**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**
**AND**
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 6574/MUM/2024**
**Assessment Year: 2005-06**

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| Assistant Commissioner of Income Tax-7(1)(1), Mumbai | Vs. | Mazagon Dock Shipbuilders Ltd. Mazdock House, Dockyard Road, Mazagon, Mumbai – 400010<br><br>(PAN: AAACM8029) |
| (Appellant) | | (Respondent) |

Present for:

Assessee : Shri. Prateek Goyal, Advocate
(Virtually appeared)

Revenue : Shri. Umashankar Prasad, CIT DR

Date of Hearing : 15.07.2025
Date of Pronouncement : 18.09.2025

**O R D E R**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2024-25/1069778604(1), dated 18.10.2024 passed against the assessment order by Assistant Commissioner of Income Tax, Range-6(3), Mumbai, u/s. 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 24.01.2013 for Assessment Year 2005-06.

2. Grounds taken by the Revenue are reproduced as under:

I. *Whether, on the facts and in the circumstances of the case and in law, the Ld. CITA) has erred in quashing the reassessment proceedings on the ground that there was no new material before the AO to reopen the case, without appreciating the fact that the issue of LTCG was not considered by the AO during the original assessment proceedings?*

II. *Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT{A) has erred in quashing the reassessment proceedings on the ground that there was mere change of opinion on the part of AO without appreciating the fact that the market value of the lease land of Rs. 591/ per sq. mtr. considered by the assessee is well short of the prevailing market value of Rs. 3930/ per sq. mtr. which resulted in under assessment of taxable income.*

3. Brief facts of the case are that assessee (Mazagon Dock Shipbuilders Ltd.) is a 100% Government of India Undertaking under the Ministry of Defence, Department of Defence Production. It filed its return of income on 28.10.2005 reporting total income at Rs.133,58,67,627/-. Assessment u/s. 143(3) was completed vide order dated 29.11.2007 with total assessed income at Rs.136,25,76,623/-. Subsequently, case of the assessee was reopened u/s. 147 by issuing notice u/s.148 on 26.03.2012. The reasons recorded for the reopening mentions that notes forming part of accounts attached to the auditors report at para-34 mentioned about transfer of land by assessee to employees cooperative housing societies for a consideration of Rs.318 lakhs. In the said reasons, ld. Assessing Officer further noted that capital gains in respect of the said transaction has been computed by adopting full value of consideration at an amount of Rs.318 lakhs. According to the ld. Assessing Officer, provisions of section 50C shall apply to the said transaction so as to take the value adopted by the Stamp Valuation Authority (SVA) as full value of consideration which has not been done by the assessee. He further noted that valuation as per the SVA will definitely be much more than the value adopted by

the assessee. Since no details of transfer have been furnished during the assessment proceedings u/s. 143(3), the income chargeable to tax will definitely be in lakhs of rupees. He thus, arrived at a reason to believe that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

3.1. It is important to take note of one specific para from the reasons to believe so recorded by the ld. Assessing Officer which reflects the casual mind for reopening the case, based merely on his apprehensions. The said para is extracted below:

> *"The valuation as per the Stamp Valuation Authority* ***will definitely be much more*** *than the value adopted by the assessee. Further, no details of the transfer had been furnished during the assessment proceedings u/s.143(3), the assessment which had been completed vide order 143(3) dated 29.11.2007. The* ***income chargeable to tax will definitely be in lakhs of rupees.****"*
> (emphasis supplied by us by underline and bold)

3.2. Further, in the above stated reasons to believe, ld. Assessing Officer has referred to para-34 of the audit report forming part of the audited statements of the assessee for the year under consideration which is also reproduced below for ready reference:

