R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 1230 OF 2019

The Swastic Safe Deposit and Investments Ltd .. Petitioner

Versus

The Assistant Commissioner of Income Tax 8(3)(1) & Ors. .. Respondents

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- Mr. J.D. Mistry, Sr. Advocate a/w Mr. M. Agarwal i/by Mr. Atul Jasani for the Petitioner
- Mr. Nirmal C. Mohanty for the Respondents

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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

Reserved on : JUNE 17, 2019.
Pronounced on : JUNE 25, 2019.

ORAL JUDGMENT (Per Akil Kureshi, J.)

1. The petitioner has challenged a notice of reopening of assessment dated 24.3.2018 for the assessment year 2011-12.

2. Brief facts are as under:-

2.1 The petitioner is a Limited Company. During the period relevant to the assessment year 2011-12, one M/s. Savoy Finance and Investments Pvt Ltd had sold shares of M/s. Piramal Healthcare Ltd for

a total consideration of Rs. 322.36 Crores (rounded off) through recognized stock exchange. According to the petitioner, these shares were held by M/s. Savoy Finance and Investments Pvt Ltd for a period in excess of 12 months immediately before sale. In the hands of the said company, therefore, these shares formed long term capital asset in terms of Section 2(29A) of the Income Tax Act, 1961 ("the Act" for short). M/ s. Savoy Finance and Investments Pvt Ltd amalgamated with the petitioner company w.e.f. 1.4.2010 which was approved by the order of this Court dated 26.11.2010.

2.2 The petitioner had also sold shares of M/s. Piramal Healthcare Ltd during the period relevant to the assessment year in question. This had given rise to short term as well as long term capital gain. Short term capital gain was offered to tax and reflected in the return of income filed by the petitioner on 28.9.2011 for the said assessment

year 2011-12 declaring total income of Rs. 57.87 Lakhs (rounded off).

2.3 The return of income filed by the petitioner was accepted without scrutiny in terms of Section 143(1) of the Act. Respondent No. 1 - Assessing Officer, thereafter, issued impugned notice on 24.3.2018 to reopen the petitioner's assessment for the said assessment year 2011.12. Strangely, two days later i.e on 26.3.2018, he issued yet another notice for the same purpose. Copies of these notices are annexed at Exhibit "E" and Exhibit "B" to the petition which the petitioner has challenged in the present petition.

2.4 In order to issue the impugned notices, the Assessing Officer had recorded following reasons:-

> "Information was received from the office of ITO 8(1)(3) Mumbai, wherein it was found that M/s. Savoy Finance and Investments Pvt Ltd being a Non Filer of Return of Income for A.Y. 2011-12 had entered in Sale of Shares;

On further verification of ITS details of M/s. Savoy Finance and Investments Pvt Ltd for F.Y. 2010-11 relevant to A.Y. 2011-12, it is seen that M/s. Savoy Finance and Investments Pvt Ltd has sold shares of M/s. Piramal Healthcare for Rs. 322,36,60,636/- during A.Y. 2011-12. Further it is found that M/s. Savoy Finance and Investments Pvt Ltd has been amalgamated with M/s. Swastik Safe Deposit & Investments Ltd w.e.f 1.4.2010.

The return of income of the assessee was generated from the ITD system. On perusal of the same, it was observed from Schedule C.G. parting to the return of income filed by M/s. Swastik Safe Deposit & Investments Ltd that the assessee has only offered a sum of Rs. 83,34,78,806/- as the full value of consideration against which capital gain of Rs. 57,87,762/- has been offered.

Considering the above fact, I have reasons to believe that the share of M/s. Piramal Health of Rs. 322,36,60,636/- sold by M/s. Savoy Finance and Investments Pvt Ltd which is amalgamated in the assessee company i.e the Swastik Safe Deposit and Investments Ltd has escaped assessment in the hand of the assessee company i.e the Swastik Safe Deposit & Investments Ltd for A.Y. 2011-12, within the meaning of Section 147 of the I.T. Act, 1961.

