IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.11.2022

\+ **W.P.(C) 13918/2022 & CM APPL. 42547/2022**

DEEPAK KAPOOR ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-2, NEW DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Piyush Kaushik, Adv.
For the Respondents : Mr. Sanjay Kumar & Ms. Easha, Advs.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner (hereafter '**the assessee**') has filed the present petition under Article 226 / 227 of the Constitution of India impugning a notice dated 31.03.2021 (hereafter '**the impugned notice**') under Section 148 of the Income Tax Act, 1961 (hereafter '**the Act**'). By the impugned notice, the assessee was called upon to file the return of income for the relevant assessment year within a period of thirty days from the said date, on the ground that his income chargeable to tax, for the Assessment Year 2016-17, has escaped assessment within the meaning of Section 147 of the Act.

2. The Assessing Officer (hereafter '**the AO**') believed that a part of the assessee's income, by way of capital gains resulting from the sale of property at Vasant Vihar, had escaped assessment.

It is the assessee's case that his return of income duly disclosed the transaction regarding sale of property and the computation of capital gains resulting from the said transaction. The assessee's return was picked up for scrutiny and his income was assessed under Section 143(3) of Act. The AO did not accept the assessee's computation and recomputed the capital gains. The assessee, thus, claims that the impugned notice, in effect, seeks to re-examine the assessment, which is impermissible.

3. The only question that arises for consideration in this petition is whether the issue of the impugned notice is occasioned by a possible change of opinion and seeks to review the assessment order.

4. The controversy in the present case relates to the assessment of income by way of long-term capital gains arising from sale of immovable property bearing no. A-53, Vasant Marg, Vasant Vihar, New Delhi-110057 (hereafter '**the Property'**). According to the assessee, the Property belonged to his parents in equal share. He acquired the Property by virtue of a will dated 17.06.1999 (hereafter '**the Will'**) executed by his father, late Sh. B.S. Ramdas Kapoor and by virtue of a Gift Deed dated 10.02.2006 (hereafter '**the Gift Deed**') executed by his mother Mrs. Achla Kapoor. The assessee sold the said Property at a consideration of ₹60,00,00,000/- (Rupees Sixty Crores Only) and it was conveyed to the Vendee by a Sale Deed executed on 28.04.2015.

5. One of the sisters of the assessee instituted a suit in this Court [being CS(OS) No.1176/2007 captioned ***Mrs. Meera Dhingra v. Mr. Deepak Kapoor & Ors.***], claiming share in the assets (including the Property), which the assessee claimed were

inherited/received from his parents by virtue of the Will and the Gift Deed. In the said proceedings, this Court passed certain orders directing *status quo* in respect of the suit assets (including the Property).

6. The assessee and his siblings settled their disputes in terms of a settlement deed, whereunder the assessee agreed to pay each of his three siblings a sum of ₹6,40,00,000/- (Rupees Six Crores Forty Lacs Only) and they agreed not to contest the Will and the Gift Deed.

7. The aforementioned suit was decreed in terms of the said settlement by an order dated 25.02.2015 passed by this Court.

8. The assessee filed his return of income for the Assessment Year 2016-17 on 30.06.2016, declaring a total income of ₹26,95,71,419/- (Rupees Twenty-six Crores Ninety-five Lacs Seventy-one Thousand Four Hundred and Nineteen Only). The same included a sum of ₹25,86,67,241/- as capital gains arising from the sale of the Property.

9. In the computation of income filed along with the return, the assessee claimed ₹11,06,66,759/- as costs of acquisition of the Property, being the fair market value as on 01.04.1981, enhanced on the basis of Inflation Index published by the Income Tax Authorities for the said purpose. The assessee also claimed a sum of ₹19,20,00,000/- paid to his three sisters in terms of the settlement as decreed, as expenditure incurred wholly and exclusively in connection with the Property. In addition, the assessee also claimed brokerage and other charges amounting to ₹3,86,66,000/-.