> *"34. By payment of Rs.43.04 lakhs in the year 1982, the Company has taken approximately 5.38 hectares of land from CIDCO on an agreement to lease for 99 years. CIDCO has delivered this land to the Company in the year 1997 for construction of residential complex for Company's employees to be completed within 3 years. Since the Company could not develop the land due to various reasons, the Company has offered this land to the employees' cooperative societies on as is where is basis, with an understanding that all the charges such as transfer charges, stamp duty, registration fee, additional premium for extension of time for construction, architectural fees etc, as levied by CIDCO are also payable by the employees. A tripartite agreement between 15 Societies, CIDCO and MDL for transfer of the said land has been signed on 18.6.2003. CIDCO vide its letter dated 09.06.2005 has confirmed that the said tripartite agreement has been taken on record by them and that they have transferred the rights in favour of the 15 Societies. The formal process of handing over/taking over of land is pending. In view of this, transfer of land is accounted in the books of accounts for the year ending 31.3.2005, deleting the land cost from the assets. The consideration for transfer of the said land amounting to Rs.318 lakhs Rs.55 per FSI as fixed at the 1/2000 meeting of Board of Directors of the Company held on 03.03.2000, is adjusted against the*

*initial amount and call monies received from the concerned allottees. The balance amount of Fis.65.72 lakh is remaining under "Other Liabilities" which will be refunded to allottees on completion of formal handing over/taking over formalities and settlement of account for the expenditure incurred till then."*

4. The main contention of the assessee in respect of reopening of the case is that once the assessment has been completed u/s.143(3), wherein all the material facts were placed on record, there was no new material before the ld. Assessing Officer to reopen the case. In terms of first proviso to section 147, to reopen an assessment u/s. 147 there are two essential requirements namely-

i) having a new tangible material which must be external to the facts of the case, and

ii) failure on the part of the assessee to fully and truly disclose the material facts, necessary for the assessment.

4.1. In the given set of facts, ld. Assessing Officer has merely relied on the audit report, more particularly to para-34 as reproduced above, which was always available on record in the original proceedings. According to the assessee, duty casted upon it to make full and true disclosure was duly met in the course of original assessment proceedings.

5. Further, on merits of the case, assessee strongly contended that provisions of section 50C do not apply to the facts of the assessee. It is a case where the lease hold rights were transferred which were originally granted to the assessee by CIDCO. The transfer took place by way of tripartite agreement whereby CIDCO agreed to substitution of lease rights granted to the assessee in favour of the Cooperative Housing Society of employees of the assessee. According to the assessee, the underlying agreement is in the nature of assignment of lease and not an agreement to sell the property.

5.1. It is a settled law that section 50C does not apply to transfer of lease hold rights. Assessee, further contended that Section 50C has come into effect from A.Y. 2003-04. According to the assessee, reasons behind the introduction of this section was mainly because the sale transactions of immoveable properties were undervalued leading to leakage of tax revenue causing losses to the Government and also unaccounted money was not good for the health of the society in general. Therefore, the restlessness on the part of Government to plug such leakage and attempts by assessee and tax professionals to avoid hardships to genuine assessee. Assessee explained that is Board of Directors is constituted with the Government secretaries and other nominees as members. Its Board of Directors decided to transfer and assign the lease rights of the land to the individual Co-operative Housing Societies formed by Groups of employees of the assessee for the betterment of the employees. According to the assessee, the public sector companies are not formed just to make profits alone but are supposed to achieve larger objectives for the Society and the State.

5.2. Submission of the assessee, relating to the merits of the case, could be summarised as under:

i. Section 50C does not apply to transfer of Tenancy/Leasehold rights. It is applicable only to land or building or both
ii. MDL is no more a party to this as CIDCO has already made an agreement with the Co-op Hsg Societies to acquire lease rent from the Societies.
iii. MDL, being a Government undertaking, had intended to acquire land from CIDCO for its employees as a welfare measure. It was working on the betterment of Society at large.