5. Permission for issuance of notice u/s. 148 as per the provisions of Sec. 151(2) of the I.T. Act, 1961 is solicited."

2.5 Upon being supplied the reasons for reopening of assessment, the petitioner raised objections under communication dated 26.10.2018 in which the petitioner inter alia contended that the shares of M/s. Piramal Healthcare were sold in recognized stock exchange after holding them for more than 12 months. This transaction was subjected to Security Transaction Tax ("STT" for short) and therefore, any gain arising out of sale of shares was exempted from tax under Section 10(38) of the Act and therefore, no income chargeable to tax had escaped assessment. The petitioner pointed out that the computation of income filed along with the return disclosed the exempt long term capital gain of Rs. 599.72 Crores under Section 10(38) of the Act. This included capital gain arising out of sale of shares of M/s. Piramal Healthcare. The petitioner also pointed out that the sale of shares of M/s. Piramal Healthcare fetched Rs. 322.36 Crores whereas consideration showed by the petitioner was Rs. 321.90 Crores

which were attributable to the security transaction tax. In short, the main ground of the petitioner in the objections raised was that no income chargeable to tax had escaped assessment.

2.6 The Assessing Officer disposed of the said objections vide order dated 2.11.2018 asserting that the reason to believe that the income chargeable to tax had escaped assessment did exist. He, however, did not comment on petitioner's contention that the entire receipt was exempt from tax. At that stage, the petitioner filed Writ Petition No. 3390 of 2018 challenging the notice of reopening of assessment. This petition was disposed by an order dated 14.2.2019, relevant portion of which reads as under:-

> "9. It is undoubtfully true that in the present case assessee's return has been accepted without scrutiny and therefore the Assessing Officer can not be stated to have formed any opinion and therefore, the concept of change of opinion would have no applicability. In such a case the Assessing Officer

would have much wider latitude to reopen the assessment and the scrutiny of this Court would be limited. Nevertheless, it is well established principle through series of judgments of this Court and other Courts that even in such a case the requirement that the Assessing Officer forms a belief that income chargeable to tax had escaped assessment must exist. Within this narrow confine, it is always open for the assessee to argue that the reasons recorded by the Assessing Officer lack validity. With this, we may revert back to the facts of the case. It is undisputed that Savoy Finance before its merger with the assessee-company had sold substantial number of shares of Piramal Healthcare for a sale consideration of Rs.322.36 crores. In the return of income filed by the petitioner for the assessment year 2011-12 relevant to the period of sale of shares after merger of Savoy Finance with the petitioner, this sale was not reflected. In the column requiring the petitioner to declare if any capital gain exempt from tax is received, the petitioner showed a figure of "Nil". This is undoubtedly not a correct declaration. This by itself would not be the conclusive of the question whether the proceeds of sale of shares was otherwise taxable as a capital gain and that therefore, reopening of assessment would be necessary. What would be relevant is did Savoy Finance hold the shares which came to be sold later on, for a period in excess of one year before sale. This exercise, we are ofcourse are not inclined to undertake in a writ petition.

10. Minute perusal of the reasons recorded would

show the ground pressed in service by him is that the petitioner had earned capital gain out of sale of shares which was not disclosed and therefore, income chargeable to tax had escaped assessment. This was also the line adopted by the Assessing Officer in the order disposing of the objection. We have perused the detail objections raised by the petitioner and the documents produced alongwith the same and also the order passed by the Assessing Officer disposing of such objections. We do not find that the Assessing Officer had dealt with the contention of the petitioner that the petitioner is in a position to establish that the shares in question were held by Savoy Finance for a period in excess of one year and therefore, there was no liability to pay capital gain tax on the proceeds of sale of shares.