10. The assessee's return was picked up for scrutiny and the AO issued a notice dated 06.07.2017, under Section 143(2) of the Act, *inter alia,* stating that the following two issues have been identified for examination:

> "i. Whether receipt of foreign remittance has been correctly offered for tax.
> ii. Whether capital gains / loss is genuine and has been correctly shown in the return of income."

11. Subsequently, on 06.09.2018, the AO issued another notice under Section 142(1) of the Act seeking further information, *inter alia*, regarding long-term capital gains (Schedule CG of ITR). This was followed by another notice dated 03.12.2018 under Section 142(1) of the Act, *inter alia,* calling upon the assessee to provide the following information:

> "1. Please provide the copy of valuation report showing the value (land cost, cost of construction and cost improvement) which was taken by you as on 01/04/1981 for the purpose of computation of capital gain.
>
> 2. Please provide the documentary evidence (in support of land cost, cost of construction and cost improvement) submitted by you before the registered valuer, who has under taken the valuation of the property."

12. The assessee responded to the aforesaid notice by a letter dated 12.09.2018, enclosing therewith the various documents including the Will dated 17.06.1999; the Gift Deed dated 10.02.2006; the order dated 25.02.2015 passed by this Court in CS(OS) No.1176/2007; Agreement to Sell dated 28.04.2015; calculation of capital gains; and Certificate under Section 197 of the Act.

13. During the course of the assessment proceedings, the assessee filed a letter dated 07.12.2018 enclosing therewith copy of the Valuation Report regarding the fair market value of the Property as on 01.04.1981. The assessee also set out the details of the expenses incurred in connection with the transfer of the Property. The relevant extract of the said letter is set out below:

> **"<u>Expenses incurred in connection with Transfer:-</u>**
>
> The assessee has claimed following expenses incurred in connection with transfer:
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> | | | |
> |---|---|---|
> | a. | Amounts paid to sisters as per Court order for for perfecting the title and be the absolute owner of the property | Rs.19,20,00,000/- |
> | b. | Legal expenses for above purposes | Rs.2,74,30,000/- |
> | c. | Brokerage on sale | Rs.1,12,36,000/- |
>
> With regard to the amounts paid to sisters, the assessee submits that the property was succeeded by Mr. Deepak Kapoor after the death of his father under will dated 17.06.1999 and also via gift deed dated 10.02.2006 from his mother. For selling the property, in 2007, the assessee filed petition u/s 276 of the Indian Succession Act for grant of Probate of will dated 17.06.1999 executed by his father before the Hon'ble Court of District Judge, Delhi. One of the sister of assessee namely Mrs. Neelam Amin duly filed 'No Objection' in relation to the execution of the will.
>
> However, one sister namely Mrs. Meera Dhingra filed a suit for declaration, partition, possession etc. before the Hon'ble High Court of Delhi against assessee in respect of the assets left behind by the parents of assessee which is also supported by two other sisters of the assessee namely Mrs. Vijay Girdhar and Mrs. Deepika Batra who also staked to a share in property which is subject matter for the year under consideration. Thus the WILL was under challenge.
>
> As a result of the above claim of the sisters, the Hon'ble High Court passed order of injunction restraining the sale

of said property on 12.07.2007 and 08.04.2009. Copy of the orders has already been filed by assessee. As a result of the above injunction, the assessee could not sold its property.

The assessee was following through his advocates however could not get the order removing injunction. Ultimately in year 2014, the above said case was amicably settled / compromised between the assessee and his sisters wherein the sisters agreed to make the assessee absolute and exclusive owner of the said property against a consideration of Rs.6.40 cr. to each for three sisters namely Mrs. Meera Dhingra, Mrs. Vijay Girdhar and Mrs. Deepika Batra.

As a result of the above settlement, the Hon'ble Delhi High Court on 07.11.2014 passed order in which the injunction was vacated by the Court and the assessee was permitted to enter into an agreement to sell with any prospective buyer as a condition that assessee has to pay / deposit before Court, the total sum of Rs.19.20 crs. payable to three sisters on or before 28.02.2015.

