In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi

Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 5529/Del/2013
Assessment Year: 2007-08

Pati Ram Vill-Kadipur, Kushak No. 1, Delhi. PAN – AVEPR0907L **(Appellant)**	**vs.**	Income-tax Officer, Ward 26(1), New Delhi **(Respondent)**

Appellant by	Sh. Ajay Wadhwa, Adv. & Ms. Harsimran Grewal, Adv.
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	04.09.2018
Date of Pronouncement	07.09.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of the ld. CIT(A)-XXIV, New Delhi dated 26.09.2012 on the following grounds :

1. That the order of the CIT(A), New Delhi in assessing income of the assessee at Rs. 1,35,82,225/- against the returned income of Rs. 5,91,067/- is against law and facts placed on records.

2. That the learned CIT(A) has erred in initiating proceedings u/s 147/148 of the Income Tax Act, 1961.

3. That in respect of claim of deduction under the provisions of section 54B made by the Assessee, the learned CIT(A) has erred in disallowing the claim of the assessee of Rs. 96,11,158/-

4. That in respect of claim made by the assessee under the provisions of section 54F of

Rs. 33,80,000/- for the residential house purchased in the name of assessee's son Shri Devender Kumar for Rs. 10,00,000/-, stamp duty of Rs. 80,000/- and construction related expenses of Rs. 23,00,000/-, the learned Assessing Officer has erred in not allowing the claim holding that the said property was purchased in the name of assessee's son and the assessee is not even a joint owner of the said property.

5. That the learned CIT(A) while disallowing the claim u/s 54F has failed to appreciate that the assessee is the actual and constructive owner of the house as has been held in CIT Vs Podar Cements (p) Ltd. & Ors. Reported as (1997) 226 ITR 625 (SC). He has further failed to appreciate that Section 54F mandates that the house should be purchased in the name of the assessee only.

6. That the learned CIT(A) has further erred in not appreciating that Section 54F of the Act is the beneficial provision which should be interpreted liberally in favour of the exemption/deduction to the tax payer and the deductions should not be denied on Hyper technical grounds in view of the decision in Late Mir Gulam Ali Khan Vs CIT reported as (1987) 165 ITR 228(AP). The object of granting exemption u/s 54 of the Act is that an assessee who sells a residential house for purchasing another house must be given exemption so far as capital gains are concerned and that the word "assessee" Must be given wide and liberal interpretation so as to include his legal heirs only.

7. That the Learned CIT(A) has erred in levying a sum of Rs. 10,85,559/- as interest u/s 234A and Rs. 17,33,734/- u/s 234B of the Income- Tax Act.

8. That the learned CIT(A) has erred in initiating penalty proceedings u/s 271(1) (C) of the Income Tax Act, 1961.

9. It is, therefore, prayed that the above said additions and disallowances made to the returned income be deleted and the returned income be accepted and taxes and interest be correctly computed in accordance with law.

2. The brief facts of the case are that the proceedings u/s. 148 of the IT Act were initiated on the basis of information gathered during the assessment proceedings of Shri Ram Lal Saini, brother of the assessee that the assessee had received a sum of Rs.1.9 crore being half share on the sale of agricultural land in the joint names of two brothers. In this regard show cause notice was issued to the assessee regarding computation of capital gain, but the assessee did not comply. Therefore, the Assessing Officer recorded the reasons for reopening u/s. 148 and issued notice on 06.10.2010 by Shri CB Singh, DCIT, Circle 26(1),

New Delhi. Accordingly, the assessee filed return of income on 07.10.2010 and declared total income of Rs.5,91,070/-. The reasons recorded are as under :

Reasons for issue of notice u/s 148 of the I.T.Act, 1961.

