

(2023) 07 GUJ CK 0030

In the Gujarat High Court

Case No : R/Special Civil Application No. 19275 Of 2021

Apex Remedies Pvt. Ltd.

APPELLANT

Vs

Income Tax Officer, Ward - 1(1)(1)

RESPONDENT

Date of Decision : 06-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Income Tax Act, 1961 — Section 10AA, 22, 43(1), 69C, 139, 142, 142(1), 143(3),
147, 147(a), 147(b), 147(3), 148, 148(2), 148A, 148(b), 149, 150, 151, 152, 153

Citation : (2023) 07 GUJ CK 0030

Hon'ble Judges : Vipul M. Pancholi, J;Devan M. Desai, J

Bench : Division Bench

Advocate : Tushar Hemani, Vaibhavi K Parikh, Vaibhavi K Parikh

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Looking to the issue involved in the present petition, learned advocates appearing for the parties have requested that this petition be taken up for final disposal at an admission stage and, hence upon their request, it is taken up for final disposal at an admission stage.

2. Rule. Learned advocate, Mr. Varun Patel waives service of notice of rule for respondent.

3. In this petition, which is filed under Article 226 of the Constitution of India, the petitioner has challenged the notice dated 29.03.2021 issued by the respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "IT Act"), by which, the respondent is seeking to reopen the assessment of the petitioner for the assessment year 2014-15 (hereinafter referred to as year under consideration).

4. The factual matrix of the present case is as under,

4.1 It is the case of the petitioner that during the year under consideration, the petitioner sold immovable property comprising of industrial plot of land along with industrial shed constructed thereon (hereafter referred to as "property in question") to M/s. Pooja Industries, for which, the petitioner received sum of Rs.40,00,000/-. It is further stated that sale consideration of Rs.40,00,000/- received by the petitioner was bifurcated into two parts i.e. an amount of Rs.11,56,159/- was attributable to the industrial plot of land and an amount of Rs.28,43,841/- was attributable to industrial shed constructed thereon. It is further stated that since the land is non-depreciable asset, Long Term Capital Gain (LTCG) on sale thereof was computed at Rs.10,869/- after taking into consideration sale consideration of Rs.11,56,159/-. However so far as building (industrial shed) is concerned, it is a depreciable asset and, hence, Short Term Capital Gain (STCG) on sale thereof was computed at Rs.26,736/- after taking into consideration sale consideration of Rs.28,43,841/-. Thus, such capital gains i.e. LTCG and STCG have been duly taken into consideration while filing the original return of income on 16.01.2016.

4.2 It is further stated by the petitioner that the respondent issued impugned notice dated 29.03.2021 under Section 148 of the IT Act seeking reopening of the case of the petitioner for the year under consideration. The reason stated in the said notice is that the case has been reopened broadly on the alleged count that the petitioner has not shown capital gain on sale of the property in question in the return of income. It is also stated that as per the case of the respondent, an information has been received that M/s. Pooja Industries has purchased the property in question from the petitioner for Rs.1,10,00,000/-, out of which, Rs.40,00,000/- was paid to the petitioner and balance sum of Rs.70,00,000/- was paid to two confirming parties. It is also stated that as per the case of the respondent, the petitioner has not offered capital gain on sale of the property in question in the return of income. Accordingly, the respondent has reason to believe that the income of Rs.40,00,000/- has escaped assessment in the hands of the petitioner for the year under consideration and, hence, the case of the petitioner has been reopened.

4.3 It is stated that the objections were raised by the petitioner against the reopening of the assessment by filing reply dated 25.11.2021, wherein it was pointed out that entire sum of Rs.40,00,000/- is duly shown in its return of income. It is the case of the petitioner that though the said objections were raised, the respondent vide order dated 02.12.2021, disposed of same by observing that such information would be verified in re-assessment proceedings.

4.4 It is stated that thereafter, the impugned notice dated 03.12.2021 came to be issued under Section 142(1) of the IT Act, which has been challenged in the present petition.

5. Heard learned Senior Counsel, Ms. Tushar Hemani assisted by learned advocate, Ms. Vaibhavi Parikh for the petitioner and learned advocate, Mr. Varun Patel appearing for the respondent.