After the above Court order, the assessee entered into an agreement to sale with M/s Hind Samachar Ltd. for a consideration of Rs.60 crs. Out of the said consideration, the buyer i.e. M/s Hind Samachar Ltd. deposited three demand drafts for Rs.6.40 crs. each in favour of three sisters before the Court. Copy of letter from buyer, M/s The Hind Samachar Limited in enclosed.

With regard to the above proceedings, the assessee has incurred legal expenses to get the property title free from all injunctions and claims and encumbrances after which only the assessee was able to sell the property that too after a long gap of 8 years i.e. from 2007 to 2015. The sale deed in the recital has elaborately mentioned the above said facts. Further the assessee has paid brokerage / commission to the broker for services rendered in connection with arranging / managing the sale transactions. Copy of relevant payment details are enclosed.

In the return of income, the assessee has shown total sale consideration of Rs.60 crs. and claimed the above amount

> as expenses incurred wholly and exclusively in connection with transfer for perfecting the title and be the absolute owner of this property. The amounts paid are wholly and exclusively related to the transfer of the property and should be allowed as expenditure u/s 48 of the Income Tax Act while calculating the capital gains.
>
> Based on the above facts submitted by the assessee, it was not possible for the assessee to sell the property without payments of above sum as per the direction of the Hon'ble Delhi High Court. Therefore the same should be allowed as expenses incurred in wholly and exclusively in connection with transfer u/s 48 of the Income Tax Act……"

14. The assessee also referred to various decisions in support of his contention that he was entitled to claim deduction in respect of amounts spent to rectify the defects in the title of the Property or to remove encumbrances. The assessee claimed that the amount paid by him to his siblings pursuant to the settlement as well as legal expenses incurred to contest the proceedings were liable to be deducted in computing the long-term capital gains chargeable to tax.

15. On examination of the statements filed by the assessee, the AO issued a Show Cause Notice dated 21.12.2018 as the AO was of the view that the benefit of indexation would be available only in respect of the assessee's share of the Property and not on the amount of ₹19,20,00,000/-, which was paid by the assessee to his sisters in terms of their *inter-se* settlement.

16. The assessee responded to the said show cause notice and contested the AO's stand that he was not entitled to the benefit of indexation in determining the costs of acquisition of the Property. The AO found that the valuation of the Property as on 01.04.1981 was arbitrary and also obtained copies of the sale deed in respect of another property in Vasant Vihar, New Delhi, which was sold

in the year 1981-82. The AO did not accept the assessee's stand that he was entitled to the benefit of indexation in respect of the entire property. According to him, the benefit of indexation was allowable only on 68% value of the Property. The AO, accordingly, assessed that the capital gains were higher by ₹9,83,81,624/- as compared to the income declared by the assessee. Thus, the AO assessed the income chargeable to tax by making addition of ₹9,83,81,624/-. The operative part of the assessment order dated 30.12.2018 reads as under:

> "**5.5. With the above remarks the capital gain is computed as under:**
>
> | | | **(in Rs.)** |
> |---|---|---|
> | | **Sale Consideration** | **60,00,00,000/-** |
> | Less | Indexed cost of acquisition 1/3rd share (land 1136460 x 1081/100 | 1,22,85,135/- |
> | Less: | Expenditure wholly & exclusively in connection with transfer | 23,06,66,000/- |
> | | Total Long Term Capital Gain | 35,70,48,865/- |
> | Less | Declare in ITR | 25,86,67,241 |
> | | Addition | 9,83,81,624/- |
>
> Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is initiated separately for furnishing inaccurate particulars of income."

17. The assessee appealed the assessment order before the Commissioner, Income Tax (Appeal).

18. By an order dated 26.07.2019, the CIT (Appeal) partly allowed the said appeal. It accepted that the assessee was entitled to indexation benefit for the entire property, however, it did not accept the assessee's valuation as to the fair market value of the Property as on 01.04.1981.