During the course of assessment proceedings in the case of Sh.Ram Pal Saini, brother of the assessee it was noticed that there was agricultural land in the joint name of Sh. Pati Ram and Sh. Ram Pal Saini both the sons of Sh. Mitha Lai, in village Kadipur, Tehsil Alipur, Delhi. The said land was sold to M/s Allied Reality Pvt. Ltd. for a consideration of Rs. 3,80,00,000/- vide sale deed dated 20.12.2006 registered in the office of Registrar, Delhi. There being half share of Sh. Pati Ram, he had received the sale consideration of Rs. 1,90,00,000/- on which the Capital Gain was to be declared by the assessee Sh. Pati Ram. In this connection, a show cause notice dated 13/04/2010 was issued to him to provide the details of Capital Gain Tax paid and evidence for furnishing the Return of Income for the assessment year 2007-08 as the transaction of sale of land was made in financial year 2006-07. The assessee has not furnished any reply for the same, therefore, I have reason to believe that the Capital Gain Income of the assessee on sale of agricultural land of Rs. 1,90,00,000/- has escaped by assessment, to assessed the same the proceedings u/s 147 of the I.T. Act are required to be initiated by issuing the Notice u/s 148 of the I.T. Act. Accordingly, Notice u/s 148 of the IT Act.

In the assessment proceedings, the Assessing Officer observed that the assessee has claimed deduction u/s. 54F of Rs.33,80,000/- and claimed indexed cost to the cost of acquisition. In the computation of income, the assessee claimed deduction u/s. 54B of Rs.1,15,71,158/- and deduction u/s. 54F of Rs.33,80,000/- but in the assessment proceedings, for want of evidence regarding claim of deduction u/s. 54B, the Assessing Officer restricted the deduction to Rs.19,60,000/- and for justification of deduction u/s. 54F amounting to Rs.33,80,000/-, it was observed that house was purchased at Bherongarh Nanda in the name of his son Shri Devendra Kumar of Rs.10,80,000/- and cost of construction and related expenses claimed at Rs.23 lacs totaling to Rs.33,80,000/-. The assessee submitted only agreement to sale

and no cost of construction details were submitted. The Assessing Officer further observed that the property has been purchased in the name of son. He, therefore, disallowed the deduction claimed u/s. 54F of Rs.33,80,000/-.

3. In appeal before the ld. CIT(A), the assessee challenged the reopening proceedings u/s. 147/148 as well as merits of the additions. However, the ld. CIT(A) dismissed the appeal of the assessee on both the aspects. Aggrieved, the assessee is in appeal before the ITAT.

4. First of all, the ld. AR argued on legal grounds challenging the validity of reopening of assessment u/s. 147/148 and validity of assessment. He submitted that the notices were issued by DCIT, Shri C.B. Singh, Circle 26(1) and also issued notice u/s. 143(2) on 15.10.2010, but notice u/s. 143(2) was issued on 12.09.2011 by Shri Kundan Lal, ITO, Ward 26(1). The assessee had also filed application under RTI Act, 2005 on various grounds, which is as under :

1 *The notice was issued by DCIT Cir 26(1) while order under 147/143(3) was passed by ITO Ward 26(1), PI provide me the copy of transfer order of case file and date of transfer of file.*

2 *Whether any fresh reason to believe was recorded by ITO Ward 26(1), if yes, pi provide the same.*

3 *Whether any fresh notice was issued under section 148 by ITO Ward 26(1), New Delhi*

4 *In which ward, the case of my brother, Sh Ram Pal Saini was assessed and pi provide the copy of information received from such words which cause to issue notice under 148 in this case.*

5 *in the above case, Show cause notice was issued before issuing notice under section 148. Under which section this show cause was issued and whether any prior permission was obtained from the JCIT or any senior authority, if yes, pi provide the copy.*

6 *The copy of assessment order and computation of brother required.*

7 *Pl. provide me the monetary jurisdiction and territorial jurisdiction as per section 120 of assessing officer during that period.*

He also relied on the following judgments as under :

1. CIT v. Smt. Anjali Dua [2008] 219 CTR 183 (Delhi)
2. ITO v. Krishan Kumar Gupta [2008] 16 DTR 1 (Delhi - Trib.)
3. Jawahar Lal Agarwal v ITO [2017] 190 TTJ 870 (Agra - Trib.)
4. Hynoup Food and Oil Industries Ltd. v. AC1T (2008) 307 ITR 115 (Guj.)
5. Dr. Mrs. K.B. Kumar v ITO [2010] 131 TTJ 511 (Delhi)
6. Manju Agarwal v. Income Tax Officer, Aligarh ITA No. 550/Agra/2012
7. Ranjeet Singh v. Asstt. CIT [2009] 120 TTJ (Delhi) 517
8. S.L. Singhania vs. ACIT Wealth Tax (1992) 193 ITR 275 ITR
9. Kusum Goyal vs. Income Tax Officer (2010) 329 ITR 283 (Calcutta)
10. Mega Corporation Ltd. vs. ACIT (2015) 155 ITD 1019 (Del-Trib)
11. KLE Infrastructures & Projects (P) Ltd. vs. ITO, 154 ITD 280 (Delhi-Trib)
12. Tata Sons Ltd. vs. ACIT, (2017) 162 ITD 450 (Mumbai-Trib)
13. CIT vs. Kamal Wahal, 351 ITR 4 (Delhi)
14. Jagpal Singh v. ITO, 186 Taxman 26

