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**(1976) 12 AHC CK 0032**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 489 of 1976**

Gupta Cold Storage

APPELLANT

Vs

Income Tax Officer, "B" Ward

RESPONDENT

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**Date of Decision :** 17-12-1976

**Acts Referred:**

Income Tax Act, 1961 — Section 148

**Citation :** (1988) 115 ITR 819

**Hon'ble Judges :** R.M. Sahai, J;D.M. Chandrashekhar, J

**Bench :** Division Bench

**Advocate :** K.M.L. Hajela, for the Appellant; Deokinandan, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.M. Sahai, J.—This petition is directed against the notice issued to the petitioner u/s 148 of the I.T. Act. The short facts are as under :

2. The petitioner started construction of a cold storage from August 19, 1960, which was completed in the assessment year 1962-63. A return u/s 139 was filed by the petitioner for the assessment year 1961-62. It was claimed that no business was done and that only installation and constructions were done in the relevant financial year. The ITO passed an order u/s 143(3) accepting the claim made by the petitioner that no business was made in that year.

3. The residential premises of the petitioner were searched in August, 1972, u/s 132 of the Act and in the course of investigation the valuation of the petitioner's cold storage was referred to the Valuation Officer. His report was submitted on 20th February, 1975, and therein the investment in the construction of the building portion only was estimated at Rs. 1,46,530 during the financial year for the assessment year 1961-62. The ITO, on a perusal of that report, issued a notice to the petitioner u/s 148 stating that he had reason to believe that for the assessment year 1961-62 income chargeable to tax, far in excess of Rs. 50,000, had escaped assessment by reason of failure on the part of the petitioner to

disclose fully and truly all material facts necessary for its assessment for that year.

4. Sri K. M. L. Hajela, learned counsel for the petitioner, has urged that the aforesaid notice is bad for the following reasons:

(1) The petitioner had made a full and complete disclosure of the particulars of his income and the ITO had passed an assessment order u/s 143(3). If the ITO had not drawn proper inference from the material facts, he cannot now reopen the assessment by merely changing his opinion as to the conclusion to be drawn from those facts.

(2) (a) The notices were issued by the ITO without application of his mind to the material, i.e., the valuation report which was the foundation for formation of his belief that the income has escaped assessment.

(b) The valuation report was not a relevant material and no reasonable person could have formed the belief that income far in excess of Rs. 50,000 has escaped assessment.

(3) The CBDT has accorded sanction to reopen the assessment mechanically without applying its mind.

(4) The notice was barred by time.

5. Sri Deokinandan, learned counsel for the revenue, has refuted the arguments of Sri Hajela and has urged that the valuation report clearly established that the petitioner did not show the correct investment in the cold storage. He has urged that the argument raised on behalf of the petitioner that the building, plant and machinery should be considered as separate items of investment was misconceived and that the notice issued, in the circumstances, was justified and was in accordance with the law.

6. The conditions on the fulfilment of which the ITO acquires jurisdiction to issue a notice u/s 148 have been pointed out by the Supreme Court in a very recent decision in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . The court, after pointing out the necessary conditions, proceeded to add :

"We may add that the duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the ITO of the account books or other evidence from which material evidence could with due diligence have been discovered by the ITO will not necessarily amount to disclosure contemplated by law. 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 ITO to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the ITO with regard to the inference which he should draw from the primary facts: If an ITO draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify

initiation of action for reopening assessment."

7. The ITO has issued the notice u/s 148 on the ground of failure on the part of the petitioner to furnish full particulars about the investment on the construction of the building of the cold storage. The controversy, therefore, centres round a very short question, namely, whether the petitioner had disclosed fully and truly the particulars of his investment on the building of the cold storage in the assessment year 1961-62.

8. It is admitted that the valuation of building as shown in the books of account for the assessment year is Rs. 54,864. The valuation officer's conclusion in his Report reads :

"Thus on considering the local P.W.D. rates pertaining to that period, type of construction, method of construction, design, etc., I estimate the investment in the construction of the building portion only for the assessment year 1961-62 at Rs. 1,46,530."

9. Annexure A to the report is the abstract of cost. The relevant portion of it reads as follows:

Rs.