19. The assessee received the impugned notice dated 31.03.2021 and responded to the same by a letter dated 21.04.2021 stating that his return of income as originally filed be treated as his return pursuant to the impugned notice. He also sought reasons for seeking reopening of the said assessment. After a few reminders, the AO provided the reasons for seeking re-opening of the assessment. The said reasons indicate that the AO seeks to recompute the capital gains at ₹65,72,78,865/- by making a further addition of ₹30,02,30,000/- which, according to the AO, is income that has escaped assessment.

Submissions

20. Mr. Kaushik, learned counsel appearing for the assessee, has referred to the various decisions in support of his contention that re-opening of assessment was not permissible merely on the ground of change of opinion.

21. Mr. Kumar, learned counsel appearing for the respondent, contended that the notice for seeking re-assessment has been issued on the basis of audit objections. He contends that the same constitutes tangible material on the basis of which assessments can be re-opened. He referred to the decision of the Supreme Court in ***Commissioner of Income Tax v. P.V.S. Beedies Pvt. Ltd.: 237 ITR 13 SC*** and contended that an assessment could be reopened on the basis of any factual information given by the internal auditors. He submitted that in the present case, the auditor had pointed out that the income had escaped assessment as the legal expenses incurred by the assessee in contesting the suit filed by one of his sisters was not justifiable and should not have been allowed. He further contended that the amount of ₹19,20,00,000/-

paid by the assessee to his sisters could not be claimed as expenses as the said payments were neither in the nature of costs for acquisition / improvement nor could be considered as transfer expenses. He also stated that since the circle rate of the Property was ₹68,08,00,000/-, the same was required to be taken as sale consideration in terms of Section 50C of the Act.

Reasons & Conclusions

22. At the outset, it is relevant to note that the proposed addition of ₹30,02,30,000/- is, mainly, on two counts. First, that the circle rate of the Property is ₹68,08,00,000/- and therefore, the said amount was required to be taken as sale consideration; and second, that the expenses claimed are not justifiable.

23. The issue regarding computation of capital gains arising from the sale of the Property was identified by the AO for a detailed examination. The notice dated 06.07.2017, issued under Section 143(2) of the Act, expressly stated that one of the two issues identified for examination was whether the capital gains/loss is genuine and had been correctly shown in the return of income. By a subsequent notice dated 03.12.2018, the assessee was called upon to, *inter alia,* provide details in respect of "*Large long term capital gains [Schedule CG of ITR]*". The assessee responded to the notices. He explained that the Property was a family property purchased by his father in the year 1969. He had acquired the same through his parents. There was some dispute among the family members regarding his acquisition of the said Property by the Will executed by his father and the Gift Deed executed by his mother. In view of the dispute, the Delhi High Court had restrained sale of the Property. The said dispute was subsequently resolved. In terms of the settlement, the assessee was

required to pay ₹6.4 crores to each of his three sisters. He had, *inter alia,* submitted as under:

> "The property was subject matter of dispute and there was restraint from selling the property imposed by Hon'ble Delhi High Court by an injunction order. This being the set back the property could fetch was Rs. 60 crs. from a willing buyer which is considered as the fair market value of the property."

24. The copy of the Agreement to Sell dated 28.04.2015 as well as the Conveyance Deed was also provided to the AO in response to his demand for the documentary evidence. The Sale Deed clearly indicated that the value of the Property at the circle rate was ₹68,08,00,000/- (Rupees sixty-eight crores and eight lacs only). Although, the assessment order does not refer to the fact that the value of the Property as per the circle rate was higher than the consideration received, it is apparent that the AO had examined the computation of capital gains, including the question as to the fair market value of the Property. The assessee had explained why, according to him, ₹60 crores were required to be considered the fair market value. It is apparent that the AO had accepted the said explanation as he did not raise any further query regarding the same. However, the AO was not satisfied with the cost of acquisition of the Property and had undertaken a detailed investigation in that regard including by retrieving information from the Delhi archives.

25. Given the nature of enquiry, it is difficult to accept that the AO had not considered the question of the fair market value.