6. Learned Senior Counsel, Mr. Tushar Hemani for the petitioner has mainly contended that the case of the petitioner has been reopened on the alleged count that the petitioner has not shown capital gain of the sale of the property in question in the return of income, however in fact, the petitioner has already declared the capital gain of sale of property in question in the return of income. It is submitted that the petitioner has declared LTCG of Rs.10,869/- and STCG of Rs.26,736/- on the sale of property in question while filing return of income. Thus, very foundation for reopening would be belied, therefore, the reopening is not justified. It is also submitted that the respondent did not question the factum of receipt of Rs.40,00,000/- being shown and offered for tax in the return of income while disposing the objections submitted by the petitioner. Thus, when the said fact has not been disputed, the question of assumption of jurisdiction cannot arise.

7. Learned Senior Counsel would further submit that the condition precedent for the purpose of resorting to reopening proceedings under Section 147 of the IT Act is that there must be 'escapement of any income chargeable to tax' and in absence of escapement of any income chargeable to tax, it is not open for the respondent – department to reopen the case of the assessee. It is submitted that in the present case, capital gain on sale of property in question has been duly disclosed in the return of income and, therefore, there is no question of escapement of income chargeable to tax. Thus on this ground, the impugned notice may be quashed and set aside. In support of the aforesaid contentions, learned Senior Counsel has placed reliance upon the decision rendered by this Court in case of Sajani Jewels Ltd. Vs. DCIT, reported in (2016) 241 Taxman 383 (Gujarat).

8. Learned Senior Counsel further submits that as per the scheme of the IT Act, an Assessing Officer can reopen the case of the assessee within the prescribed time limit provided he has 'reason to believe' that some income chargeable to tax has escaped assessment in the hands of the assessee. It is thus submitted that the pre-requisite for the purpose of reopening an assessee's case is that there must be 'reason to believe' that some income chargeable to tax has escaped assessment. Such 'reason to believe' must be based on some tangible material and must prima facie establish that there is escapement of income chargeable to tax. In the present case, such pre-requisite as to 'reason to believe' does not stand satisfied. In fact, the petitioner has disclosed the receipt of Rs.40,00,000/- in the return of income. Thus, there is no escapement of Rs.40,00,000/-. Hence, subsequent assumption of jurisdiction on such incorrect facts are bad in law. In support of the said contentions, learned Senior Counsel has placed reliance upon the decision rendered by this Court in case of Sheth Bros. Vs. JCIT, reported in (2003) 251 ITR 270 (Gujarat).

9. Learned Senior Counsel, after referring to the affidavit-in-reply filed by the respondent, submitted that the validity of reopening is to be decided on the basis of the reason recorded prior to issuance of the notice under Section 148 of the IT

Act. It is submitted that the reason cannot be improved upon at later stage by filing affidavit. It is also submitted that no new ground or argument can be taken into consideration so as to enlarge the scope of reason beyond what is stated in the reasons recorded for reopening. In support of the said contention, learned Senior Counsel has placed reliance upon the decision rendered by this Court in case of Kantibhai D. Narola Vs. ACIT, reported in (2021) 436 ITR 302 (Gujarat).

10. Learned Senior Counsel, therefore, urged that the impugned notice be quashed and set aside.

11. On the other hand, learned Standing Counsel, Mr. Varun Patel has opposed this petition. Learned Standing Counsel has referred to the averments made in the affidavit-in-reply filed on behalf of the respondent. It is submitted that in the present case, the Assessing Officer has received information from ITO, Ward-3(2) (9), Ahmedabad dated 27.10.2016 regarding purchase of the land at Ashlali, Narol by M/s. Pooja Industries from the petitioner – assessee and the petitioner – assessee was paid Rs.40,00,000/- by M/s. Pooja Industries for the sale transaction. It is submitted that the Assessing Officer, after analyzing such information and after making inquiries in connection with the said information, observed that the assessee has not shown capital gain on the sale of such immovable property (land). Thereafter, the Assessing Officer has recorded independent satisfaction that the income of Rs.40,00,000/- has escaped assessment in case of the petitioner – assessee. It is further submitted that the Assessing Officer has also observed in the reasons for reopening that no scrutiny assessment under Section 143(3) of the IT Act was earlier made in case of the assessee and, therefore, only requirement to initiate proceeding under Section 147 of the IT Act is 'reason to believe'.

