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

\+ **INCOME TAX APPEAL NO. 790/2014**

Date of decision: 23rd December, 2014

COMMISSIONER OF INCOME TAX - 15 (ERSTWHILE CIT-IX)

..... Appellant

Through Ms. Suruchi Aggarwal, Sr. Standing Counsel, Mr. Aamir Aziz & Mr. Shashank Menon, Advocates.

versus

SHRI CHINTOO TOMAR ..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) arises out of proceedings initiated by the Assessing Officer by issue of notice under Section 148 of the Act recording the following reasons:-

> "Assessment of Chintoo Tomar for the A.Y. 2007-08 was completed in summary at an income of Rs.1,99,613/-. It apparent from the records that the during the financial year 2006-07, the assessee has earned capital gain of Rs.2,69,47,709/- out of which Rs.2,55,56885/- was claimed exempted u/s 54 by investing in residential property and remaining portion was set off against brought forward capital loss. It is observed that the property transferred by the assessee was agriculture land not a residential property. Therefore, the capital gain arising out of it is not eligible for exemption u/s 54. The

> same has resulted in under assessment of taxable income of Rs.2,55,56,885/-.
>
> In view of the above facts, I have reason to believe that an income of Rs.2,55,56,885/- has escaped assessment within the meaning of section 147 of income –tax Act, 1961 thereby making it a fit case for issue of notice under section 148 of the income-tax Act, 1961."

2. We have carefully scrutinised and read the said reasons, but are unable to appreciate and comprehend the nexus between the reasons recorded and the conclusion/inference drawn that income had escaped assessment.

3. The Assessment Year in question is 2007-08 and the reasons recorded state that the return filed for the said year was subjected to summary scrutiny and not assessment under Section 143(3) of the Act, which is factually correct. It further states that the assessee had earned capital gains of Rs.2,69,47,709/- out of which Rs.2,55,56,885/- was claimed as exempt under Section 54 of the Act by investing in residential property and the remaining portion was set off against brought forward capital loss. This is the statement of fact recorded by the Assessing Officer on the basis of the return of income filed. The next portion is relevant. The Assessing Officer has recorded that the property transferred by the assessee, i.e. the property sold, was an agricultural land and not a residential property. This is not correct. It is accepted by the counsel for the Revenue that the assessee had furnished details of the property sold,

which was a farm house located within the municipal limits of the Nation Capital Territory of Delhi. These details were available before the reasons to believe were recorded. In the return of income, the assessee had disclosed sale consideration of Samalkha property and had also disclosed having purchased a residential property at Vasant Vihar and 50% share in a DLF house for claiming exemption under Section 54 of the Act. It is not understood on what basis the Assessing Officer assumed that Samalkha property was agricultural land. The property was located in Rajokri in the National Capital Territory of Delhi and had a built-up area of 3,605 sq. ft. and was also subjected to property tax. The records reveal that on 21st October, 2011, the assessee had informed the Assessing Officer that they had sold the said property and had enclosed the papers including his wealth tax return, house tax notice, valuation report, etc. and also the factum that the property before sale was self occupied. Notice under Section 148 of the Act is dated 27th March, 2012 and was subsequent to the letter dated 21st October, 2011. It is clear that the Assessing Officer assumed facts without even trying to look at the return of income and other papers on record. The aforesaid assumption was a mere suspicion without any foundation or footing and, therefore, nothing more than gossip. It is a case of non-application of mind.

4. The Assessing Officer thereafter has observed that as the land sold was agricultural land, capital gains arising out of the said sale was not

exempt under Section 54 of the Act. The said statement is obviously incorrect and an erroneous statement. In case the land was agricultural land, then the sale was not a sale of a capital asset within the meaning of Section 2(14) of the Act and no capital gains tax would have been payable. Therefore, the inference of escapement and that tax had not been paid because investment was made under Section 54 of the Act, is illogical and irrational.

5. In the present case, the time period stipulated for issue of notice under Section 143(2) of the Act had expired and, therefore, the Assessing Officer could have only issued notice under Section 148 of the Act, if the jurisdictional pre-conditions mentioned in Section 147 of the Act were satisfied. The Assessing Officer should have formed a *prima facie* opinion that income chargeable to tax had escaped assessment and recorded these reasons in writing. The reasons so recorded should have some basis or support and not a mere gossip. The reasons cannot be a mere pretence and should be held in good faith. The expression "reasons to believe" predicates a belief which is founded and induced by existence of palpable or cogent material or information. Reason to suspect cannot amount to reason to believe. As it is the beginning of the inquiry, having a *prima facie* opinion is sufficient; and irrebuttable conclusive evidence or finding is not required. But the *prima facie* formation of belief should be rational, coherent and not *ex facie* incorrect and contrary to what is on record. As

noticed in paragraph 3 above, the facts recorded are incorrect. Secondly, the reasons must have live nexus and must disclose on what basis or evidence the Assessing Officer feels and has reason to believe that income chargeable has escaped assessment. The reasons must be germane and genuine. For grounds elucidated in paragraph 4 above, this requirement falters. The reasons recorded by the Assessing Officer do not meet and satisfy the said basic and limited pre-jurisdictional requirement. There is no rational connection between the reason recorded and the formation of belief that income had escaped assessment.

6. The Tribunal in the impugned order has observed that the Assessing Officer did not ultimately make any addition for the said reason as has been noted and quoted above. It is obvious that the Assessing Officer could not have proceeded on the basis of the reasons recorded because they did not show any link with the escapement of income and were also factually incorrect being contrary to what was apparent from the record at the initiation stage itself.

The appeal, therefore, has to fail and is accordingly dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 23, 2014
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