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(2020) 09 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 2749 Of 2019

Asian Satellite Broadcast Pvt. Ltd — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 28-09-2020

Acts Referred:
Income Tax Act, 1961 — Section 14, 45, 47, 47(iii), 139, 142(1), 143(2), 143(3), 147, 148, 148(1), 151(1)
Constitution Of India, 1950 — Article 226

Citation : (2020) 09 BOM CK 0033

Hon'ble Judges : Ujjal Bhuyan, J;Milind N. Jadhav, J

Bench : Division Bench

Advocate : Percy Pardiwala, Madhur Agarwal, Jay Bhansali, Snehal Bamne

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J

1. Heard Mr. Percy Pardiwala, learned senior counsel along with Mr. Madhur Agarwal, learned counsel for the petitioner and Mr. N. C. Mohanty, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of notice dated 22.03.2019 issued by respondent No.1 under section 148 of the Income Tax Act, 1961 seeking to re-open the assessment of the petitioner for the assessment year 2012-13 as well as order dated 09.09.2019 passed by respondent No.1 rejecting the objections raised by the petitioner to the notice issued under section 148 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter).

3. Petitioner is a private limited company having its registered office at Lower Parel, Mumbai. It is engaged in the business of trading in fabric yarn, investment and finance. It is an assesee under the Act assessed to tax under the jurisdiction of respondent No.1.

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3.1. For the assessment year 2012-13, petitioner filed e-return of income on 30.09.2012 declaring loss of Rs.3,69,126.00. Subsequently, petitioner revised its original income on 30.03.2014 whereby the loss figure was declared at Rs.1,91,940.00.

3.2. Assessment case of the petitioner for the said assessment year was selected for scrutiny. Notice under section 143(2) of the Act was issued on 08.08.2013 followed by notices issued under section 142(1) of the Act on 27.06.2014 and 22.09.2014.

3.3. It may be mentioned that in the previous year relevant to the assessment year 2012-2013, petitioner had transferred 4,20,090 equity shares of ZEE Entertainment Enterprises Limited (for short 'ZEE' hereinafter) to an associated entity called M/s. Essel Business Processes Limited (for short 'Essel' hereinafter) as gift i.e., without consideration. Be it stated that cost of the said shares in the hands of the petitioner was Rs.1,41,18,604.00.

3.4. It may also be mentioned that as per Note 14 to the profit and loss statement submitted before the assessing officer, petitioner had mentioned loss on transfer of investments for an amount of Rs.1,41,18,604.00. In Note 19, it was mentioned that petitioner had transferred 4,20,090 equity shares of Re.1.00 each of ZEE to Essel, a related party, to consolidate onshore media assets including shares of listed companies. This information was again furnished to respondent No.1 pursuant to his second notice issued under section 142(1) of the Act in the form of details of investments.

3.5. In its letter dated 31.12.2014, petitioner furnished details of transfer of shares of ZEE to Essel along with board resolution. Petitioner explained that as a part of internal restructuring for consolidation of media assets of the group of companies, holdings in ZEE were transferred at nil consideration by the assessee to Essel for which assessee incurred loss of Rs.1,41,18,604.00 on transfer of such shares. This was further explained by the petitioner to respondent No.1 in its letter dated 12.02.2015. Responding to a query of the assessing officer as to why market value should not be considered for transfer of shares of ZEE at nil consideration, it was submitted that petitioner had transferred 4,20,090 shares of ZEE, a listed company, at nil consideration to Essel to consolidate the group's onshore media assets including shares of listed companies. Petitioner submitted that transfer of shares without consideration should be considered as a gift.

4. Ultimately, respondent No.1 passed the assessment order for the assessment year under consideration on 27.02.2015 under section 143(3) of the Act assessing the total income of the petitioner at total loss of Rs.1,91,940.00.

5. After more than four years, respondent No.1 issued notice under section 148 of the Act to the petitioner on 22.03.2019 stating that he had reasons to believe that petitioner's income chargeable to tax for the assessment year 2012-13 had escaped assessment within the meaning of section 147 of the Act. He, therefore, proposed to re-assess the income of the petitioner for the said assessment year

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and called upon the petitioner to submit a return in the prescribed form for the said assessment year within 30 days. It was also mentioned that the said notice was issued after obtaining necessary approval of the Principal Commissioner of Income Tax - 6, Mumbai i.e., respondent No.2.