26. The cost of assets and expenses in connection with transfer of the Property and for perfecting title were also subject matter of a detailed scrutiny during the assessment proceedings. The

assessee was specifically called upon to furnish the documentary evidence in support of cost of land, cost of construction and cost of improvement. The assessee had responded to the same by providing details and the manner in which costs of acquisition had been computed. He had also claimed the amount of ₹19,20,00,000/- paid by him to his sisters as expenses for perfecting the title and in connection with the transfer of the said Property. In addition, he had also deducted an amount of ₹2,74,30,000/-, being the legal expenses incurred in connection with the suit instituted by his sisters.

27. The AO had examined the statements and elaborately dealt with the question whether indexation was available in respect of the amount of ₹19,20,00,000/- paid by the assessee to his sisters. The AO had recomputed the capital gains by making an addition of an amount of ₹9,83,81,624/- by reducing the costs of acquisition as claimed by the assessee. The question whether the AO was correct in accepting that the amount of ₹19,20,00,000/- paid by the assessee was required to be deducted from the total consideration received from the vendee, is not material. The principal question is whether the AO had examined the computation of income by way of long-term capital gains. Undisputedly, he had.

28. The assessment cannot be reopened only for the reason that the AO has changed his view on the question of the fair market value or whether the amount paid by the assessee to his sisters was deductible from the total consideration.

29. In ***CIT v. Kelvinator of India Ltd.: (2002) 256 ITR 1***, a Full Bench of this Court had held as under:

> "**14.** The scope and effect of the newly substituted section 147 with effect from April 1, 1989, by the

Direct Tax Laws (Amendment) Act, 1987, as subsequently amended by the Direct Tax Laws (Amendment) Act, 1989, with effect from April 1, 1989, as also of sections 148 to 152 have been elaborated in the departmental Circular No. 549, dated October 31, 1989…..

xxxx xxxx xxxx

36. From a perusal of clause 7.2 of the said circular it would appear that in no uncertain terms it was stated as to under what circumstances the amendments had been carried out, i.e., only with a view to allay fears that the omission of the expression "reason to believe" from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion.

37. It is, therefore, evident that even according to the Central Board of Direct Taxes a mere change of opinion cannot form the basis for reopening a completed assessment.

xxxx xxxx xxxx

39. …..A statute conferring an arbitrary power may be held to be ultra vires article 14 of the Constitution of India. If two interpretations are possible, the interpretation which upholds constitutionality, it is trite, should be favoured.

40. In the event it is held that by reason of section 147 if the Income-tax Officer exercises his jurisdiction for initiating a proceeding for reassessment only upon a mere change of opinion, the same may be held to be unconstitutional. We are therefore of the opinion that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion.

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42. …..An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of

> assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong."

30. The said decision was upheld by the Supreme Court in ***CIT v. Kelvinator of India Ltd.: (2010) 320 ITR 561***. Further, the Supreme Court observed as under:

> " **5.** …..However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be *per se* reason to reopen.
>
> **6.** We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.
>
> **7.** One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the

> conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief….."

31. The assessee had made full disclosure regarding the facts and circumstances in which the said amount was paid. It is obvious that the AO had considered the allowability of such deduction. The AO now seeks to re-assess the assessee's income on the ground that the amount of ₹19,20,00,000/- paid by the assessee to his sisters was not deductible from the sale consideration for the purpose of computing capital gains. This is clearly a case of change of opinion.

32. It is also relevant to note that, in the assessment proceedings, the assessee had relied on various decisions including the decision of the Madras High Court in ***V. Lakshmi Reddy v. The Income Tax Officer: 241 CTR 364 (Madras)***, which was also referred to as a footnote to the statement of computation of income filed along with the return, in support of his claim that the amount of ₹19,20,00,000/- paid by him to his sisters was liable to be deducted from the sale consideration of the said Property. The AO took the view that the said amount was the share of the assessee's sisters in the Property and thus, the assessee was not liable for indexation benefit while computing the costs of the Property. As stated above, the assessment order was also appealed before the CIT (Appeal).

33. In the case of ***Commissioner of Income Tax-VI, New Delhi v. Usha International Ltd.: (2012) 348 ITR***, this Court had held as under:

> "13. It is, therefore, clear from the aforesaid position that:

(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;

(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of "change of opinion".

