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

\+ ITA 61/2025

PR. COMMISSIONER OF INCOME TAX-1 .....Appellant

Through: Mr.Indruj Singh Rai, SSC with Mr.Sanjeev Menon and Mr.Rahul Singh, JSCs along with Mr.Anmol Jagga, Adv. for Revenue.

versus

M/S EAST DELHI LEASING PVT. LTD. .....Respondent

Through: Mr.Rohit Jain, Adv. with Mr.Samarth Chaudhari, Adv.

% ***Date of Decision: 10.03.2025***

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

TUSHAR RAO GEDELA, J: (ORAL)

1. Present appeal has been filed, *inter alia*, seeking the following prayers:-

> *"a) To frame the substantial questions of Law mentioned in Para 2 of the appeal;*
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> *b) To frame any other substantial question of Law which may arise from the impugned order dated 10.04.2024;*
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> *c) To set aside the impugned order dated 10.04.2024 dismissing the appeal of the revenue and allowing the appeal of the Respondent/Assessee; and*
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> *d) Pass any other relief which this Hon'ble Court may deem fit and proper in favour of the appellant in the facts and circumstances of the case."*

2. We have heard the learned counsel for the parties.

3. From the examination of the impugned judgement of the learnd ITAT, it is manifest that the reasoning contained therein to conclude that the notice under section 148 of the Act, issued under the erstwhile regime suffers from the vice of "reason to suspect" rather than "reason to believe" is predicated on the judgement of the Hon'ble Supreme Court in a criminal case. It would be apposite to extract the relevant paragraphs of the impugned order which read thus:

> *"6. On perusal of the reasons recorded for reopening the assessment reproduced supra, we find that there is no dispute that the amounts that stood credited in the bank account of the assessee were received from the related entities of the assessee company. Similarly there is absolutely no dispute to the fact that the amounts that went outside the bank account of the assessee company were also invested with the related entities of the assessee company. Assessee being engaged in the business of financing and leasing , obviously had to receive monies and make investments in various entities, This is what is done by the assessee company. The fruits of these investments would get fructified as income only in future years as and when these investee companies start making profits. No fault per se could be attributed on the activities of the assessee in this regard keeping in mind the nature of business of the assessee company. Even the STR only indicated the movement of inflow and outflow of funds in the bank account of the assessee. It does not state that the said transactions represent income of the assessee. This is a clear case of assuming jurisdiction u/s 147 of the Act out of sheer suspicion and in order to make roving and fishing enquiries. It is trite law that suspicion howsoever strong cannot partake the character of a legal evidence. The principles laid down by the Hon'ble Apex Court in its recent decision rendered in the context of Criminal Appellate Jurisdiction in the case of* ***Raja Naykar vs State of Chattisgarh in Criminal Appeal No. 902 of 2023 dated 24.1.2024*** *would be relevant here and would come to the rescue of the assessee herein. For the sake of convenience, the entire order of Hon'ble Apex Court is reproduced below:-*
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> > *"1. This appeal challenges the judgement and order dated 22nd July, 2015, passed by the Division Bench of the High Court of Chhattisgarh, Bilaspur in CRA No. 223 of 2012, thereby dismissing the appeal filed by the Appellant, namely, Raja Naykar (Accused No. 1) and confirming the judgment and order of conviction and sentence awarded to him by the Court of Additional Sessions Judge, Durg (Chhattisgarh) (hereinafter referred to as "Trial Judge") in Sessions*

Trial No. 14 of 2010 on 23rd November, 2011.

2. Shorn of details, the facts leading to the present appeal are as under:

2.1 On 21st October, 2009, the half-burnt body of Shiva alias Sanwar (hereinafter referred to as „deceased") was found behind Baba Balak Nath temple near Shastri Nagar ground. Based on the information given by one, Pramod Kumar (P.W.3), merg intimation Ex. P-33 was registered against unknown persons.