11. In facts of the present case, therefore, we ask the Assessing Officer to consider this objection of the petitioner and give his specific finding through a speaking order. For this limited purpose, we place the matter back before the Assessing Officer. The Assessing Officer shall pass a further order dealing with this specific objection of the petitioner. In facts of the case, the Assessing Officer may give personal hearing to the authorized representative of the petitioner. Further order may be passed preferably within two months from today. For a period of four weeks after such order is communicated to the petitioner, reassessment shall stand stayed. Petition disposed of accordingly. "

2.7 In terms of the said order of the High Court, the

petitioner filed additional submissions before the Assessing Officer on 5.4.2019 and reiterated its position that in facts of the case, it cannot be said that any income in the hands of the petitioner chargeable to tax has escaped assessment. The Assessing Officer passed order dated 12.4.2019 disposing of such objections of the petitioner. In such order, he noted that the return filed by the petitioner was previously accepted without scrutiny. He relied upon the decision of the Supreme Court in case of **Asst. CIT V/s. Rajesh Jhaveri Stock Brokers P Ltd**[1] and held that all issues can be examined during the course of assessment. With respect to the petitioner's central contention of the sale of shares of M/s. Piramal Healthcare held for more than 12 months not giving rise to any taxable gain, he observed as under:-

> "6. The contention of the assessee that the sale of shares of Piramal Healthcare Limited resulted in LTCG exempt from tax and therefore there is no "escapement of income" as such warranting a notice u/s 148 of the

1 (2007) 291 ITR 500 (SC)

Act is examined.

i. As per the submissions made by the assessee as part of its objections, the total capital gains (which includes capital gain of Rs. 289,19,93,081/- on sale of shares of Piramal Health by Savoy) which is arguably exempt is Rs. 599,72,70,602/-. As against this, the Profit on sale of shares appearing in the assessee's audited P&L account is Rs. 13,41,24,534/- (Schedule 7 of the accounts). Thus, it is not clear where this amount of Rs. 599,72,70,602/- (which includes capital gain of Rs. 289,19,93,08/- on the sale of shares mentioned in the reasons for reopening) is appearing in the P&L account of the assessee.

ii. The entire amount of Capital Gains on sale of shares (excluding the benefit of indexation available in calculating Long Term Capital Gains) shall constitute part of the assessee's P&L account and accordingly part of its book profit. The amount is amenable to tax u/s. 115JB of the Act. The assessee is silent about the MAT liability. Thus, there would be income chargeable to tax escaping assessment while calculating the income under S. 115JB of the Act.

iii. It is also seen that while the ITS shows transaction/sale at Rs. 322,36,60,363/-, the statement filed by the assessee as part of the objections shows the total consideration at Rs. 321,90,44,141/-. Thus, there is a difference of Rs. 46,16,222/- which needs to be verified and reconciled. This can only be done in the course of reassessment proceedings.

iv. For this reason, the contention of the assessee that since it has only earned LTCG that are exempted from tax, there is no escapement of income is not correct. Non-disclosure of receipts is prima facie escapement of assessment of income and would require deeper examination and enquiries which cannot be done at the stage of disposing of objections but can only be undertaken in the course of (re)assessment proceedings.

Without prejudice to the above, as directed by the Hon'ble HC, prima facie it appears from the documents submitted by the assessee as part of its objections that the shares of Piramal Healthcare Limited were held by Savoy for a period of more than 12 months immediately preceding the date of transfer. However, the matter requires further investigation / enquiries which can only be undertaken in the course of reassessment proceedings and not at the stage of disposal of objections."

3. This order of the Assessing Officer has given rise to the fresh petition at the hands of the petitioner. Learned counsel for the petitioner submitted that from the material on record, the petitioner was able to demonstrate before the Assessing Officer that no income chargeable to tax had escaped assessment. The reasons recorded by the Assessing Officer for issuing the impugned notice of reassessment, therefore,

lack validity. Even though the return filed by the petitioner was accepted without scrutiny, the impugned notice must be set aside. Learned counsel took us extensively through the documents on record to contend that on the basis of irrefutable material on record, it would be ex facie, established that the shares of M/s. Piramal Healthcare were held by M/s. Savoy Finance and Investments Pvt Ltd for a period in excess of 12 months. These shares were sold through recognized stock exchange upon payment of STT. In terms of Section 10(38) read with Section 2(29A), gain arising out of sale of shares was exempted from tax. Learned counsel relied on several decisions reference to which would be made at a later stage.