6. Vide the forwarding letter dated 17.04.2019 petitioner informed respondent No.1 that it had filed the return on 15.04.2019 but at the same time requested respondent No.1 to furnish a copy of the reasons recorded for re-opening the assessment along with the sanction of the appropriate authority.

7. By letter dated 24.04.2019, respondent No.1 furnished to the petitioner a copy of the reasons recorded for re-opening assessment along with approval of respondent No.2. Without much elaboration at this stage, it is seen from the reasons recorded that a view was taken by respondent No.1 that transfer of shares of listed entities at nil consideration amongst unlisted group entities was made with the sole purpose of evading payment of capital gains tax and such transfer clearly fell within the scope of a colourable device. Therefore, it was held that petitioner had not disclosed fully and truly all material facts with respect to transfer of the shares of ZEE by claiming the same to be a part of the process of consolidation of media houses. After working out the capital gains which had allegedly escaped assessment in the hands of the petitioner at Rs.3,35,61,611.00, respondent No.1 recorded that he had reason to believe that petitioner's income chargeable to tax for the assessment year 2012-13 for an amount of Rs.3,35,61,611.00 had escaped assessment within the meaning of section 147 of the Act on account of failure on the part of the petitioner to disclose fully and truly all material facts.

8. After perusing the reasons recorded by the assessing officer, respondent No.2 recorded satisfaction that due to default on the part of the petitioner to disclose fully and truly all material facts necessary for assessment, re-opening of assessment under section 148 of the Act was justified and accordingly approved.

9. Following the procedure laid down by the Supreme Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer, 259 ITR 19, petitioner submitted its objections on 18.06.2019 to re-opening of assessment under section 147 of the Act by issuing notice under section 148 thereof.

10. By a long order dated 30.08.2019 communicated to the petitioner on 09.09.2019, respondent No.1 rejected the objections raised by the petitioner. From a perusal of the rejection order it is seen that respondent No.1 stated that information was received from ACIT - 6 (2), Mumbai and ITO - 6(3)(1), Mumbai wherefrom it revealed that transfer of shares of ZEE, a listed company, amongst unlisted group entities for nil consideration under the pretext of consolidation of media business was actually a proper division of business empire of the group amongst the promoter family. Such transaction was deemed to be a colourable device to evade tax on capital gains.

11. Aggrieved, present writ petition has been filed by the petitioner seeking the

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reliefs as indicated above.

12. Petitioner has contended that it had disclosed fully and truly all material facts necessary for assessment to the assessing officer. After several rounds of explanations and hearings, assessing officer accepted the claim of the petitioner vis-a-vis transfer of equity shares of ZEE to Essel as a gift without consideration whereafter the assessment order was passed under section 143(3) of the Act. Now on the basis of certain information received from two income tax officers which were not furnished to the petitioner, the concluded assessment of the petitioner for the assessment year under consideration has been sought to be re-opened by taking the view that such transfer of shares was a colourable device for evading payment of tax on capital gains.

12.1. It is the contention of the petitioner that firstly, there was full disclosure of primary facts by the petitioner before the assessing officer. Secondly, a subsequent view taken by the assessing officer on the basis of which the impugned notice has been issued amounts to a clear change of opinion vis-a-vis transfer of shares. This cannot be a ground for re-opening a concluded assessment. Information on the basis of which the impugned action was initiated was not furnished to the petitioner.

13. This Court by order dated 16.10.2019 had issued notice and granted ad-interim stay to the impugned notice dated 22.03.2019 by taking the view that it is a clear case of change of opinion; thus, impugned notice is without jurisdiction. It was held thus:-

"2. This Petition under Article 226 of the Constitution of India, challenges a Notice dated 22nd March, 2019 passed by Respondent No.1 - Dy. Commissioner of Income Tax, issued under Section 148 of the Income Tax Act, 1961 (the Act). The impugned notice seeks to re-open an Assessment for the Assessment Year 2012-13.