6. In the first appeal, ld. CIT(A) has elaborately dealt with the contentions raised by the assessee both, on the jurisdictional issue of change of opinion adopted by the ld. Assessing Officer for the purpose of reopening of the case as well as on the merits whereby assessee contended that provisions of section 50C does not apply in the case of transaction of transfer of lease hold rights. The relevant observations and findings of the ld. CIT(A) are extracted below for ready reference:

> *"In the above reasons, the source of information to the AO to re-open the case is Notes forming part of accounts and not any new material. The language of Section 147 clearly establishes that the Assessing Officer (A.O.) has the authority to reassess any income that has escaped assessment for a given assessment year, provided the conditions of Sections 148 to 153 are met. However, this power is contingent on the A.O. having a valid reason to believe that income has escaped assessment. The phrase "reason to believe" in Section 147 must be interpreted carefully, by the A.O. In my view, the provision exists to empower the A.O. to reassess income that was not brought to light during the original proceedings and that would have a significant impact on the assessment outcome. Section 147 does not allow for reassessment merely because the A.O. changes its opinion on a matter based on facts already known during the original assessment. Doing so would effectively give the A.O. the power to review, whereas Section 147 confers only the power to reassess, not to review.*
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> *4.6 In the case of Income Tax Officer Ward No. 16(2)... Appellant(s) Versus M/s Tech Span India Private Ltd. & Anr..... Respondent(s), IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 2732 OF 2007. The Hon'ble court too observed:*
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> *To determine whether a case involves a change of opinion, both the literal and legal meanings must be considered. A change of opinion refers to the formulation of an opinion followed by a subsequent change in that opinion. In the context of assessment, it refers to the belief formed by the A.O. on a particular issue, based on their understanding and reflection. The Supreme Court has firmly established this principle in numerous judgments, including CIT vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC), where it was held that while the A.O. has the power to reopen an assessment if there is reason to believe that income has escaped assessment, this power cannot be exercised on the basis of a mere change of opinion. A distinction must be maintained between the A.O.'s power to reassess and the power to review, as the latter is not granted under Section 147.*
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> *4.7 In my view, presently the Assessing Officer had no power to re-open the case as there was no "new material" before AO to come to the conclusion that there is escapement of income in the original assessment. However, a bare perusal of reasons recorded for reassessment and the original assessment proceedings under Section 143(3) makes it clear that the point on which the re-*

*assessment proceedings were initiated, was well considered in the original proceedings being part of audit report. Hence, initiation of the re-assessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the Assessing Officer is of the view that the long term capital gain could not be assessed in the original proceedings, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings*

*Considering the above discussion, it is held that all the facts were brought to the notice of AO and all the statutory obligation were already fulfilled by the assessee by submitting all the relevant materials before the AO during original assessment. Therefore, there is no failure and/or lapse on the part of the assessee as visualized by proviso under section 147 of the Act. On this score alone the assessment is bad and thus liable to be cancelled. The AO has also not pointed out as to how the assessee failed to disclose fully and truly all material facts necessary for its assessment during the original assessment proceeding concluded u/s 143(3). As a result, it is held that the re-assessment proceedings in the present case are not valid and the reassessment proceedings are quashed. Since, the reassessment proceedings have been quashed, the other grounds are not adjudicated.*

*5. As a result, the appeal of the assessee is allowed."*

7. Contentions of the Revenue by way of this appeal before the Tribunal are that issue of long term capital gain was not considered by the Assessing Officer in the original assessment proceedings and that the fair market value of the lease land was not considered which resulted in an underassessment of taxable income. It is important to note that in its grounds raised by the Revenue, it itself has referred to the transaction of land as "lease land".

8. We have heard both the parties and perused the material on record and given thoughtful consideration to the judicial precedents relied upon, placed in the case law compilation filed by the assessee. At the outset, we note that reference made by the ld. Assessing Officer in the reasons to believe for reopening of the case refers to the disclosure made in para-34 by the assessee in its audited financial statements. Further, from the para extracted above contained in the reasons to believe, we have already mentioned about the apprehensive

mind of the ld. Assessing Officer while taking up the case for reopening. In the said para, he mentioned about his uncertainty as well as possibility that valuation as per SVA will be definitely much more than the value adopted by the assessee. He also states that income chargeable to tax will definitely be in lakhs of rupees. Such an apprehension is nothing but surmises and conjectures and is an attempt to make fishing and roving enquiries without any new tangible material brought on record to draw the live link and nexus on the reasons to believe arrived at and charge the assessee for escapement of income from assessment.

