

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 14021 of 2019**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 16197 of 2019**

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BANKIM BHAGWANJI CHAAUHAN  
Versus  
INCOME TAX OFFICER, WARD 1  
=====

Appearance:

DARSHAN R PATEL(8486) for the Petitioner

MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 1  
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**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 23/03/2021**

**COMMON ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. As common question of law and fact arise in both the writ applications with respect to different assessee for the same assessment year, therefore, both the writ applications are heard and disposed of by this common judgment and order.
2. By filing these writ applications under Article 226 of the Constitution of India, the writ applicant seeks to challenge the notice dated 20.2.2019 issued by the respondent under Section 148 of the Income Tax Act, 1961 (for short, 'the Act') seeking to reopen the applicants income tax

assessment for the A.Y. 2012-13.

3. Brief facts of the present case are as under:

3.1 Both the writ applicants namely Bankim Chauhan and Dipak Chauhan are the real brothers. They had sold their immovable property valued at Rs.64,00,000/- on 27.06.2011 by way of the registered sale deed. Both the brothers received equal share and accordingly an amount of Rs.32,00,000/- credited in their bank accounts. Both the writ applicants filed their return of income on 24.07.2012 for the AY 2012-13 and same was processed under Section 143(1) of the Act. On 13.01.2017, the respondent served a letter to both the writ applicants stating that on the basis of Annual Information Report ('AIR' for short), they had received Rs.64,00,000/-, through the transaction of sale of property, however, no return of income have been filed by them. Both the writ applicants have filed their reply vide letter dated 24.10.2017 *inter-alia* stating that they had filed their return of income tax on 24.07.2012 and also enclosed copy of return for the perusal of the revenue. On 12.03.2019, the respondent called for the details of the transactions. Pursuant to query dated 12.03.2019, the writ applicants complied with said letter and furnished necessary details with regard to sale transactions, invoices and cost of improvement and index

cost of acquisition of property.

3.2 In the aforesaid background facts, the Assessing Officer, reopened the assessment under Section 147 of the Act for the AY 2012-13 by issuing impugned notice dated 20.02.2019 under Section 148 of the Act. On 24.04.2019, the writ applicants requested the respondent to provide reasons for reopening. The respondent vide letter dated 30.04.2019 provided the reasons for reopening of the assessment. Meanwhile, vide letter dated 01.07.2019, the writ applicants furnished necessary documents and filed their objections vide letter dated 13.07.2019 to the reasons recorded for reopening of the assessment. The respondent rejected the objections raised by the writ applicants vide letter dated 19.07.2019. For the sake of convenience, the reasons recorded in case of Bankim Chauhan (SCA No. 14021 of 2019) is considered, which reads as under:-

*“2. The reasons recorded for reopening the assessment for AY 2012-13 is as under:-*

*1. The assessee is an individual. The address as per ITBA is 62/1, Shailesh Park Society, Chhapra, Navsari. The PAN of assessee is AAHPC5796G.*

*2. Information made available with this office reveals that assessee alongwith another 2 co-owner have sold immovable property on 27.6.2011 for total consideration of Rs.64,00,000/-. There are 2 persons involved in the transaction. Accordingly, assessee's share comes to*

*Rs.32,00,000/-.*

*3. On going through the return filed by the assessee for A.Y. 2012-13, it is noticed that assessee has shown consideration received of Rs.32,00,000/-. After claiming cost of acquisition of Rs.10,17,641/-, cost of improvement of Rs.17,11,965/- and deduction U/s. 54 of Rs.3,60,000/-, the assessee has offered capital gain of Rs.1,10,394/- only for taxation.*

*4. Information made available with this office reveals that assessee alongwith other owner have sold immovable property on 27.6.2011 for total consideration of .64,00,000/-. There are 2 persons involved in the transaction. Accordingly, assessee's share comes to Rs.32,00,000/-. After claiming cost of acquisition of Rs.10,17,644/-, cost of improvement of Rs.17,11,965/- and deduction U/s.54 of Rs.3,60,000/-, the assessee has offered capital gain of Rs.1,10,394/- only for taxation.*