2.2 The prosecution case, in a nutshell, is that Mohan – the husband of Accused No. 2 and brother of the Appellant was killed by the deceased; and as its offshoot, on 21st October, 2009 at about 12.00 a.m., the Appellant committed the murder of the deceased by causing 24 stab wounds on his body. He then wrapped the body in a blanket with the help of other accused persons, took it behind the Baba Balak Nath temple near Shastri Nagar ground where the half burnt body of the deceased was found in the following afternoon. Postmortem examination of the body of the deceased was conducted on 23rd October, 2009 by Dr. Ullhas Gonnade (P.W.11) who observed as many as 24 injuries on the deceased. According to P.W.11, after commission of murder, the body of the deceased was burnt and his death was homicidal in nature. It was further the case of the prosecution that an electricity bill in the name of one, Alakh Verma was found from the body of the deceased, on the basis of which the police proceeded with further investigation. In pursuance of the disclosure statements of the accused persons, seizure was effected and the police concluded that the deceased was murdered by the Appellant and that the body was then taken to the Baba Balak Nath temple with the help of the other accused persons where an attempt was made to burn the body.

2.3 At the conclusion of the investigation, a charge-sheet came to be filed in the Court of Judicial Magistrate First Class, Durg. Since the case was exclusively triable by the Sessions Court, the same came to be committed to the Sessions Judge.

2.4 The accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C") wherein they pleaded not guilty and claimed to be tried. The prosecution examined 18 witnesses to bring home the guilt of the accused.

2.5 At the conclusion of trial, the Trial Judge found that the prosecution had succeeded in proving that the Appellant had committed the murder of the deceased. The prosecution further proved that the accused persons committed criminal conspiracy to destroy the evidence, and threw the body of the deceased after burning the same behind the Baba Balak Nath temple. The prosecution also proved that

accused no. 2 helped in throwing the body of the deceased and destroying evidence by way of cleaning the blood stains etc. of the deceased. Thus, the Trial Judge convicted the Appellant for offences punishable under Sections 302 and 201 read with 120B of the Indian Penal Code, 1860 ("IPC" for short) and was awarded a maximum sentence of life imprisonment; whereas Accused Nos. 2 to 4 were convicted for offences punishable under Sections 201 read with 120B of IPC and were sentenced to undergo rigorous imprisonment for five years and fine of Rs.1,000/-.

2.6 Being aggrieved thereby, the Appellant and other accused persons preferred appeals before the High Court through CRA No. 223 of 2012 and CRA No. 38 of 2012 respectively. The High Court by the common impugned judgement, although allowed the appeal filed by the accused nos. 2 to 4; however, it dismissed the appeal filed by the present Appellant and affirmed the order of conviction and sentence awarded to the him by the Trial Judge.

2.7 Being aggrieved thereby, the present appeal.

3. We have heard Shri Sameer Shrivastava, learned counsel for the appellant-Raja Naykar and Shri Sumeer Sodhi, learned counsel for the respondent-State of Chhattisgarh.

4. Shri Sameer Shrivastava submitted that both the Trial Judge as well as the High Court have grossly erred in convicting the appellant. It is submitted that there is no evidence at all which establishes the guilt of the appellant beyond reasonable doubt. It is submitted that the finding of guilt of the appellant as recorded by the Trial Judge is based on conjectures and surmises and, therefore, not sustainable in law. Learned counsel further submitted that, from the evidence of the father and brother of the deceased, it would reveal that the dead body of the deceased has not been identified and the prosecution has failed to prove that the dead body found in the garbage was that of Shiva.

5. On the contrary, Shri Sumeer Sodhi submitted that both the Trial Judge and the High Court, upon correct appreciation of evidence, have found the accused-appellant guilty of the charges levelled against him. It is submitted that, as per the FSL report, human blood was present on the dagger which was recovered at the instance of the present appellant. It is further submitted that the recoveries made on the basis of the Memorandum under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Evidence Act") would establish the guilt of the accused appellant beyond reasonable doubt. He, therefore, submits that no interference would be warranted with the impugned judgment in the facts and circumstances of the present case.

6. With the assistance of the learned counsel for the parties, we have

scrutinized the evidence on record.

7. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda vs. State of Maharashtra, wherein this Court held thus:

> *"152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case* ***which rests on circumstantial evidence alone.*** *The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v. State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129]:*
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> > ***"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."***
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> ***153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:***
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> ***(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.***
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> ***It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations***

were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

> ***"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between „may be" and „must be" is long and divides vague conjectures from sure conclusions."***
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> ***(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,***
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> ***(3) the circumstances should be of a conclusive nature and tendency,***
>
> ***(4) they should exclude every possible hypothesis except the one to be proved, and***
>
> ***(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.***
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> ***154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.***

8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused „must be" and not merely „may be" proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between „may be proved" and „must be or should be proved". It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

9. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how

strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

10. In the light of these guiding principles, we will have to examine the present case.

11. On a perusal of the judgment of the Trial Judge as well of the High Court, it would reveal that the main circumstance on which the High Court and the Trial Judge found the appellant guilty of the crime is the recovery of various articles at his instance. They have further found that the pieces of blanket recovered from the place of incident and the place where the dead body was subsequently taken for being burnt, were found to be identical/similar. The High Court has observed that specific questions were put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") regarding recovery of various articles at his instance and also regarding the FSL report, but he has failed to give an explanation with regard thereto.