8.1. With adequate disclosure made by the assessee in its audited financial statement, it clearly reflects the transaction of lease hold rights in the land allotted to it by CIDCO under the lease deed. There is adequate disclosure of material facts for the purpose of making the assessment. These facts were already before the ld. Assessing Officer in the original assessment proceedings and nothing new in this context has been brought on record to initiate the reopening proceedings. Furthermore, admittedly, it is a transaction of transfer of lease hold rights to which ld. Assessing Officer resorts to apply provisions of section 50C. It is a settled law that provisions of section 50C do not apply to a lease hold transaction.

8.2. From the perusal of the records, it is discernible that there is no fresh tangible material brought on record by the ld. Assessing Officer to justify reopening of the assessment. To us, it appears that ld. Assessing Officer by the impugned reopening proceedings has sought to review the decision already taken during the original assessment completed u/s.143(3) which is impermissible. The reasons to believe recorded by ld. Assessing Officer clearly brings out a change of mind

by way of reopening of the assessment already completed which cannot be camouflaged under reasons to believe. The entire basis for reopening of the assessment in the present case is on the material which was already on record. Act of ld. Assessing Officer is nothing but a change of opinion on the same material available with him, with an intent to review the assessment already done. Ld. Assessing Officer has certainly transgressed the statutory conditions prescribed u/s.147, which is not permissible. Contents of reasons to believe recorded by the ld. Assessing Officer manifest arbitrariness, leading to unwarranted consequences on the part of the assessee, which the law certainly does not recognise.

8.3. Also, even if the reopening proceedings are held to be valid as contended by the Revenue, still the underlying transaction for which the reopening has been taken up is a transaction of transfer of lease hold rights which has been attempted to be brought within the purview of section 50C. On this also, the Revenue would fail as the issue is no longer *res integra*.

8.4. To buttress our contentions, we draw our force from the decisions of the Hon'ble Supreme Court in the case of CIT(A) vs. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC), which held that Assessing Officer has power to reopen provided there is “tangible material” to come to conclusion that there is escapement of income from assessment, the reasons must have live link with formation of belief.

8.5. We also draw force from the decision of Hon'ble Supreme Court in the case of Calcutta Discount Company vs. ITO 2 S.C.R page No.241, which dealt with the words used in the first proviso to section 147 "*omission or failure to disclose fully and truly all material facts necessary for the assessment for that year*". While deliberating on the issue, Hon'ble Court observed as under:

> *"Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences-whether of facts or law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts.*
>
> *If from primary facts more inferences than one could be drawn, it would not be possible to say that , the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn ?"*

8.6. Also, Hon'ble Jurisdictional High Court of Bombay in the case of Crystal Price Developers vs. ACIT [2025] 172 taxmann.com 463 (Bom) dealt with similar issue and held that –

> *"INCOME TAX: Where Assessing Officer issued a reopening notice on ground that assessee had taken loans of certain amount and given loans of certain amount lesser than that and interest received on said loan given by it should be charged to tax as income from other sources, since Assessing Officer had not to effect that assessee failed made out any case to disclose fully and truly all material facts necessary for assessment and reasons for reopening were itself based on records provided by assessee, thus, there was no fresh tangible material for reopening assessment, impugned reopening notice issued after four years was to be set aside."*

8.7. Considering the facts of the case and observations made above including the provisions of the Act and judicial precedents, we hold that reopening proceedings initiated by the ld. Assessing Officer are bad in law. Consequently, the impugned reassessment order passed

thereafter is also bad in law and liable to be quashed. Thus, the grounds raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 18 September, 2025

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| Sd/- | Sd/- |
| (Sandeep Gosain) | (Girish Agrawal) |
| Judicial Member | Accountant Member |

***Dated: 18 September, 2025***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT(A)

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai