RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Civil Writ Petition No. 610/2001
CNR: RJHC010119392001 | URN: CW / 1109U / 2001

Rajasthan High Court
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Dr. V. D. Choudhary, Prop. M/s Choudhary Ultra Sound Clinic, 44/ Sukadia Nagar, Sriganganagar.

----Petitioner

Versus

1. Union of India Through the Secretary To the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Commissioner of Income-tax, Bikaner.
3. The Assessing Officer, Ward-3, Sriganganagar.

----Respondent

For Petitioner(s)	:	Mr. Vinay Kothari, through V.c. Mr. Bhavyadeep Singh
For Respondent(s)	:	Mr. K.K. Bissa

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order(Oral)

13/10/2026

Per: Arun Monga, J

1. The petitioner herein, *inter alia*, seeks quashing of the notice dated 07.02.2000 issued by the Assessing Officer, Ward-3, Sriganganagar, under Section 148 of the Income Tax Act, 1961 ("the Act"), for reopening the assessment for the Assessment Year 1995–96. The petitioner further seeks a direction restraining respondent No. 3 from passing any reassessment order or recovering tax, interest or imposing penalty pursuant thereto.

2. The petitioner had filed his return of income for the Assessment Year 1995–96 declaring a total income of Rs. 1,68,020/-. During the relevant assessment year, the petitioner purchased a plot situated at 2-C-9, Sukadia Nagar, Sri Ganganagar, for Rs. 1,49,850/-, inclusive of registration charges and other expenses. It is stated that the said

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transaction was duly reflected in the petitioner's books of account, including the capital account, balance sheet and profit and loss account. The return was processed under Section 143(1)(a) of the Act, *vide* order dated 26.08.1996.

2.1 Subsequently, respondent No. 3 issued a notice dated 07.02.2000 under Section 148 of the Act for reopening the assessment for the Assessment Year 1995–96. Admittedly, the reasons recorded for initiating the reassessment proceedings were supplied to the petitioner. The reasons indicated that the value of the plot adopted by the registering authority for the purposes of stamp duty had been taken into consideration *vis-à-vis* the purchase consideration disclosed by the petitioner.

2.2 Pursuant to the issuance of the aforesaid notice, reassessment proceedings were initiated in respect of the petitioner's return of income for the Assessment Year 1995-96. Aggrieved thereby, the petitioner has filed the present writ petition.

3. Learned counsels for the petitioner submit that the impugned notice dated 07.02.2000, issued under Section 148 of the Act, for reopening the assessment for the Assessment Year 1995–96, is without jurisdiction, as the statutory conditions prescribed under Sections 147 and 148 of the Act are not satisfied. It is contended that no income chargeable to tax had escaped assessment and that the petitioner had duly disclosed the relevant particulars and furnished the necessary details and documents along with the return of income. There was no omission or failure on the part of the petitioner to disclose fully and truly all material facts necessary for the assessment.

3.1 Learned counsels further submit that the reassessment proceedings have been initiated solely on the basis of the value of the plot adopted by the registering authority for the purposes of stamp

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duty, without any tangible material indicating that the actual purchase consideration paid by the petitioner was higher than the amount disclosed in the books of account. It is argued that such valuation, being an estimate of the market value of the property, does not by itself establish any undisclosed investment or escapement of income, particularly when the disclosed purchase consideration is supported by a duly executed purchase agreement. They submit that the impugned proceedings are founded on mere suspicion. They amount to a change of opinion and a mere reappraisal of the material already disclosed.

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3.2 Learned counsels lastly submit that the initiation of reassessment proceedings is arbitrary, unjustified and contrary to the settled principles governing the exercise of jurisdiction under Sections 147 and 148 of the Act, causing undue prejudice to the petitioner. It is therefore alleged that the proceedings are vitiated by *mala fides* and have been initiated to harass the petitioner.

4. *Per contra*, learned counsel for the respondents opposes the submissions advanced by the petitioner and contends that the notice under Section 148 was issued on the basis of the material available on record and in accordance with law. It is further contended that the impugned proceedings do not amount to a change of opinion, as the original assessment was processed under Section 143(1) of the Act.