12. At this stage, it is submitted that the assessment in the present case for the year under consideration is sought to be reopened beyond four years from the end of the relevant assessment year and, hence, first proviso to Section 147 of the IT Act would not be applicable as no prior scrutiny assessment under Section 147(3) of IT Act or assessment under Section 147 of the IT Act was made in case of the assessee for the year under consideration. In the present case, the Assessing Officer has clearly recorded about 'reason to believe' on the basis of the information available on record. It is also submitted by learned Standing Counsel that while disposing of the objections raised by the petitioner – assessee against reopening of the assessment, the Assessing Officer has considered such objections and rejected the same by assigning reasons while passing an order dated 02.12.2021. It is submitted that the Assessing Officer is not expected to come to a definite conclusion about the escapement of income based on information received by him while recording reasons for reopening for issuance of notice under Section 148 of the IT Act. Learned Standing Counsel would further submit that sufficiency or correctness of the information or material cannot be the issue for examining the validity and legality of the notice under Section 148 of the IT Act for initiating the assessment proceedings under Section 147 of the

IT Act. Thus, the contention taken by learned Senior Counsel appearing for the petitioner with regard to no escapement of income cannot be gone into at this stage as it is a matter to be adjudicated during the course of assessment proceedings based on evidence on the record. Learned Standing Counsel, therefore, urged that this Court may not exercise the power under Section 226 of the Constitution of India in favour of the petitioner.

13. Learned Standing Counsel has placed reliance upon the decision rendered in case of ACIT Vs. Rajesh Jhaveri Stock Broker Pvt. Ltd., reported in (2007) 291 ITR 500 (SC) as well as decision rendered by the Hon'ble Supreme Court in case of Raymond Woolen Mills Vs. ITO, reported in (1999) 236 ITR 34. It is, therefore, urged that this petition may not be entertained.

14. Having heard learned advocates for the parties and having gone through the material placed on record, it would emerge that the respondent issued impugned notice dated 29.03.2021 under Section 148 of the IT Act seeking reopening of the case of the petitioner for the year under consideration. The reason stated in the said notice is that the case has been reopened broadly on the alleged ground that the petitioner has not shown capital gain on sale of the property in question in the return of income. The said notice was issued on the basis of the information received from the concerned officer that M/s. Pooja Industries has purchased the property in question from the petitioner for Rs.1,10,00,000/-, out of which, Rs.40,00,000/- was paid to the petitioner and balance sum of Rs.70,00,000/- was paid to two confirming parties.

Therefore, the respondent has reason to believe that the income of Rs.40,00,000/- has escaped assessment in the hands of the petitioner for the year under consideration. Thus from the said reasons stated in the notice, it can be said that as per the case of the respondent, income of Rs.40,00,000/- has escaped assessment at the hands of the petitioner, for which, capital gain tax has not been paid.

15. It is pertinent to note that the petitioner raised objections against the reopening of the assessment by filing reply dated 25.11.2021. If the said reply is carefully seen then, it is revealed that the petitioner has pointed out that entire sum of Rs.40,00,000/- is duly shown in its return of income. It is also revealed from the return of income, copy of which is placed on record, that the petitioner has declared LTCG of Rs.10,869/- and STCG of Rs.26,736/- on the sale of the property in question.

16. It would further reveal from the record that the respondent disposed of the objections raised by the petitioner, wherein also, the respondent did not question the factum of receipt of Rs.40,00,000/- being shown and offered for tax by the petitioner in the return of income.

17. At this stage, this Court would like to refer to the provision of Section 147 of the IT Act, which reads as under,

“147.Income escaping assessment.

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)

Explanation.-For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]”

18. In case of Sajani Jewels Ltd. (supra), this Court has observed in Paragraph Nos.10, 11 and 12 as under,

“10. This brings us to the last contention of the petitioner. We may recall, the argument is that in any case, the entire income of the assessee being tax exempt, even if the stand of the department as reflected in the reasons recorded is correct and ultimately established, there would be no additional tax burden on the petitioner. To put it simply, the question being posed is where is the escapement of income chargeable to tax ?