*5. On going through the return, it is noticed that assessee has offered an amount of Rs.1,10,394/- only as capital gain for taxation. However, no documentary proof has been furnished with reference claim of cost of improvement and deduction claimed U/s.54. Therefore, there is escapement of income to the tune of Rs.20,71,965/as no documentary proof has been submitted with regard to claim of cost of improvement of Rs. 17,11,965/- and deduction u/s. 54 of Rs. 3,60,000/-.*

*6. In order to explain the transaction, opportunity was accorded by this office to the assessee vide this office letter dated 12.3.2019. However, the assessee has not responded to this opportunity.*

*7. In view of the above, the assessee's case falls within the explanation 2(b) of the section 147 of the I.T. Act, i.e. "where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has*

*understated the income or has claimed excessive loss, deduction, allowance or relief in the return,"As such, I have a reason to believe that an amount of Rs.20,71,9651/- out of sale proceeds of property as stated above, has escaped assessment in the hands of the assessee for the year under consideration. I am satisfied that the case of the assessee is a fit case for action u/s 147 of the Act by reason of assessee's failure to disclose fully and truly all the material facts necessary for assessment."*

- 3.3 Being aggrieved by the order of disposal of objections against the notice for reopening of the assessment, the writ applicants have come up before this Court by filing present writ applications.
4. We have heard Mr. Darshan Patel, the learned advocate appearing for the writ applicants and Mrs. Kalpana Raval, the learned Standing Counsel assisted by Mr. Nikunt Raval, the learned advocate appearing for the revenue.
5. Mr. Darshan Patel, the learned advocate appearing for the writ applicants raised the following contentions :
- (a) It was submitted that the impugned notice is bad in law and without jurisdiction as the conditions precedent for the reopening under Section 147 of the Act are not satisfied.
- (b) Referring to the reasons recorded, it was submitted that mainly the reopening sought to be reopened on the ground

that the writ applicants failed to file their return of income and did not have furnished supporting proofs with regard to the claim of cost of improvement and deduction under Section 54 of the Act. In these background facts, it was submitted that the Assessing Officer has recorded the reasons by placing total incorrect and irrelevant facts for reopening of the assessment since the writ applicants had duly furnished all details and documentary evidences. Therefore, the reasons lack validity and on this count the impugned notice is required to be quashed and set aside.

- (c) It was submitted that the entire exercise of reopening under Section 147/148 is in violation of settled proposition of law since the same reflects mere change of opinion on the part of the Assessing Officer. In this regard, it was submitted that in pursuance of the query letter, the writ applicants had furnished detailed reply along with documents like copy of ledge accounts of construction in respect of cost of improvement and also submitted bank passbook showing the invoices in specified security of National Highway Authority of India for claiming deduction under Section 54 of the Act. After submitting the reply and documents, the Assessing Officer did not raise any further queries, as he satisfied with the compliance made by the writ applicants. However, now respondent seeks to reopen the assessment on the same set

of facts and circumstances without their being any tangible material against the writ applicants.

- (d) It was submitted that the reasons recorded for reassessment are too vague and no independent findings are recorded. The Assessing Officer has recorded his satisfaction only on the basis of AIR without carrying out his independent inquiry and hence, he assumed the jurisdiction only on borrowed satisfaction, which is impermissible in law.
- (e) In support of submissions, the learned counsel has relied on the following decisions :
- (i) decision rendered in Special Civil Application No. 21030 of 2017 dtd 21.03.2018 in case of Mumtaz Haji Mohmad Memon Vs. Income Tax Officer, Ward 6(1)(1);
  - (ii) decision reported in (2018) 92 taxmann.com 74 (Gujarat) I cae of Sunrise Education Trust Vs. Income-tax Officer (Exemption);
  - (iii) decision rendered in Special Civil Application No. 15475 of 2015 dtd 11.01.2016 in case of Manishkumar Pravinbhai Kiri Vs. Asst. Commissioner of Income Tax;
  - (iv) decision rendered in Special Civil Application No. 16171 of 2017 in case of Vijay Harishchandra Patel Vs. Income Tax Officer, Ward (3)(5);
  - (v) decision reported in (2019) 101 taxmann.com 259(SC), in case of Principal Commissioner of Income tax-5 Vs.