5. On the other hand, the ld. DR relied on the order of the lower authorities and submitted that the AO has correctly passed the order under the provisions of the Act. The assessee has filed return of income only in response to notice u/s. 148. The jurisdictional issue is decided on the basis of PAN which was not available before the Assessing Officer at the time of recording the reasons as well as issuing of notice u/s. 148 by Shri C.B. Singh, DCIT, Circle 26(1). Merely on technical issue of change of incumbency the assessment does not vitiate. The case laws relied by the AR are not applicable in the present case. The assessee had not filed any return voluntarily as per section 139.

6. After hearing both the sides and perusing the entire materials on record, the AR of the assessee drew our attention on paper book containing 10 pages. We observe that earlier notice was issued by DCIT, Circle 26(1), but later on 143(2) notice was issued by ITO ward 26(1). We further observe from the RTI reply issued by the Central Public Information officer dated 01.02.2017 that no fresh reason to belief or notice u/s. 148 was recorded by the ITO ward 26(1). The AR of the assessee has referred to plethora of judgments. Similar issue had come up before various Benches of Tribunal and Hon'ble High Court who have decided the similar issue in favour of the assessee. ITAT, Agra Bench in Manju Agarwal vs. ITO (ITA No. 550/Agra/2012) vide order dated 23.08.2013 has held as under :

> 6.1 ITAT, Agra Bench in the case of late Shri S.N. Bhargava vs. ITO (supra) decided the identical issue and the facts and findings of the Tribunal in paras 3 to 10 are reproduced as under :
> *"3. The assessee in the present appeal has challenged the initiation of reassessment proceedings u/s. 147 of the IT Act as well as the addition of Rs.5,92,809/- on account of unexplained deposit in the bank account as sale proceeds of shares.*
> *4. Briefly, the facts of the case are that the information was received from DDIT (Inv.), Gurgaon regarding bogus claim of longterm capital gains shown on account of purchase and sale of shares through M/s. R.K. Agarwal & Co., New Delhi by the assessee. The notice u/s. 148 was issued with the approval of additional CIT, Range-I, Agra by the ITO 1(4), Agra on 28.03.2003 as no such assessee was assessed to tax with him at the address given in the information and the same was served upon the assessee on the same day. As per information, a sum of Rs.5,92,809/- was remitted to the assessee through draft drawn on Corporation Bank, Karol Bagh, New Delhi in the name of M/s. R.K. Agarwal & Co., New Delhi. The said amount of draft was found credited in the account of the assessee. It was, therefore, found that said M/s. R.K. Agarwal & Co. have been providing entries to the beneficiaries by showing the purchase and sale of shares which had not taken place. In response to notice u/s. 148, the assessee filed written reply that he is filing return of income with the Income-tax Officer 3(4), Mathura, hence, the notice u/s. 148 was wrong and incorrect. On 18.08.2003, again notice u/s. 142(1) with the same queries was issued and the assessee challenged the said notice also on the same reasons. Then this case was transferred to ITO, Mathura and, therefore, notice u/s. 142(1) was issued on 22.09.2003, 06.10.2003 and the assessee submitted that he has already filed return on 26.03.1999. The AO observed that no compliance has been made to the*

statutory notices and show cause notice was issued to explain why the receipt of Rs.5,92,809/- shown as capital receipts may not be taxed. During the discussion, the assessee challenged the proceedings u/s. 147 and subsequently notice u/s. 142(1) on the plea that notice u/s. 148 was without jurisdiction. In view of this position, therefore, a notice u/s. 148 was issued on 13.01.2004 by Income-tax Officer 3(4), Mathura with approval of Additional CIT, Range-3, Mathura and the same was served upon the assessee on the same date. Thereafter notice u/s. 142(1) was issued but the assessee did not file fresh return u/s. 148 and stated that original return filed may be treated as return filed in response to notice u/s. 148 and stated that original return filed may be treated as return filed in response to notice u/s. 148. Thereafter, proceedings were taken up and ultimately, the ITO 3(4), Mathura made the addition of Rs.5,92,809/- on account of unexplained deposits in bank account of assessee for bogus purchase and sale of shares through M/s. R.K. Agarwal & Co., New Delhi.