11. In this context, we may revisit the modus operandi adopted by the petitioner as alleged by the department. According to the department, the petitioner had shown purchases of goods worth Rs.90.17 lakhs from one of the bogus entities created by Bhanwarlal Jain. There was no genuine purchase. All that was done was that the assessee had paid such amount in cheque without making any purchases. The seller after receiving such amount, would return substantial portion thereof in cash retaining his commission. This circuitous route would ensure that cost of purchases made by the assessee would be artificially inflated, thereby deflating the profit. In that view of the matter, even if the department is correct, all that would be done even if the assessment is permitted, is to disallow the expenditure of Rs.90.17 lacs. Correspondingly, the income of the assessee would increase by the said sum of Rs.90.17 lacs. However, if the entire income is exempt under section 10AA of the Act, there would be still no tax implication. With this background in mind, we had noted the history of petitioner's claim for exemption under section 10AA of the Act while recording facts. The assessee having succeeded upto High Court level in establishing such claim, we must proceed on such basis.

12. The result of this exercise would be that even if the expenditure of the so called bogus purchases is disallowed, the only effect it could have is to increase the profit of the assessee which in any case is exempt under section 10AA of the Act. Section 147 of the Act would be applicable where the Assessing Officer has

reason to believe that income chargeable to tax has escaped assessment. When this fundamental requirement fails, power of reopening cannot be exercised. We are unable to appreciate the argument of the counsel for the Revenue that such income would not qualify as business income and that it should be treated as income from other sources by applying section 69C of the Act. This section pertains to unexplained expenditure and provides that where, in any financial year, an assessee has incurred any expenditure and he offers no explanation about the sources of such expenditure or part thereof or the explanation offered is not satisfactory, the amount covered by such expenditure or the part, as the case may be, would be deemed to be the income of the assessee for such financial year. The present is not a case where the assessee has incurred expenditure, but failed to offer explanation about the source of such expenditure. The source of expenditure in question was very much available since in the reasons recorded itself, the Assessing Officer points out that the purchases were made by making cheque payments. Section 69C of the Act therefore has no applicability."

19. In case of Sheth Bros. (supra), this Court has observed as under,

"9. Before the Assessing Officer can initiate any proceedings under section 147 of the Act, he is required to establish existence of jurisdictional facts. The Supreme Court in case of Calcutta Discount Co.Ltd. vs. ITO & Anr.(1961) 41 ITR 191 (SC) has stated thus :

"That to confer jurisdiction under section 34 to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year, two conditions had to be satisfied. The first was that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax had been underassessed. The second was that he must also have reason to believe that such "underassessment" had occurred by reason of either (1) omission or failure on the part of an assessee to make a return of his income under section 22, or (2) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions were conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question".

9.1 This Court in case of P.V.Doshi Vs. CIT (1978) 113 ITR 22 (Guj) stated :

"The conditions precedent for initiating reassessment proceedings are : (1) reasonable belief reached by the Income-tax Officer under clause (a) or clause (b) of section 147; (ii) recording of reasons by the Income-tax Officer under section 148(2); (iii) sanction before issuing the notice of reassessment by the higher authorities under section 151. These three conditions have been introduced by way of safeguards in public interest so that the finally concluded proceedings, which at the time of the original assessment could be reopened

through the initial procedure of appeal, revision or rectification before the assessment became final, could not be lightly reopened with the consequent hardship to the assessee and also unnecessary waste of public time and money in such proceedings. These conditions have, therefore, to be treated as being mandatory"

20. In case of Kantibhai D. Narola (*supra*), this Court has observed in Paragraph Nos.32, 35 and 36 as under,

"32. The law as regards the reopening of the assessment under Section 147 of the Act 1961 is well-settled.

(i) The Court should be guided by the reasons recorded for the reassessment and not by the reasons or explanation given by the Assessing Officer at a later stage in respect of the notice of reassessment. To put it in other words, having regard to the entire scheme and the purpose of the Act, the validity of the assumption of jurisdiction under Section 147 can be tested only by reference to the reasons recorded under Section 148(2) of the Act and the Assessing Officer is not authorized to refer to any other reason even if it can be otherwise inferred or gathered from the records. The Assessing Officer is confined to the recorded reasons to support the assumption of jurisdiction. He cannot record only some of the reasons and keep the others upto his sleeves to be disclosed before the Court if his action is ever challenged in a court of law.

(ii) At the time of the commencement of the reassessment proceedings, the Assessing Officer has to see whether there is *prima facie* material, on the basis of which, the department would be justified in reopening the case. The sufficiency or correctness of the material is not a thing to be considered at that stage.

(iii) The validity of the reopening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment.

(iv) The basic requirement of law for reopening and assessment is application of mind by the Assessing Officer, to the materials produced prior to the reopening of the assessment, to conclude that he has reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied-a postmortem exercise of analysing the materials produced subsequent to the reopening will not make an inherently defective reassessment order valid.