5. In the aforesaid backdrop, we have heard learned counsels for both the parties and perused the case file.

6. At the very outset, we may observe that it is a conceded position that notice under Section 148 of the Act, was issued on the basis of the information that the notified District Level Committee (DLC) rates applicable to the land in question were higher than those taken into consideration at the time of processing the return under Section 143(1) of the Act.

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7. In view of the aforesaid factual position, the question that arises for consideration is whether the present case falls within the ambit of a change of opinion or within the exception applicable to an assessment under Section 143(1) of the Act, on the ground that the original assessment was a summary assessment and, therefore, reopening the same would not amount to a change of opinion.

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8. Learned counsel for the respondents has relied upon the decision of the Division Bench of this Court in **M/s Ayush Agrotech Pvt. Ltd. v. The Principal Commissioner of Income Tax & Anr.**[1] to contend that, since the earlier assessment was carried out under Section 143(1)(a) of the Act, the reopening of the assessment would not constitute a change of opinion.

9. However, we find that the aforesaid judgment was rendered in the facts and circumstances of that case, wherein additional information came to light after the assessment as a result of a survey, which was not available to the Assessing Officer at the time of the original assessment. Whereas, in the present case, the DLC rates were already in the public domain when the assessment was processed. In this regard, it is pertinent to refer to a judgement of the High Court of Chhattisgarh in **Smt. Kamala Ojha v. Income Tax Officer**[2],wherein somewhat similar circumstances arose. Relevant thereof is reproduced hereinbelow:

> *"26. Thereafter, the Supreme Court in Dhariya Construction Company's case (supra) has clearly held that opinion of the District Valuation Officer per se is not an information for the purposes of reopening assessment under Section 147 of the Act, 1961. The Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon.*
> *27. The High Court of Madhya Pradesh in the matter of Prakash Chand v. Deputy Commissioner of Income-Tax and another has held that the Assessing Officer had no jurisdiction to reopen the concluded assessment by recourse to Section 148 of the Act on the strength of such valuation report, obtained subsequently. Similar is the proposition of law laid down by the High Court of Gujarat in the matter of Akshar Infrastructure Pvt. Ltd. v. Income Tax Officer - Ward 1(1)17 following the principle of law laid*

1.D.B. Spl. Appl. Writ No.1102/2017, decided on 18.12.2017.
2.W.P.(T) No.177/2016, decided on 19.06.2017.

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down by the Supreme Court in Dhariya Construction Company's case (supra).

28. A valuation report is only an opinion of a valuer. The same does not amount to information within the meaning of Section 147(b) nor can it form a ground for reason to believe that the assessee had failed to disclose his income fully and truly within the meaning of Section 147(a) of the Act. The condition precedent for assumption of jurisdiction under Section 147(a) of the Act is reason to believe of the Income-tax Officer. If that be so, then a report or information of a valuer cannot substitute the words 16 (2004) 269 ITR 260 (MP) 17 Manu/GJ/0317/2017 "reason to believe" of the Income-tax Officer. An opinion of a third person cannot be "a reason to believe" of the Income-tax Officer. It is the Income-tax Officer who has to assert on materials available that he has reason to believe that any income chargeable to tax has escaped assessment or that the same was due to the fact that the assessee failed to disclose his income truly and fully. The reason to believe of an Income-tax Officer cannot be substituted by an opinion of a valuer. No condition precedent for assumption of jurisdiction under Section 147(a) is satisfied. (See Bhola Nath Majumdar v. Income-Tax Officer and others18.)