4. On the other hand, learned counsel Mr. Mohanty for the Department opposed the petition contending that the Assessing Officer has recorded proper reasons before issuing the impugned notice. There is prima facie material suggesting that the income chargeable to tax had escaped assessment. He pointed out that the return filed by the petitioner was accepted under Section 143(1) of the Act. In

that view of the matter, the Assessing Officer would have much wider latitude to reopen the assessment. Since, the Assessing Officer had not formed any opinion, the principle of change of opinion would not apply. Learned counsel relied on the decisions of the Supreme Court in case of **Rajesh Jhaveri Stock Brokers P Ltd** (supra) and in case of **Raymond Woollen Mills Ltd Vs. ITO & Ors.**[2] in support of his contentions.

5. In the present case, the return of the income filed by the petitioner was accepted under Section 143(1) of the Act without scrutiny. Under the circumstances, as held by the Supreme Court in the case of Rajesh Zhaveri Stock Brokers P Ltd (supra), the Assessing Officer would have much wider latitude in reopening the assessment. Since, no scrutiny assessment was previously framed, the Assessing Officer had no occasion to form an opinion on any of the controversial issues arising out of the return. The principle of change of opinion, therefore, would have no applicability. It is also true that at the stage of issuance of notice, only question would be whether there was relevant material on which a

2 (1999) 236 ITR 34

reasonable person could have formed a requisite belief that income chargeable to tax had escaped assessment. Whether such material conclusively proved the escapement cannot be gone into at that stage. These principles flow from the decisions of the Supreme Court in the case of Rajesh Zhaveri Stock Brokers P Ltd (supra) and Raymond Woollen Mills Ltd (supra).

6. Despite such position, it is also settled through the decisions of the High Courts that even in a case where the return of the income of an assessee is accepted without scrutiny, the fundamental requirement of the income chargeable to tax having escaped assessment must be satisfied. If from the material on record, it can be gathered that this fundamental requirement is not satisfied, the Court would intercept and quash the notice of reopening of assessment since the Assessing Officer would lack the jurisdiction in such a case to reopen the assessment. Reference in this respect can be made to a decision of the Division Bench of this Court in case of **Prashant S. Joshi Vs. ITO (Bom)** in which the Court observed as under:-

"17. Counsel for the revenue submitted before the Court that in the present case, no assessment has taken place and at the stage of section 143(1), there is only an intimation. Reliance is sought to be placed on the judgment of the Supreme Court in Asst. CIT V/s. Rajesh Jhaveri Stock Brokers P. Ltd. [2007] 291 ITR 500. The judgment of the Supreme Court in Rajesh Jhaveri has noticed the difference between the expression `intimation' and `assessment' and the Supreme Court held that in the scheme of things an intimation under section 143(1)(a) cannot be treated as an order of assessment. The Supreme Court held that there being no assessment under section 143(1)(a), the question of a change of opinion, as contended did not arise. The judgment of the Supreme also emphasises what is meant by the expression "reason to believe" and the nature of the belief that is to be formed by the Assessing Officer that the income for any assessment year has escaped assessment. The Supreme Court held that at the stage of the issuance of a notice under section 148, the Assessing Officer must have reason to believe that income has escaped assessment and at that stage an established fact that income has escaped assessment is not required. The Supreme Court held thus (page 511) :-

> "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..... 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 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."

18. The Supreme Court held that so long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render him powerless to initiate reassessment proceedings even when an intimation under section 143(1) had been issued. In other words, when an intimation has been issued under section 143(1), the Assessing Officer is competent to initiate reassessment proceedings provided that the requirements of section 147 are fulfilled. In such a case as well, the touchstone to be applied is as to whether there was reason to believe that income had escaped assessment."

Similar view has been taken by Gujarat High Court in case of **Inductotherm (India) P Ltd Vs. M. Gopalan, Deputy CIT (Guj)**[3] making following observations:-

> "13. Despite such difference in the scheme between a return which is accepted under section 143(1) of the Act as compared to a return of which scrutiny assessment under section 143(3) of the Act is framed, the basic requirement of section 147 of the Act that the Assessing Officer has reason to believe that income chargeable to

3 (2013) 356 ITR 481 (Guj)

tax has escaped assessment is not done away with. Section 147 of the Act permits the Assessing Officer to assess, reassess the income or recompute the loss or depreciation if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. This power to reopen assessment is available in either case, namely, while a return has been either accepted under section 143(1) of the Act or a scrutiny assessment has been framed under section 143(3) of the Act. A common requirement in both of cases is that the Assessing Officer should have reason to believe that any income chargeable to tax has escaped assessment.