(v) The crucial link between the information made available to the Assessing Officer and the formation of the belief should be present. The reasons must be self evident, they must speak for themselves.

(vi) The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. To put it in other words, something therein, which is critical to the formation of the belief must be referred to. Otherwise, the link would go missing.

(vii) The reopening of assessment under Section 147 is a potent power and should not be lightly exercised. It certainly cannot be invoked casually or mechanically.

(viii) If the original assessment is processed under Section 43(1) of the Act and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In other words, although the reopening may be after the expiry of four years from the end of the relevant assessment year, yet it would not be necessary for the Assessing Officer to show that there was any failure to disclose fully or truly all the material facts necessary for the assessment.

(ix) In order to assume jurisdiction under Section 147 where assessment has been made under sub-section (3) of section 143, two conditions are required to be satisfied;

(i) The Assessing Officer must have reason to believe that the income chargeable to tax has escaped assessment;

(ii) Such escapement occurred by reason of failure on the part of the assessee either (a) to make a return of income under section 139 or in response to the notice issued under sub-section (1) of Section 142 or Section 148 or (b) to disclose fully and truly all the material facts necessary for his assessment for that purpose.

(x) The Assessing Officer, being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria.

(xi) While the report of the Investigation Wing might constitute the material, on the basis of which, the Assessing Officer forms the reasons to believe, the process of arriving at such satisfaction should not be a mere repetition of the report of the investigation. The reasons to believe must demonstrate some link between the tangible material and the formation of the belief or the reason to believe that the income has escaped assessment.

(xii) Merely because certain materials which is otherwise tangible and enables the Assessing Officer to form a belief that the income chargeable to tax has escaped assessment, formed part of the original assessment record, per se would not bar the Assessing Officer from reopening the assessment on the basis of such material. The expression "tangible material" does not mean the material alien to the original record.

(xiii) The order, disposing of objections or any counter affidavit filed during the writ proceedings before the Court cannot be substituted for the "reasons to believe".

(xiv) The decision to reopen the assessment on the basis of the report of the Investigation Wing cannot always be condemned or dubbed as a fishing or roving inquiry. The expression "reason to believe" appearing in Section 147 suggests that if the Income Tax Officer acts as a reasonable and prudent man on the basis

of the information secured by him that there is a case for reopening, then Section 147 can well be pressed into service and the assessments be reopened. As a consequence of such reopening, certain other facts may come to light. There is no ban or any legal embargo under Section 147 for the Assessing Officer to take into consideration such facts which come to light either by discovery or by a fuller probe into the matter and reassess the assessee in detail if circumstances require.

(xv) The test of jurisdiction under Section 143 of the Act is not the ultimate result of the inquiry but the test is whether the income tax officer entertained a "bona fide" belief upon the definite information presented before him. Power under this section cannot be exercised on mere rumours or suspicions.

(xvi) The concept of "change of opinion" has been treated as a built in test to check abuse. If there is tangible material showing escapement of income, the same would be sufficient for reopening the assessment.

(xvii) It is not necessary that the Income Tax Officer should hold a quasi judicial inquiry before acting under Section 147. It is enough if he on the information received believes in good faith that the assessee's profits have escaped assessment or have been assessed at a low rate. However, nothing would preclude the Income Tax Officer from conducting any formal inquiry under Section 133(6) of the Act before proceeding for reassessment under Section 147 of the Act.

(xviii) The "full and true" disclosure of the material facts would not include that material, which is to be used for testing the veracity of the particulars mentioned in the return. All such facts would be expected to be elicited by the Assessing Officer during the course of the assessment. The disclosure required only reference to those material facts, which if not disclosed, would not allow the Assessing Officer to make the necessary inquiries.

(xix) The word "information" in Section 147 means "instruction or knowledge derived from the external source concerning the facts or particulars or as to the law relating to a matter bearing on the assessment. An information anonymous is information from unknown authorship but nonetheless in a given case, it may constitute information and not less an information though anonymous. This is now a recognized and accepted source for detection of large scale tax evasion. The non-disclosure of the source of the information, by itself, may not reduce the credibility of the information. There may be good and substantial reasons for such anonymous disclosure, but the real thing to be looked into is the nature of the information disclosed, whether it is a mere gossip, suspicion or rumour. If it is none of these, but a discovery of fresh facts or of new and important matters not present at the time of the assessment, which appears to be credible to an honest and rational mind leading to a scrutiny of facts indicating incorrect allowance of the expense, such disclosure would constitute information as contemplated in clause (b) of Section 147.