3. The regular Assessment Proceedings were completed under Section 143(3) of the Act. The impugned notice has been issued beyond a period of four years from the end of the relevant Assessment Year. It is the Petitioner's case that the facts which forms the basis of reasons to believe the income chargeable to tax were completely disclosed. Moreover, it was also subject matter of consideration during the regular Assessment Proceedings. Thus, it is clear case of change of opinion. Therefore, without jurisdiction.

4. As none appears for the Respondent, Registry is directed to issue a notice to the Respondent, returnable on 27th November, 2019. Humdust permitted.

5. In the meantime, there shall be ad-interim stay to the impugned notice dated 22nd March, 2019."

14. Respondent No.1 has filed affidavit in reply. Stand taken in the affidavit is that the impugned notice dated 22.03.2019 under section 148 of the Act and the subsequent order dated 09.09.2019 rejecting the objections of the petitioner to

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re-opening were issued and passed in accordance with the provisions of the Act and hence justified.

14.1. Reference has been made to letters dated 29.02.2018 received from ACIT - 6(2), Mumbai and 29.03.2018 received from ITO - 6(3)(1), Mumbai. Copies of those two letters have been annexed to the affidavit. The two letters referred to order dated 28.02.2018 passed by the Commissioner of Income Tax (Appeals)-12, Mumbai in the appeal of M/ s. 25FPS Media Private Limited for the assessment year 2012-13. It was pointed out that the said appellant was part of the group concerns of the petitioner. In the appellate order, Commissioner of Income Tax (Appeals) has held such transfer of shares as a colourable device and that the same would not be eligible for exemption from capital gains under section 47(iii) of the Act. As a matter of fact, Commissioner of Income Tax (Appeals) had directed the assessing officer to take necessary steps for giving effect to the findings of the appellate order regarding tax liability of the transferred shares with the further direction that if the assessing officer did not have jurisdiction, he should inform the jurisdictional assessing officer for taking necessary action. Appellate order dated 28.02.2018 has also been annexed to the affidavit. Therefore, respondent No.1 has contended that the transfer of shares at nil consideration was made with the sole purpose of evading payment of capital gains tax and was a colourable device. Value of the transferred shares was assessed by respondent No.1 whereafter he contended that Rs.3,35,61,611.00 was the escaped capital gains. Thus, contention of respondent No.1 is that there was escapement of income to the above extent on account of failure of the petitioner to disclose fully and truly all material facts with respect to transfer of shares of ZEE to Essel. Respondent No.2 had granted approval to re-opening of assessment after due application of mind. Therefore, the writ petition should be dismissed.

15. Mr. Pardiwala, learned senior counsel for the petitioner submits that there was no new material before the assessing officer post the assessment order to have reason to believe that income of the petitioner for the assessment year under consideration had escaped assessment on account of the failure of the petitioner to disclose fully and truly all material facts necessary for assessment. He submits that it is evident petitioner had disclosed all the relevant materials pertaining to transfer of the shares of ZEE to Essel as a gift i.e., without consideration. Such transfer was made following resolution by the board of directors of the petitioner. Gift of shares is permissible under section 47(iii) of the Act. Therefore, no tax on capital gains can be levied on such transfer; there being no capital gain on account of the transfer being a gift. All the materials were before the assessing officer whereafter he had accepted the transfer of shares as a gift and completed the assessment after due scrutiny under section 143(3) of the Act. Based on two letters of two income tax officers subsequently a different view was taken by the assessing officer that the transfer of shares was a colourable device used by the petitioner as a mean to evade payment of income tax. This is nothing but change of opinion and as rightly held by this

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Court in the order dated 16.10.2019, the same is not permissible and therefore, the assessing officer had no jurisdiction to issue the impugned notice under section 148 of the Act. What the petitioner had claimed and initially allowed by the assessing officer is clearly permissible in law under section 47(iii) of the Act. No question of earning any capital gains and consequential levy of tax thereon arises. In this connection, he has placed reliance on the following decisions:-

1) CIT Vs. George Anderson and Company Limited, 66 ITR 622;

2) CIT Vs. Bhanji Lavji, 79 ITR 582;

3) K. P. Varghese Vs. ITO, 131 ITR 597;