1. Cold storage main building, two chambers including insulation of walls and A. C. sheet roof, etc., all complete

62,236

2. Wooden staging (three floors) for stocking perishable including insulated ceiling, wooden staircase, etc., all complete for storage.

64,352

3. Land including boundary walls.

11,330

Total

1,46,530

10. Out of the total value of the investment of Rs. 1,46,530 on the cold storage, as estimated by the valuation officer, the sum of Rs. 64,352 was the investment on the wooden staging and deducting this amount of Rs. 64,352, the total investment on buildings and the site, according to the valuation officer, was Rs. 82,178.

11. Sri Hajela submitted that wooden staging in a cold storage is regarded as part of plant and not of building and that if the investment of Rs. 64,352 on wooden staging, as estimated by the valuation officer, is deducted from the total investment of Rs. 1,46,530 on the cold storage, as valued by the valuation officer, the investment on land and building in the assessment year 1961-62,

according to the valuation officer, would be only Rs. 82,178. Shri Hajela added that the assessee had shown an investment of Rs. 54,852 on land and buildings in the assessment year 1961-62 and the excess of investment on buildings in that year, even accepting the valuation by the valuation officer, which could be said to have been not disclosed by the petitioner in the assessment year 1961-62 would be only Rs. 27,322. It was further contended by Sri Hajela that even if such excess of investment of Rs. 27,322 could be taken to be undisclosed income of the petitioner for the assessment year 1961-62 it would fall very much short of Rs. 50,000, and, hence, the ITO could not reopen the assessment after a lapse of 8 years from the close of the assessment year 1961-62.

12. On the other hand, the learned standing counsel contended that in determining the total amount of income which the ITO had reason to believe to have escaped assessment, he was entitled to take into consideration the difference between the total investment on the cold storage in the assessment year 1961-62 as valued by the valuation officer and the total investment as disclosed by the petitioner during the assessment for that year, that as such difference exceeded Rs. 50,000, the ITO had reason to believe that the income which had escaped assessment for the assessment year 1961-62 exceeded Rs. 50,000.

13. In reply, Shri Hajela pointed out that in his report to the CBDT setting out the reasons for initiating proceedings u/s 148 of the I.T. Act, 1961 (produced as annexure C to the counter-affidavit), the ITO had stated that the reason for his belief that income had escaped assessment was that the valuation officer had worked out the investment in cold storage at Rs. 1,46,530 as against the disclosed investment of Rs. 54,856. Shri Hajela argued that the petitioner had disclosed in the assessment for the year 1961-62 an investment of Rs. 54,856 only on the construction of the buildings and that the ITO had in mind only the investment by the petitioner on buildings and not on plant or machinery, that the ITO had proceeded on an erroneous basis that the report of the valuation officer disclosed an investment of Rs. 1,46,530 on buildings, and that the ITO was clearly in error in regarding the investment on wooden staging valued by the valuation officer at Rs. 64,352 as a part of the building.

14. Shri Hajela maintained that the wooden staging in a cold storage should be regarded as a part of the plant and not the building. In support of his contention he relied on the ruling of this court in Commissioner of Income Tax Vs. Kanodia Cold Storage, that the freezing chamber containing insulation material like cork to keep it at appropriate temperature should be regarded as coming within the meaning of "plant" as used in Section 43(3) of the I.T. Act, 1961.

15. Shri Hajela is right, in our opinion, that the wooden staging in the petitioner's cold storage (valued by the valuation officer at Rs. 64,352) cannot be regarded as a part of the building. If the value of wooden staging estimated by the valuation officer at Rs. 64,332 is excluded, the total investment on the buildings of the cold storage, even according to the valuation officer, would be

only Rs. 82,178. Hence, there was no basis for any reasonable belief by the ITO that the petitioner's investment on buildings during the assessment year 1961-62 exceeded the amount shown by him, i.e., Rs. 54,852, by more than Rs. 50,000. Hence, he could not issue a notice u/s 148 of the I.T. Act, 1961, beyond 8 years from the date of the close of the assessment year 1961-62. That notice is clearly beyond time and invalid.

16. Hence, we allow this petition and quash the notice dated July 14, 1976, (annexure IV to the writ petition).

17. In the circumstances of the case, we direct the parties to bear their own costs.