5. The ld. CIT(A) noted in the appellate order that the assessee preferred the appeal against the order u/s. 148/144 passed by the ITO 3(4), Mathura on 24.03.2004 for the assessment year under appeal. Thus, the assessment order is dated 24.03.2004. The ld. CIT(A) also recorded some facts in the appellate order and with regard to reopening of assessment u/s. 147 noted that for re-assessment proceedings, existence of fresh prima facie material is required and the reason to believe would mean cause or justification, which is satisfied in this case and the AO has reason to believe that the income chargeable to tax has escaped assessment and accordingly confirmed the reopening of assessment in the matter. The ld. CIT(A) on merits also, dismissed the appeal of the assessee and confirmed the addition.

6. The ld. counsel for the assessee submitted that initially 148 proceedings were initiated by the ITO 1(4), Agra by issuing notice u/s. 148 on 28.03.2003, in which the AO recorded the reasons, which did not satisfy the requirement of law. He has submitted that when the assessee intimated the Assessing Officer at Agra that he has already filed return of income with ITO, Mathura, therefore, the AO at Agra has no jurisdiction to issue notice u/s. 148. The matter was, therefore, transferred to ITO, Mathura, who without recording reasons proceeded with Income-tax proceedings and when he was apprised that notice u/s. 148 and 142(1) issued by the ITO, Mathura is without jurisdiction then a fresh notice u/s. 148 was issued on 13.01.2004, copy of which is filed at page 10 of the paper book. He has referred to page 8 & 9, which is letter dated 08.12.2003 issued by ITO, Mathura and copy of the reasons recorded by the ITO, Agra. He has submitted that the Assessing Officer at Mathura solely followed the same reasons, which were recorded by ITO, Agra. Therefore, it was merely a borrowed satisfaction and the Assessing Officer at Mathura did not apply his mind to the facts of the case and was having no reasons to believe that income chargeable to tax has escaped assessment. The AO at Mathura has also not examined any information, which was alleged to have been supplied by the DDIT(Inv.), Gurgaon. Therefore, re-assessment proceeding is bad in law.

7. On the other hand, the ld. DR produced the assessment record and stated that there is no order sheet available on this file pertaining to the assessee's case and from the

record, filed the copy of notice u/s. 148 dated 28.03.2003 issued by ITO, Agra, reasons recorded for reopening of assessment and sanction granted by Addl. CIT, Range-I, Agra dated 28.03.2003. The ld. DR submitted that except the reasons recorded and copy of same filed on record, there is no other reason available on record for reopening of assessment. The ld. DR relied upon the orders of the authorities below and submitted that reassessment proceedings are as per law and additions have correctly been made in the matter. 8. We have considered the rival submissions and the material available on record. The assessee in the paper book filed letter issued by ITO 3(4), Mathura dated 08.12.2003 at page 8 of the paper book, in which same facts have been recorded regarding reopening of assessment by AO at Agra and thereafter transferred the case to him at Mathura. Copy of reasons are filed at page 9 of the paper book, which tally with the reasons supplied by the ld. DR from the record. Copy of the reasons supplied by the ld. DR are reproduced as under :