Manzil Dinesh Kumar Shah;

(vi) decision reported in 655 (2014) 52 taxmann.com. 141 (Gujarat), in case of India Gelatine and Chemicals Ltd Vs. Assistant Commissioner of Income tax (no.2);

6. In view of the aforesaid contentions, Mr. Darshan Patel, the learned advocate submitted that the reopening of the assessment for the AY 2012-13 is without jurisdiction and hence, notices deserve to be quashed and set aside.
7. On the other hand, the learned Standing Counsel Mrs. Kalpana Raval, appearing for the revenue has vehemently opposed the writ applications contending that the Assessing Officer has justified to reopen the assessment as the assessee failed to submit the necessary supporting evidence with regard to claim of cost of acquisition, cost of improvement and deduction claimed under Section 54 of the Act. Thus, in absence of any explanation on the part of the assessee, the Assessing Officer has reasoned to believe that income to the extent of assessee's claim of cost of acquisition, cost of improvement and deduction claimed under Section 54 of the Act has escaped assessment and chargeable to tax.
8. Mrs. Kalpana Raval, learned Standing Counsel for the revenue submits that there being no merits in the writ



applications, the same deserve to be dismissed.

9. Having heard the learned counsel for the respective parties and having gone through the materials on record, the only question falls for our consideration is that whether the revenue is justified in reopening the assessment for the year under consideration?
  
10. A plain reading of reasons recorded show that the claim of cost of acquisition, cost of improvement and deduction claimed under Section 54 of the Act is subject matter of present case. The assessee in both the cases being the co-owners of the property situated at Navsari, which had been sold of on 27.06.2011 by way of registered sale deed and the consideration was Rs.64,00,000/-. Both the assessee being co-owners of the property, had shown the amount of sale consideration received in their respective part, in their return of income and copy thereof has been placed on record. The record indicates that the assessee had replied the query letter dated 13.02.2017 stating inter-alia that they have offered the long term capital gain for taxation after claiming deduction as per their share in the immovable property. Vide letter dated 12.03.2019, revenue had called for details with regard to claim of cost of acquisition, cost of improvement and claim under Section 54 of the Act and in pursuance of said letter, both the

assessee had furnished necessary details vide letter dated 20.03.2019. It is the case of the revenue that on 19.03.2019, the reasons for reopening of the assessment had been recorded, whereas, the reply along with details had been received to their office on 22.03.2019. Under such circumstances, the day when reasons for reopening were recorded, no any details as called for were supplied by both the assessee.

11. After close scrutiny of the correspondence made between the assessee and revenue, we are of the view that the stand of the revenue with regard to non-filing of the necessary particulars are factually incorrect. It appears from the record that after the impugned notices issued under Section 148 of the Act, and before filing of the objections against the reasons recorded, both the assessee had furnished necessary details/documents in support of their claim of cost of acquisition, cost of improvement and deduction claimed under Section 54 of the Act. Therefore, the assessee nowhere failed to disclose the necessary facts with regard to their assessment. It is an admitted fact that both the assessee have filed their return of income for the year under consideration, whereby, they had declared the amount received from the sale transactions and the claim with respect to cost of acquisition, cost of improvement and investment made in National Highway Authority for

which they have claimed deduction under Section 54 of the Act. It is pertinent to note that while passing the order of disposing of objections against the reasons recorded, the authority failed to consider the necessary disclosures made in the return of income and the details / documents furnished by the assessee in pursuant of the query letter issued by the Assessing Officer.

12. Under the circumstances, we are of the view that while recording the reasons for reassessment, the Assessing Officer failed to consider the necessary details which were on the record and without application of mind, the Assessing Officer has recorded the reasons in mechanical manner. Thus, the reasons lack validity and Assessing Officer had proceeded on erroneous premise.
13. For the reasons recorded hereinabove, we are of the view that in the case on hand, considering the facts and circumstances of the case, there is no basis or jurisdiction for the respondent to form a belief that income of assessee chargeable to tax for the year under consideration has escaped assessment within the meaning of Section 147 of the Act.
14. In the result, both the writ applications are allowed. The impugned notice dated 27.3.2019 in Special Civil

Application No. 14021 of 2019 and notice dated 29.03.2019 in Special Civil Application No. 16197 of 2019 are quashed and set aside. No order as to costs.

**(J. B. PARDIWALA, J)**

**(ILESH J. VORA, J)**

P.S. JOSHI.