Cost of acquisition of house couldn't be reduced on basis of wealth tax return which AO had at assessment stage

Summary – The High Court of Gujarat in a recent case of Praful Somabhai Patel (HUF), (the Assessee) held that where issue of deduction under section 54F had already been taken into consideration by Assessing Officer, reassessment could not be initiated on basis of wealth tax valuation report which was already available with same officer at time of original assessment

Facts

- The assessee filed its return of income and assessment was made *vide* order under section 143(3) at the returned income after allowing the assessee its claim under section 54F.
- The Assessing Officer found that the assessee also owned one more property, income from which was chargeable under the head Income from 'House Property', and therefore, the deduction under section 54F stood wrongly allowed to it. It was on this basis that the deduction under section 54F, allowed in the original assessment, was withdrawn in the subsequent assessment framed.
- On appeal, the Commissioner (Appeals) allowed the assessee's appeal, holding the reopening as being without jurisdiction, and thus bad in law. It was found that the Assessing Officer had reopened the assessment issued to assess difference in valuation for income tax and wealth tax. However, it was held that the value of the property (asset) under the Wealth-tax Act is to be computed under the provisions of that Act read with relevant rules, so that it has no bearing on the value as adopted for the income-tax purposes. Further, the relevant reasons, being found in the audit folder, it was an admitted position that the same emanated on the basis of the audit objection raised by the audit party which was not permissible.
- On second appeal, the Tribunal allowed the revenue's appeal.
- On appeal by the assessee to the High Court:

Held

- It is clear that when capital gain was already taken into consideration by the Assessing Officer, again original assessment cannot be changed on the basis of valuation report of wealth tax. Wealth tax valuation report was available with the same officer, when the original assessment was made. In that view of the matter, while considering the matter on the income-tax, wealth-tax valuation ought not to have been relied upon and the valuation report which was relied by the Assessing Officer was available with the authority.
- In view of various judicial pronouncements, it is clear that 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

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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. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in *Central Provinces Manganese Ore Co. Ltd.* v. *ITO* [1991] 191 ITR 662, for initiation of action under section 147(*a*) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential.

- 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 the 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. Merely an audit report, would not authorize the Assessing Officer to reopen the assessment even within the period of 4 years from the end of the relevant assessment year, when the said material was already before him when the original assessment was made. Any such attempt on his part would be based on mere change of opinion. To reiterate when a claim was processed at length and after calling for detailed explanation from the assessee, the same was accepted, merely because a certain element or angle was not in the mind of the Assessing Officer while accepting such a claim, cannot be a ground for issuing notice for reassessment. Therefore, the Assessing Officer cannot change his opinion, which he has already accepted in his assessment order.
- Thus, the Tribunal has committed an error in reversing the finding of the Commissioner (Appeals) and also committed an error in holding that the reopening proceedings are valid, legal and within the jurisdiction of the respondent.
- Even otherwise, the method of valuation is in order and since the valuations are made under two different Acts, they cannot be made basis for reopening of valuation. Accordingly, all these appeals are allowed.

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