4) Hindustan Lever Limited Vs. R. B. Wadkar, 268 ITR 332;

5) CIT Vs. M/s. B. Arunkumar & Co., 2016 (3) TMI 768;

6) Prakriya Pharmachem Vs. ITO, (2016) 238 Taxmann 185;

7) CIT Vs. M/s. Morarji Textiles Limited, 217 (2) TMI 122;

8) Integra Garments and Textiles Limited Vs. Income Tax Officer and others, 418 ITR 139; and

9) Swastik Safe Deposit and Investments Limited Vs. Assistant Commissioner of Income Tax, (2019) 265 Taxmann 164.

15.1. Mr. Pardiwala finally submits that the foundation for initiation of re-assessment proceeding was the appellate order passed by the Commissioner of Income Tax (Appeals) in the case of M/s. 25FPS Media Private Limited. The issue in question, that is, treating the transaction of transfer of shares as a colourable device and consequential direction to the assessing officer to tax the transaction under capital gains provision after assigning the market value of the shares as the sale consideration was examined by the Income Tax Appellate Tribunal, Mumbai Bench 'F', Mumbai ('Tribunal' for short) in Jayneer Infrapower and Multiventures Private Limited Vs. Deputy Commissioner of Income Tax, (2019) 103 Taxmann.com 118. Tribunal, after due deliberation, held that the transaction cannot be said to be a colourable device. By no stretch of imagination, the gain can be taxed under the head 'income from other sources'. As regards transfer of shares as gift, Tribunal held that there is nothing in the Act which prohibits a company from giving or receiving gifts. There is no requirement of a gift deed. Tribunal finally came to the conclusion that the transfer of shares by way of gift is exempt from the provisions of capital gains by virtue of the provisions of section 47(iii) of the Act. In that view of the matter, Mr. Pardiwala submits that the very foundation on the basis of which the impugned notice was issued and the objections raised by the petitioner were rejected by the impugned order no longer survives. He, therefore, submits that the impugned notice is without jurisdiction and the same is liable to be set aside and quashed.

16. Per contra, Mr. Mohanty, learned standing counsel Revenue submits that the

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course of action adopted by respondent No.1 cannot be faulted. He has given due reasons for issuance of the impugned notice and the same cannot be said to be fanciful, speculative or based on suspicion. An element of subjective satisfaction while forming reason to believe that income assessable to tax has escaped assessment cannot be ruled out. On that ground, notice of re-opening assessment may not be set aside. In support of his contentions, he has placed reliance on the following decisions:-

1) Raymond Woollen Mills Limited Vs. ITO, 236 ITR 34;

2) ACIT Vs. Rajesh Zaveri Stock Brokers Private Limited, 291 ITR 500;

3) Kalsha Builders Private Limited Vs. ACIT, Writ Petition No.3656 of 2018 (Bombay) decided on 08.02.2019; and

4) Phool Chand Bajrang Lal Vs. ITO, 203 ITR 456.

17. Submissions made by learned counsel for the parties have been duly considered. Also perused the materials on record and carefully gone through the judgments cited at the bar.

18. In the present case, the assessment year under consideration is 2012-13 and the assessment order under section 143(3) of the Act was passed on 27.02.2015. Notice under section 148 of the Act was issued on 22.03.2019. In any case, the impugned notice has been issued beyond four years from the end of the assessment year in question. It is in that context that we will have to discuss and analyze sections 148 and 147 of the Act.

18.1. As per sub-section (1) of section 148, before making assessment, re-assessment or re-computation under section 147, the assessing officer is required to serve upon the assessee a notice requiring him to furnish a return of his income in the prescribed form and within the specified period as if such return were a return required to be furnished under section 139. Sub-section (2) says that before issuing any such notice, the assessing officer is required to record his reasons for doing so. Under sub-section (1) of section 151, no such notice under section 148 shall be issued by the assessing officer after expiry of a period of four years from the end of the relevant assessment year unless the higher authority as mentioned in the provision is satisfied on the reasons recorded by the assessing officer that it is a fit case for issue of such notice.

18.2. In so far section 147 is concerned, it says that if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or re-assess such income. However, as per the first proviso, where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no action shall be taken under section 147 after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-

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section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for its assessment for that assessment year.