"An information has been received from the DDIT(Inv.),Gurgaon vide letter F.No.DDIT(Inv.)/GGN/02-03 dated 12.03.2003 regarding transaction of shares resulting into Long Term Capital Gains that has been found bogus as a result of inquiries made by the said Wing. On inquiries it has been found that the bank a/c from which money has been transferred to various beneficiaries have been operated by certain stock brokers, who have been providing entries to the beneficiaries by showing them transactions made by them in purchase / sale of shares of certain companies, which in fact never took place. The assessee is also one of the beneficiary figuring in the list supplied by the DDIT Wing, Gurgaon and an amount of Rs.5,92,809 has been remitted to the assessee through Draft No. DD. 186676 dated 12.04.97 from a/c. No. CA-3097 held in Corporation Bank, Karol Bagh, New Delhi n the name of M/s. R.K. Agarwal & Company, 1748/55, Naiwala, Karol Bagh, New Delhi. The said amount is found credited in the Bank A/C. No. SB/8069, Canara Bank, Vibhav Nagar, Agra which belongs to the assessee. Since the said transaction of purchase and sales of the shares has been found to be bogus and therefore, entire amount of sale proceeds of shares claimed to have been received by the assessee by Bank Draft, is the income of assessee from undisclosed sources, which has escaped assessment within the meaning of section 147 of the IT Act, 1961. Since, no regular assessment has been made in the assessee's case for A.Y. 98-99, approval u/s. 151(2) of the IT Act is considered necessary to assess the above said income by issuing a notice u/s. 148 of the IT Act, 1961. From the above, it is clear that above reasons were recorded by the ITO 1(4), Agra, which on approval by Addl. CIT, Range-I, Agra, the ITO 1(4), Agra issued notice u/s. 148 of the IT Act to the assessee. There is no other reasons available on record as produced by the ld. DR. It would mean that the AO at Mathura did not record any reasons at his own, but merely followed the same reasons which were recorded by the ITO at Agra. No material is produced before us to counter the submissions of the ld. counsel for the assessee. The details noted in the assessment order and the appellate order would also clarify that initially the re-assessment proceedings were initiated at Agra and the Revenue department finding no jurisdiction over the assessee transferred the case to the ITO, Mathura and the ITO Mathura also without recording fresh reasons proceeded u/s. 148 against the assessee on the basis of same reasons recorded by the ITO, at Agra. When the assessee seriously contested the

jurisdiction of the Assessing Officer at Mathura because he could not proceed on the basis of reasons recorded at Agra, the AO at Mathura issued fresh notice u/s. 148 on dated 13.01.2004 with the approval of Addl. CIT, Range-3, Mathura and the same was served upon the assessee. The Assessing Officer has nowhere recorded in the assessment order if any fresh reasons have been recorded at Mathura before issuing notice u/s. 148 on dated 13.01.2004. The AO merely recorded in the assessment order that fresh notice u/s. 148 was issued on 13.01.2004 with the approval of additional CIT, Range-3, Mathura, but there is no whisper of recording any fresh reasons at Mathura by the present AO in the assessment order. Even the ld. DR during the course of arguments, when produced assessment records before us, accepted that there is no other reasons recorded by the AO at Mathura. It was, therefore, clearly proved that the AO at Mathura merely acted upon the reasons recorded at Agra, copy of which is placed on record and was also supplied to the assessee (PB-9). In the aforesaid reasons, it is clear that the AO has nowhere recorded the necessary ingredients of section 147 of the IT Act that the AO has reason to believe that any income chargeable to tax has escaped assessment for the assessment year under appeal. Further, the reasons have not been recorded by the Assessing Officer of the present assessee. Further the concerned AO at Mathura has nowhere reason to believe that any income chargeable to tax has escaped assessment. The Assessing Officers at Mathura and Agra did not examine any of the information received from DDIT (Inv.) Gurgaon before proceeding with the matter. The AO at Mathura merely followed the reasons recorded at Agra and proceeded with the matter. Hon'ble Delh High Court in the case of Signature Hotels P. Ltd. vs. ITO, 338 ITR 51 held as under :

"Held, allowing the petition, that the reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs. 5 lakhs during financial year 2002-03 as stated in the annexure. According to the information, the amount received from a company,, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income. Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid-up capital of Rs.90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September, 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to be quashed." 8.1 Hon'ble Rajasthan High Court in the case of CIT vs. Shree Rajasthan Syntex Ltd., 313 ITR 231 held as under : "The assessee company had leased out certain plant and machinery to another company under agreements executed on different dates for a specified period of time. The depreciation claimed by the assessee on the capital assets leased out to the lessee under section 32 of the Income-tax Act, 1961 for the assessment years 1996-97, 1997-98 and 1998-99 was allowed by the Assessing Officer. The lessee had claimed revenue

