned notice dated 27.03.2015 is quashed. Petition is disposed of.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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