19. As already noticed above, the present case is one where the impugned notice has been issued clearly beyond four years from the end of the assessment year in question. It is also not a case where the assessee failed to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. Therefore, what would be relevant to note is that in so far the present case is concerned, the assessing officer must have reason to believe that any income of the petitioner chargeable to tax has escaped assessment by reason of the failure on the part of the petitioner to disclose fully and truly all material facts necessary for such assessment.

20. The expressions 'reason to believe' and 'failure on the part of the assessee to disclose fully and truly all material facts' have been subjected to numerous judicial pronouncements, and it is not necessary to burden this judgment by making reference to the long line of judicial precedents. Suffice it say that there must be a live link between the reasons recorded and formation of the belief that income chargeable to tax has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment which must not be fanciful or based on suspicion. Both the conditions must co-exist in order to confer jurisdiction on the assessing officer. Of course, the assessee is required to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the assessing officer books of accounts or other materials from which the required evidence with due diligence could have been discovered by the assessing officer would not necessarily amount to disclosure contemplated by law. But the duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that, his duty ends. It is for the assessing officer to draw the correct inference from the primary facts. Once such an inference is drawn which may subsequently appear to be erroneous that cannot be a basis for initiation of action for re-opening assessment as it would amount to change of opinion and change of opinion cannot be a ground for re-opening concluded assessment.

21. Question for consideration is whether in the facts and circumstances of the case, respondent No.1 could have formed an opinion that he had reason to believe that income of the petitioner chargeable to tax for the assessment year 2012-13 had escaped assessment by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for the assessment?

22. In our view the facts or the materials on record say otherwise. But before we delve into this aspect of the matter it would be apposite to briefly dilate on the relevant provisions dealing with capital gains and taxability of capital gains.

23. Chapter IV of the Act deals with computation of total income. Capital gains is

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one of the heads of income under section 14. Section 45 deals with capital gains. Sub-section (1) says that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to income tax under the head 'capital gains' and shall be deemed to be the income of the previous year in which the transfer took place.

24. Section 47 deals with transactions not regarded as transfer. Clause (iii) is relevant. Section 47(iii) says that nothing contained in section 45 shall apply to any transfer of a capital asset under a gift or will or an irrevocable trust. However, as per the proviso, this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures, etc. allotted by a company, directly or indirectly to its employees under any employees' stock option plan or scheme of the company offered to such employees in accordance with the guidelines issued by the central government in this behalf.

25. From a conjoint reading of the aforesaid provisions it is evident that while any profits or gains arising out of transfer of a capital asset shall be deemed to be the income of the previous year in which the transfer took place chargeable to income tax under the head 'capital gains', section 47(iii) makes it very clear that any transfer of a capital asset under a gift or will or an irrevocable trust shall not be liable to income tax under the head 'capital gains'. Evidently, the proviso is not applicable to the present case.

26. Gujarat High Court in Prakriya Pharmachem (supra) examined a challenge to re-opening of assessment on the ground that transfer of shares by way of a transfer deed led to escapement of income from assessment. The transfer deed was examined whereafter it was found that a certain number of shares were transferred by the said petitioner to its sister concern by way of gift without charging any amount. After referring to sections 45 and 47(iii), Gujarat High Court held that nothing would apply to any transfer of capital assets under a gift or will or an irrevocable trust. Gujarat High Court also held that it was not the case of the assessing officer that the said case was not one of transfer of asset under a gift. In such circumstances, it was held that reasons recorded by the assessing officer to form the belief that income chargeable to tax had escaped assessment lacked validity. Therefore, the impugned notice was set aside.

27. Reverting back to the facts of the present case, we have already noted that while filing the e-return, petitioner had made a note that it had suffered loss on transfer of investments to the extent of Rs.1,41,18,604.00. This was explained in Note 19 forming part of the financial statement wherein it was stated that during the relevant previous year petitioner had transferred 4,20,090 equity shares of Re.1.00 of ZEE to Essel, a related party, at nil consideration to consolidate onshore media assets including shares of listed companies.