(xx) The reasons recorded or the material available on record must have nexus to the subjective opinion formed by the A.O. regarding the escapement of the income but then, while recording the reasons for the belief formed, the A.O. is not required to finally ascertain the factum of escapement of the tax and it is sufficient that the A.O. had cause or justification to know or suppose that the income had escaped assessment [vide *Rajesh Jhaveri Stock Brokers (P.) Ltd.'s case (supra)*]. It is also well settled that the sufficiency and adequacy of the reasons which have led to the formation of a belief by the Assessing Officer that the income has escaped the assessment cannot be examined by the court.

35. The power to reopen a completed assessment under Section 147 of the Act 1961 has been bestowed on the Assessing Officer, if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. However, this belief that income has escaped assessment has to be the reasonable belief of the Assessing Officer himself and cannot be an opinion and/or belief of some other authority. On the basis of the information by itself received from another agency, there cannot be any reassessment proceedings. However, upon receipt of the information/material received from other source, the Assessing Officer is required to consider the material on record in case of the assessee by applying his mind and thereafter is required to form an independent opinion on the basis of the material on record that the information has bearing on the income of the assessee and such income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be 'independent' and not 'borrowed' or 'dictated' satisfaction. Law in this regard is now well-settled.

36. The Supreme Court in the case of *Anirudh Sinhji Karan Sinhji Jadeja vs. State of Gujarat* reported in [1995] 5 SCC 302 as well has held that if a statutory authority has been vested with the jurisdiction, it has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether. The cases reopened on the basis of information received from the other departments are also governed by the aforesaid principle of making an independent inquiry and recording of satisfaction by the Assessing Officer issuing notice under Section 148 of the Act."

21. From the aforesaid decisions rendered by this Court, it can be said that the validity of opening of the assessment shall have to be determined with reference to the reasons recorded for reopening of the assessment. Further, power to reopen a complete assessment under Section 147 of the IT Act has been given to the Assessing Officer if he has reason to believe that any income chargeable to

tax has escaped assessment for any assessment year.

22. In case of Rajesh Jhaveri Stock Broker Pvt. Ltd. (supra), the Hon'ble Supreme Court has observed in Paragraph No.16 as under,

"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word reason in the phrase reason to believe would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Delhi High Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991 (191) ITR 662], for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction (see ITO v. Selected Dalurband Coal Co. Pvt. Ltd. [1996 (217) ITR 597 (SC)]."

23. In case of Raymond Woolen Mills (supra), the Hon'ble Supreme Court has observed as under,

"In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority."

24. From the aforesaid decision rendered by the Hon'ble Supreme Court in case of Rajesh Jhaveri Stock Broker Pvt. Ltd. (supra), it can be said that at the

initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage.

25. Keeping in view aforesaid decisions rendered by the Hon'ble Supreme Court as well as this Court, if the facts of the present case, as discussed hereinabove, are carefully examined, it can be said that in the reasons recorded by the respondent while issuing notice under Section 148 of the IT Act to the petitioner, it is stated that the petitioner has not shown capital gain on sale of the property in question in the return of income and the officer has reason to believe that the income of Rs.40,00,000/- has escaped assessment at the hands of the petitioner for the year under consideration. However, the petitioner has submitted objections/ reply, wherein it has been specifically pointed out that he had already disclosed the receipt of Rs.40,00,000/- by way of sale consideration from the transaction in question and has bifurcated the said amount under the head of Building (Depreciable Assets) – at Rs.28,43,841/- and under the head of Land (Other Assets) at Rs.11,56,159 towards the sale consideration, which have been shown. The petitioner has also paid STCG of Rs.26,736/- and LTCG of Rs.10,869/-. Therefore, it cannot be said that the income chargeable to tax has escaped assessment in the hands of the assessee. Thus looking to the aforesaid facts of the present case, we are inclined to entertain the present petition.

26. Accordingly, the present petition stands allowed. The impugned notice dated 29.03.2021 issued by the respondent under Section 148 of the IT Act and the proceedings pursuant thereto are hereby quashed and set aside. Rule is made absolute.