(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons."

34. In the said decision, this Court had also observed that there may be cases where the AO did not raise the written query but he may have still examined the subject matter because the aspect and question may be too apparent and obvious.

35. In the context of the observations made by the Full Bench of this Court in ***Commissioner of Income-tax-VI, New Delhi v. Usha International Ltd.*** (*supra*), this Court in ***Maruti Suzuki India Ltd. v. Deputy Commissioner of Income Tax: (2013) SCC OnLine Del 1930***, had observed as under:

"It is apparent from the above extract that even in cases where no query is raised by the assessing

> officer in the course of the original assessment proceedings it may yet be held that the assessing officer had examined the subject matter. This is so because the aspect or question in issue may be too apparent and obvious. However, the Full Bench cautioned by stating that such cases would have to be examined individually. It is, therefore, clear that even where no query is raised by the assessing officer and there is no discussion in the assessment order, it may yet be a case where the assessing officer would be considered to have examined the issue. However, we are not concerned with those type of cases inasmuch as in the present case the assessing officer had clearly raised a specific query with regard to bad debts/advances written off and the petitioner/assessee had given details in respect thereof. It is obvious that since no such addition was made on that count, the assessing officer had considered and examined the position and held in favour of the petitioner/assessee. Therefore, we can safely conclude that, in the facts and circumstances of the present case, the assessing officer had, indeed, examined the issue at the time of the original assessment proceedings and had formed an opinion by not making any addition in respect thereof. Thus, the reopening of the assessment which had been concluded on 13.03.2006, would be nothing but a mere change of opinion."

36. In ***Gemini Leather Stores v. Income Tax Officer, 'B' Ward, Agra & Ors.: (1975) 100 ITR 1***, the Supreme Court held that where the Income Tax Officer has all the material before him and has framed the original assessment, it is not open for him to take recourse to Section 147(a) of the Act to remedy the error resulting from his oversight. In ***Indian and Eastern Newspaper***

Society v. Commissioner of Income Tax, Delhi: (1979) 119 ITR 996, the Supreme Court expressed a similar view and held as under:

> "**14.** Now, in the case before us, the Income Tax Officer had, when he made the original assessment, considered the provisions of Sections 9 and 10. Any different view taken by him afterwards on the application of those provisions would amount to a change of opinion on material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under Section 147(*b*). Reliance is placed on *Kalyanji Mavji & Co*. v. *CIT* [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287] where a Bench of two learned Judges of this Court observed that a case where income had escaped assessment due to the "oversight, inadvertence or mistake" of the Income Tax Officer must fall within Section 34(1)(*b*) of the Indian Income Tax Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels farther than the statute warrants insofar as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the Income Tax Officer discovers that he has committed an error in consequence of which income has escaped assessment it is open to him to reopen the assessment. In our opinion, an error discovered on a reconsideration of the same material (and no more) does not give him that power. That was the view taken by this Court in *Maharaj Kumar Kamal Singh* v. *CIT* [AIR 1959 SC 257 : (1959) 35 ITR 1 :1959 Supp 1 SCR 10] , *CIT* v. *Raman & Co*. [AIR 1968 SC 49 : (1968) 1 SCR 10 : (1968) 67 ITR 11] and *Bankipur Club Ltd.* v. *CIT* [(1972) 4 SCC 386 : 1974 SCC (Tax) 76 : (1971) 82 ITR 831] , and we do not believe that -the law has since taken a different course. Any observations in *Kalyanji Mavji & Co*. v. *CIT* [(1976) 1 SCC 985 : 1976 SCC (Tax) 111 : (1976) 102 ITR 287] suggesting the contrary do not, we say with respect, lay down the correct law."

37. It is now impermissible for the AO to seek reopening of the assessment to review its decision regarding the fair market value of the Property or deduction on account of the amount of ₹19,20,00,000/- paid by the assessee to his sisters or the expenses incurred by him.

38. In view of the above, the petition is allowed and the impugned notice dated 13.03.2021 is, accordingly, set aside. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 09, 2022
'gsr'