28. In the notice dated 22.09.2014 issued to the petitioner by respondent No.1 under section 142(1) of the Act, respondent No.1 had called upon the petitioner to file further details of the transfer of 4,20,090 shares of ZEE to Essel with

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documentary evidence including sale bill and also the details of taxability on such transfer of shares in connection with the ongoing scrutiny assessment proceedings.

28.1. In response thereto, petitioner submitted details of investments including opening balance and transfer of investments during the year. This included equity shares of ZEE at serial No.7, which were transferred to Essel.

28.2. In the letter dated 31.12.2014, petitioner explained to respondent No.1 about the transfer of shares of ZEE to Essel. It was stated that as a part of internal restructuring for consolidation of media assets of the group, the holdings in ZEE were transferred at nil consideration by the petitioner to Essel. In the process petitioner had incurred loss of Rs.1,41,18,604.00. The related board resolution was enclosed along with the said letter. It is seen that board of directors of the petitioner in its meeting held on 16.08.2011 had approved consolidation of media assets and in that connection, transfer of holdings in ZEE to Essel.

28.3. Responding to a query, petitioner in its further communication dated 12.02.2015 impressed upon respondent No.1 as to why market value should not be considered for transfer of shares of ZEE to Essel which was at nil consideration. It was stated that the said transfer of shares at nil consideration was done to consolidate the group's onshore media assets including shares of listed companies. Respondent No.1 was requested that the transfer of shares without consideration should be considered as a gift which is not liable to tax under section 45. It was thereafter that the assessing officer passed the assessment order under section 143(3) accepting the above claim of the petitioner. Though the assessment order as such is silent on this aspect, the preceding communications between petitioner and respondent No.1 would clearly demonstrate that petitioner had disclosed all the primary facts regarding transfer of shares of ZEE to Essel without any consideration and as a gift. In any case, it was a scrutiny assessment.

28.4. From the reasons recorded, order rejecting objections of the petitioner and the reply affidavit of respondent No.1 in the present proceeding, it is clearly discernible that the basis for re-opening of assessment was the two letters of departmental authorities dated 29.02.2018 and 29.03.2018. Though petitioner was not furnished copies of the said two letters, copies of the same have been annexed to the affidavit in reply wherefrom it is evident that in the case of a group entity, Commissioner of Income Tax (Appeals) had held that such transfer of shares was nothing but a colourable device. Further view taken was that such a device was adopted so that income assessable to tax under the head 'capital gains' remained outside the net of taxation. It was held that such transfer of shares attracted section 45(1) and accordingly, liable to be taxed on the market value of the shares so transferred. It was on that basis notice under section 148 was issued.

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29. As rightly held by this Court in the order dated 16.10.2019, such a view taken by respondent No.1 was nothing but a change of opinion. While initially contention of the petitioner that such transfer of shares was a gift without consideration was accepted, subsequently the above view was revised to treat the transfer of shares not as a gift and to tax the said transaction on the market value of the shares; this is nothing but change of opinion. It is quite apparent that petitioner had placed before the assessing officer during the assessment proceedings all the primary facts wherefrom he made the inference. Now it is not open to the assessing officer to take a second view on the same set of facts treating the earlier view as erroneous. This is not permissible.

30. To make matters worse, we find that Tribunal in the case of Jayneer Infrapower and Multiventures Private Limited (supra) examined such transaction of transfer of shares which was held to be a colourable device by the Commissioner of Income Tax (Appeals) and liable to be taxed on the market value of the shares. Tribunal recorded a categorical finding of fact that such transfer of shares without consideration was a gift which is valid, permissible and genuine. Referring to section 47(iii) Tribunal held that transfer of shares by way of gift is exempt from the provision of capital gains and concluded that transfer made as a gift without consideration is not taxable under the provisions of capital gains.

31. Thus, the very foundation on which the impugned notice was issued no longer survives.

32. Considering the above, we are of the unhesitant view that the impugned notice dated 22.03.2019 issued by respondent No.1 and the impugned order dated 09.09.2019 passed by respondent No.1 rejecting the objections of the petitioner to re-opening of assessment are hereby set aside and quashed.

33. Writ petition is accordingly allowed but without any order as to costs.

34. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

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