

Assessee couldn't challenge validity of sale of land by filing writ against reassessment notice

Summary – The High Court of Gujarat in a recent case of Abha Vinaykumar Jain, (the Assessee) held that In a petition challenging reassessment notice issued on ground that capital gain on sale of land had escaped assessment, Court could not consider validity of said sale transaction; assessee must submit to jurisdiction of Assessing Officer who alone would take final decision in this respect while framing reassessment

Facts

- The assessee's return of income was accepted without scrutiny. Thereafter it appeared that a sale deed of non-agriculture land belonging to the assessee was registered during relevant assessment year.
- The Assessing Officer issued notice making enquiries about such transactions but the assessee did not respond.
- The Assessing Officer issued notice under section 147 on the ground that short term capital gain on aforesaid transactions had escaped assessment.
- The assessee challenged impugned notice contending that she had never sold the land in question and the sale deed was fraudulently executed on the basis of the power of attorney which was forged, and that the assessee continued to be in possession of the aforesaid land.

Held

- Whether there is *prima facie* evidence suggesting transfer of capital asset or whether the assessee is correct in contending that the entire transaction was fraudulent and no sale actually took place, are the issues, the court is not inclined to go into in the instant petition. The petitioner must submit to the jurisdiction of the Assessing Officer who alone can ask relevant questions in this respect and take a final decision while framing reassessment. If the Assessing Officer is prevented from carrying out assessment, the serious question of such assessment getting time barred by the time the petitioner's litigation before the civil court achieves finality would arise. This is not a case where the very liability or the question of gain is under litigation. What is under litigation is the factum of the transfer of capital asset. If eventually the petitioner loses in her challenge to the sale deed, the situation would be that the sale of the land by virtue of such deed, did actually take place as is recorded in the document, in which case, the petitioner must surrender the capital gain arising out of such transaction of capital asset to tax during the assessment year relevant to financial year when the transaction took place.
- For such reasons, petition is dismissed.