12. The motive attributed to the appellant by the prosecution is that the appellant was under an impression that the deceased Shiva had caused the murder of his elder brother Mohan. It is the prosecution case that, on the date of the offence, deceased Shiva was working in a hotel owned by the sister-in-law of the appellant. The appellant gave money to the deceased to buy liquor. They both had consumed liquor. After having dinner, his sister-in-law, her daughter along with the baby went to bed in the middle-room of the house. He slept on the cot. He asked Shiva to sleep on the spread bed on the floor. It is the prosecution case that, at about 10.30 p.m., the appellant gave several blows to Shiva with a dagger. Thereafter, he wrapped the dead body of Shiva in a blanket and a homemade mattress and called his friend Chandan Sao. Thereafter, they broke the lock of the rickshaw parked near Chawni Chowk and took the rickshaw to the house from Chawni Chowk
for disposing off the dead body. Thereafter, the appellant along with other accused persons lifted the dead body of the deceased and placed the same on the rickshaw. The rickshaw was then taken to the garbage dumping ground where he threw the dead body. Thereafter, he concealed the dagger in the garbage scattered inside the boundary wall. Following which, he again went to the place where he had thrown the dead body and burnt the clothes wrapped around the dead body and came back to his sister-in law's house.

13. The aforesaid story is narrated in the Memorandum of the appellant under Section 27 of the Evidence Act. However, as held by the Privy Council in the locus classicus case of Pulukuri Kotayya and others v. King-Emperor2, only such statement which leads to recovery of incriminating material from a place solely and exclusively within the knowledge of the maker thereof would be admissible in evidence.

14. Undisputedly, the dead body was found much prior to the recording of the Memorandum of the appellant under Section 27 of the Evidence Act. Therefore, only that part of the statement which leads to recovery of the dagger and the rickshaw would be relevant.
15. The Property Seizure Memo would show that the dagger was seized from a place accessible to one and all. According to the prosecution, the incident took place on 21st October, 2009 and the recovery was made on 25th October, 2009.

16. As per the FSL report, the blood stains found on the dagger were of human blood. However, the FSL report does not show that the blood found on the dagger was of the blood group of the deceased. Apart from that, even the serological report is not available.

17. Insofar as the recovery of rickshaw is concerned, it is again from an open place accessible to one and all. It is difficult to believe that the owner of the rickshaw would remain silent when his rickshaw was missing for 3-4 days. As such, the said recovery would also not be relevant.

18. Another circumstance relied on by the Trial Judge is with regard to recovery of blood-stained clothes on a Memorandum of the appellant. The said clothes were recovered from the house of the appellant"s sister-in-law. The alleged incident is of 21st October 2009, whereas the recovery was made on 25th October, 2009. It is difficult to believe that a person committing the crime would keep the clothes in the house of his sister-in-law for four days.

19. It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the
deceased. In the case of Mustkeem alias Sirajudeen v. State of Rajasthan, this Court held that sole circumstance of recovery of blood-stained weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of blood-stained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt.

20. As already discussed hereinabove, merely on the basis of suspicion, conviction would not be tenable. It is the duty of the prosecution to prove beyond all reasonable doubt that it is only the accused and the accused alone who has committed the crime. We find that the prosecution has utterly failed to do so.

21. Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313 Cr. P.C. is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in the case of Sharad Birdhichand Sarda (supra), in a case based on circumstantial evidence, the nonexplanation or false explanation of the accused under Section 313 Cr.P.C. cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances.