29. If the facts of the present case are examined in light of the principles of law laid down by Their Lordships of the Supreme Court and subsequent decisions of the High Courts of Gauhati and Madhya Pradesh, it would appear that reassessment proceeding has been sought to be reopened by the assessing authority as apparent from Annexure P-7 which is the reason recorded under Section 148 (2) of the Act, 1961 for initiation of action under Section 147 of the Act is the report of the Assistant Valuation Officer-II, Mumbai dated 12-6-2015, which states as under:

> *"The report from the AVO-II, Mumbai dated 12.6.2015 was received in this office on 18.6.2015 where the FMV of the property as on 1.4.1981 was again determined at Rs.8,34,300/-.*
>
> *The income on a/c of capital gain has not been correctly disclosed in her return of income for a.y. 2011-12 belatedly filed on 31.3.2013 and now it has to be worked out as per AVO-II, Mumbai's report on the basis of FMV determined as on 1.4.1981 at Rs.8,34,300/-. Therefore, I have reason to believe that the said income under the head "capital gain" has escaped assessment within the meaning of provisions of section 147 of the Act."*

30. Thus, it appears that only on the basis of the valuation report received from the said officer - Assistant Valuation Officer, the assessing authority sought to reopen the proceeding under Section 147 of the Act, 1961 which is clearly not an information for reopening the assessment proceeding as held by the Supreme Court in Dhariya Construction Company's case (supra) wherein it has been observed that opinion of the District Valuation Officer is not an information for the purposes of reopening assessment under Section 147 of the Act and the Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon, as such, opinion of a third person cannot be the basis for reopening the proceeding for reassessment under Section 147 of the Act, as in the present case, the reopening proceeding is based only on the report received from the Assistant Valuation Officer and the assessing authority has not applied its mind and solely relied upon that opinion of the AVO to reopen the assessment under Section 147 read with Section 148 of the Act, 1961, which is in teeth of the decision of the Supreme Court in Dhariya Construction Company's case(supra) and as such, contrary to law.

(xxxx…xxxx….xxxx)

32. The petitioner raised preliminary objections after serving of reasons to believe furnished by the petitioner vide Annexure P-8 clearly stating that no independent satisfaction has been arrived by the assessing authority and therefore there is no jurisdictional facts available for initiation of proceeding under Section 147 of the Act, 1961 which was rejected by order dated 13-12-2016 by the Revenue."

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A Single Bench of this Court also had an occasion to deal with a similar proposition in **Tara Chand Mundhra vs. Union of India & Ors.**[3] The relevant extract is reproduced hereinbelow:-

> *"14. In view of the law laid down by this court in the cases of Pratapsingh Amrosingh Rajendra Singh and Deepak Kumar MANU/RH/0095/1992 and Smt, Prem Kumari Surana MANU/RH/0107/1993, it has been conclusively held by this court that the report of a valuer cannot singly be made the basis of information as required under Section 147(b) of the Act to issue a notice under Section 148 of the Act. No separate reasons have been furnished by the Department. The only reason discernible from the reply filed by the Department is that subsequent to the filing of the return by the assessee, the Department came into possession of the report of the official valuer of the Department and, thus, came to issue the notice under Section 148 of the Act. As the only ground available with the Department for issuing notice under Section 148 of the Act was held bad by this court, it can safely be held that the notice issued for reopening the assessment is a notice without foundation. As and when a notice is held to be without foundation then what would necessarily follow is that the law laid by the Supreme Court in the case of Calcutta Discount Co. Ltd. MANU/SC/0113/1960: [1961]41ITR191(SC) will govern the field and the notice deserves to be quashed. Consequently, the notice of reopening the assessment annexure-7 deserves to be quashed."*

10. We are in respectful agreement with the views expressed hereinabove and, accordingly, hold that the reassessment proceedings under Sections 147 and 148 of the Act could not have been initiated in the present case, as the same are founded on a mere change of opinion. Had the circumstances been otherwise, the competent authority would have been well within its jurisdiction to initiate reassessment proceedings in accordance with law.

11. As an upshot, the impugned show-cause notice dated 07.02.2000, issued under Section 148 of the Act, is quashed and set aside with consequences to follow.

12. Accordingly, the writ petition is allowed. All pending applications also stand disposed of.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

B-20/Raksha

3 S.B. Civil Writ Petition No.3998/1988, decided on 14.10.1998.

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