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16. It would, thus, emerge that even in case of reopening of an assessment which was previously accepted under section 143(1) of the Act without scrutiny, the Assessing Officer would have power to reopen the assessment, provided he had some tangible material on the basis of which he could form a reason to believe that income chargeable to tax had escaped assessment. However, as held by the apex Court in the case of Asst. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. [2007] 291 ITR 500 (SC) and several other decisions, such reason to believe need not necessarily be a firm final decision of the Assessing Officer."

7. With this background, we may peruse the material on record. As noted, M/s. Savoy Finance and Investments Pvt Ltd before its amalgamation with the petitioner company, had sold shares of M/s. Piramal Healthcare Ltd for a total consideration of Rs. 322.36 Crores. This was through recognized stock exchange and after payment of security transaction tax. Undisputedly, in the return of income filed,

the assessee did not disclose this sale transaction but according to it, since these shares were held by M/s. Savoy Finance and Investments Pvt Ltd for a period in excess of 12 months and the transaction was through recognized stock exchange and after payment of STT, the consideration was exempted from tax under Section 10(38) of the Act. It is also undisputed that in the computation of income filed along with the return, this transaction was duly reflected by the assessee. It was in this background that the assessee has been taking a ground that when the sale consideration did not give rise to any taxable income, mere error or oversight in not disclosing the transaction in the return of income would not give rise to the income chargeable to tax escaping assessment and if this be so, the Assessing Officer had no occasion to reopen the assessment. Through multiple submissions made before the Assessing Officer, the assessee has been pressing this point. The Assessing Officer's response can be best gathered from his order dated 12.4.2019 disposing of said objections after the High Court placed the issue back before the Assessing Officer for considering this specific point. His reaction to the

petitioner's contention in this respect, we have reproduced in earlier portion of the judgment. His objections flowing from the said order can be summerized as under:-

(i) The sale transaction is reported to be worth Rs. 322.36 Crores whereas the statement filed by the assessee along with objections reflected consideration of Rs. 321.90 Crores. Thus, there was difference of Rs. 46.16 Lacs between two figures;

(ii) The assessee was not correct in contending that since long term capital gain from sale of shares was exempted from tax, there was no escapement of income chargeable to tax since in the opinion of the Assessing Officer, non disclosure of the receipt would amount to escapement of income chargeable to tax;

(iii) According to the Assessing Officer, it does appear from the documents on record that shares of M/s. Piramal Healthcare Ltd were held by M/s. Savoy Finance and Investments Pvt Ltd for a period of more than 12 months immediately preceding the date of transfer. However, in his opinion, the matter requires further examination;

(iv) Even if for normal computation, the sale consideration is exempt from tax, the same would form part of the assessee's book profit for the purpose of computing tax under Section 115JB of the Act.

8. All the four objections raised by the Assessing Officer can be dealt with on the basis of the documents on record.

9. In so far as objection No. (i) is concerned, the same is a minor difference of Rs. 41.16 Lacs between the transaction amount of sale of shares and one contained in the statement filed by the assessee with objections. As correctly pointed out by the learned counsel for the petitioner, this represents the brokerage component and has nothing to do with the taxability of the income.

10. In so far as objection No. (ii) is concerned, the Assessing Officer is plainly incorrect in law. Mere non-disclosure of receipt would not automatically imply escapement of income chargeable to tax from assessment. There has to be something beyond an unintentional oversight or error on the part of the assessee in not disclosing such receipt in the return of income. In other words, even after non-disclosure, if the documents on record conclusively establish that the receipt did not give rise to any taxable income, it would not be open for the Assessing Officer to reopen the assessment referring only to the non disclosure of the receipt in the return of income.