22. In the result, the appeal is allowed. The impugned judgment and order dated 22nd July, 2015, passed by the Division Bench of the High Court of Chhattisgarh, Bilaspur in CRA No. 223 of 2012 is quashed and set aside. The appellant is directed to be released forthwith, if not required in any other case.
(Emphasis supplied by us hereinabove)

7. In our considered opinion, the principles enunciated in the aforesaid decision by Hon'ble Supreme Court would be squarely applicable to the facts of the instant case before us. The ld. AO while recording the reasons had merely suspected that the movement of funds (both inflow and outflow) in assessee's bank account constitutes income of the assessee. This suspicion was however triggered based on the STR received by the ld. AO. At the cost of repetition, we would like to mention the fact that the assessee is engaged in the business of financing and leasing where obviously there would be huge movement of funds (both inflow and outflow) in the bank account of the assessee. Moreover, all these funds were received from the related entities and invested with the related entities in the regular business of financing and leasing. There is absolutely no income element involved therein. There is no presumption u/s 68 of the Act for the movement of funds between entities to be automatically construed as yielding income. Further the investigation wing had only suggested enquiry to be made with regard to the rotation of funds. This may lead the ld. AO to entertain 'reason to suspect' and not 'reason to believe' that income of the assesee had escaped assessment. Reliance in this regard is placed on the decision of Hon'ble Jharkhand High Court in the case of PCIT vs Maheswari Devi reported in 455 ITR 755 (Jharkhand). This information also cannot be construed as a tangible material available with the ld. AO which would enable him to form a reasonable belief that income of the assessee had escaped assessment warranting reopening u/s 147 of the Act, moreso , when the investigation wing never even complained of the escapement of income of the assessee."

The reliance placed by the learned ITAT on the aforesaid judgment of the Hon'ble Supreme Court cannot be ignored. It is apparent that the principles enunciated in the criminal jurisprudence in respect of a proof beyond reasonable doubt was erroneously applied to an issue which was subject of provisions of Income Tax Act. In our opinion, the construction of the words "reason to believe" as construed by the Learned ITAT on the anvil of Raja Naykar *(supra)*, is absolutely erroneous and cannot be made applicable to the present case.

4. Keeping in view that though no substantial question of law with regard to this issue has been framed by this court, however, it is deemed appropriate to frame the following Question of Law:

> *a. Whether the ITAT was not wrong in applying the principles enunciated by the SC in a criminal case where the discharge of burden of proof is beyond reasonable doubt, to the principle of "reason to believe" as provided in section 148 of the Act?*

5. It is trite that the concept of "proving beyond reasonable doubt" applies "*strictu senso*" to penal provisions/statutes. It is also trite that in taxing statutes, in particular, section 148 of the Act, the "reason to believe", must be based on objective materials, and on a reasonable view. The Hon'ble Supreme Court in ***ITO v. Lakhmani Mewal Das, (1976) 3 SCC 757*** has upheld the aforesaid principle. Relevant paragraph of Lakhmani Mewal *(supra)* is extracted hereunder:

> *"8. The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction*

to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reasons for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law".

The aforesaid principle has been followed by the Hon'ble Supreme Court in ***Deputy Commissioner of Income Tax v. M.R. Shah Logistics, (2022) 14 SCC 101***) stating that the basis for a valid reopening of assessment should be availability of tangible material, which can lead the AO to scrutinise the returns for the previous assessment year in question, to determine, whether a notice under section 147 is called for. Predicated on the aforesaid judgments it can be safely inferred that the concept of burden of proof beyond reasonable doubt is not to be applied in cases such as the present one.

6. Though, learned counsel for the respondent (hereafter referred to as the "Assessee") in order to support the reasoning rendered by the learned ITAT, addressed submissions on the merits of the case, however, we are not persuaded to consider the same. This is for the reason that the learned ITAT misdirected itself in predicating its entire reasoning on an incorrect and inapplicable principle of law, which are confined to purely penal provisions,

which is not the case here. Thus, on this error alone the impugned judgement is found to be unsustainable in law. Once the edifice of differentiating "reason to suspect" and "reason to believe" itself is on incorrect application of the principle as explained above, the consequential appreciation on merits too would suffer the same fate.

7. Ergo, we have no hesitation in quashing and setting aside the impugned judgement dated 10.04.2024 passed by the learned ITAT, and we do so. However, we remit the matter to the learned ITAT to consider *de novo* the appeal of the Revenue on merits including any issue/objections which may arise on law after giving sufficient opportunity to both the parties. The rights and cognitions of the parties are left open. Nothing stated herein shall tantamount to any expression on merits of the case.

8. Accordingly, the appeal is allowed to the aforesaid extent.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MARCH 10, 2025/*rl*