11. In the third ground, the Assessing Officer virtually conceded to the assessee's contention that the shares of M/s. Piramal Healthcare were held by M/s. Savoy Finance and Investments Pvt Ltd for a period more than 12 months immediately preceding the date of the transfer. Having done so, he thereafter, resorts to further inquiries that may be needed during the course of assessment. As held repeatedly by this Court and other Courts, reopening of assessment cannot be based on fishing or rowing inquiries or for carrying out further investigation. If there was any prima facie material suggesting that income chargeable to tax had escaped assessment, surely, the Assessing Officer was entitled to carry out further inquiries. In the present case, however, the Assessing Officer does not dispute the following vital aspects:-

(a) The shares of M/s. Piramal Healthcare Ltd were held by M/s. Savoy Finance and Investments Pvt Ltd for a period of more than 12 months immediately preceding the date of transfer;

(b) The transaction of sale of shares was carried out through recognized stock exchange and;

(c) The STT was paid on said transaction;

Plainly, therefore, in terms of Section 10(38) of the Act, such income was exempt from tax.

12. The Assessing Officer's sole surviving ground is that for the purpose of computing assessee's book profit under Section 115JB of the Act, such receipt would not be excluded. In this context, learned counsel for the Department is correct in drawing our attention to the first proviso to Section 10(38) of the Act. Section 10(38) of the Act exempts from tax any income arising from the transfer of long term capital asset, being an equity share in a company subject to the conditions contained therein. The first proviso to Section 10(38) provides that the income by way of long term capital gain of a company shall be taken into account in computing the book profit and income tax payable under Section 115JB of the Act. Learned counsel is also correct in contending that this objection raised by the Assessing Officer in the order disposing of the objections does not travel beyond the reasons recorded by him in reopening the assessment. We have reproduced the reasons in which the Assessing Officer has pointed out that M/s. Savoy Finance and Investments

Pvt Ltd had sold shares of M/s. Piramal Healthcare Ltd for a consideration of Rs. 322.36 Crores. In the return filed by the assessee, as an amalgamating company, the assessee had only offered a sum of Rs. 83.34 Crores as full value of consideration. Thus, he had reason to believe that said consideration of Rs. 322.36 Crores had escaped assessment. These reasons are broad enough to include escapement of income chargeable to tax whether under the normal provisions or under the MAT provisions. Learned counsel for the assessee is not correct in contending that within the scope of reasons recorded, this ground is not available to the Assessing Officer.

13. The question, however, is even on this ground whether the Assessing Officer can succeed and even prima facie establish that the income chargeable to tax had escaped assessment. The documents on record would show that the assessee had submitted its computation of book profit for the purpose of Section 115JB of the Act in which under caption "other income" sum of Rs. 13.41 Crores (rounded off) was included for computation of such profit. Same was

elaborated in Schedule 7 and pertained to profit on sale of shares. Thus, the assessee had for the purpose of computation of its book profit in terms of Section 115JB of the Act, accounted the profit arising out of the sale of share which was in any case in tune with the first proviso to Section 10(38) of the Act and corresponding provisions of Section 115JB of the Act. At this stage, learned counsel for the Department submitted that this requires examination which can be done only during the course of reassessment. We are afraid such a contention will not be valid in view of the decision of the Supreme Court in case of **Apollo Tyres Ltd Vs. CIT**[4] in which it was held that while determining the book profit under Section 115J (which is a predecessor provision to Section 115JB), the Assessing Officer cannot recompute the profit in the Profit & Loss Account. It was held that the Assessing Officer cannot tinker with the audited accounts of the assessee while computing book profit under Section 115JB of the Act.

14. The above discussion would show that even prima facie, the counsel for the Assessing Officer was unable to

4 [2002] 255 ITR 273

demonstrate before us on the grounds stated and the reasons recorded that income chargeable to tax had escaped assessment. His i.e. Assessing Officer's attempt of further verification would amount to rowing inquiry. There is nothing on record prima facie suggesting that the profit out of sale of shares was taxable under the normal provisions or that it was excluded for the purpose of computing book profit under Section 115JB of the Act. Under these circumstances, the impugned notice for reassessment is quashed. Petition is allowed and disposed of.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**