expenditure for the lease rent paid to the assessee but the Assessing Officer had allowed depreciation on the capital value of the plant and machinery. On noticing this fact, the Assessing Officer of the assessee initiated proceedings under section 147 of the Act and made an addition to the income of the assessee. The Commissioner (Appeals) upheld the addition made by the Assessing Officer for the assessment years 1996-97 and 1997- 98 but deleted the addition made by the Assessing Officer for the assessment years 1998-99 and 2001-02. On the finding that that the reassessment proceedings had been initiated on borrowed satisfaction and that the lease agreements being operating leases the assessee was the owner of the leased assets which were leased out to the lessee company for a rent and thereby the assessee was also a user of the assets, the Tribunal held that the assessee was entitled to depreciation under section 32 of the Act. On appeals : Held, (i) that the reassessment proceedings had been initiated only on account of the opinion of the Assessing Officer of the lessee and the Tribunal was right in fixing that it was "borrowed satisfaction" which was not sufficient to confer power on the Assessing Officer to initiate reassessment proceedings against the assessee." Aforesaid decision has been confirmed by the Hon'ble Supreme Court by dismissing the departmental Special Leave Petition as is reported in 313 ITR (Statute) 27.

9. Considering the above discussion, it is clear that the Assessing Officer at Agra was not having jurisdiction over the assessee. Therefore, he should not have recorded the reasons for reopening of assessment and further he did not examine any information supplied by DDIT(Inv.) and that he was having no reasons to believe that income chargeable to tax has escaped assessment and such facts are also not mentioned in the reasons recorded for reopening of assessment. The AO at Mathura did not do anything in the matter and merely followed the reasons recorded by ITO at Agra and that he has initiated the proceedings u/s. 148 against the assessee on borrowed satisfaction of ITO, Agra. He has also not examined any record of the case or the information received from DDIT(Inv.). The reasons which are not in accordance with law have been recorded at Agra by the ITO, who was not authorized to do so and was not having jurisdiction over the assessee and the Assessing Officer having jurisdiction over the assessee at Mathura did not do so and merely acted on the above borrowed satisfaction. In our view the initiation of re-assessment proceedings u/s. 147 of the IT Act is clearly bad in law and against the provisions of law. The Assessing Officer at Mathura has, therefore, not validly assumed the jurisdiction to initiate the reassessment proceedings because he has merely followed the reasons recorded by ITO at Agra, who was having no jurisdiction over the assessee. We accordingly set aside the orders of the authorities below and quash the reassessment proceedings u/s. 147 of the IT Act. In the result, all the additions would stand deleted. Therefore, there is no need to decide the additions on merits, which is wholly academic in nature.

10. In the result, the appeal of the assessee is allowed."

The facts noted above are not in dispute. It is not in dispute that the ITO 4(2), Agra recorded the reasons for reopening of assessment on 08.03.2011, which is reproduced above. From the above it is clear that these reasons were recorded at

Agra and notice u/s. 148 dated 08.03.2011 was also issued by the ITO 4(2), Agra (PB-1), in which the address of the assessee is given at 5/1 Gular Road, Aligarh. There are no other reasons available on record, if any, recorded by the ITO ward 1(2), Aligarh. It would mean that the Assessing Officer, who has passed the impugned reassessment order at Aligarh did not record any reasons at his own, but merely followed the same reasons which were recorded by the ITO 4(2), Agra. The details noted in the assessment order and filed in the paper book would also clarify that initially the re-assessment proceedings were initiated at Agra and the Revenue Department finding no jurisdiction over the assessee, transferred the case to ITO 1(2), Aligarh and the ITO Aligarh without recording fresh reasons proceeded u/s. 148 of the IT Act on the basis of same reasons recorded by ITO at Agra. The assessee contested the jurisdiction of the AO at Agra, therefore, it appears that the record was transferred to ITO, Aligarh. There is no whisper in the impugned reassessment order as to under which order, the jurisdiction was changed from Agra to Aligarh. It is, therefore, accepted fact that there is no other reason recorded by the AO at Aligarh. The AO at Aligarh merely acted upon the reasons recorded by the ITO, Agra. In the aforesaid reasons, it is clear that the AO has nowhere recorded necessary ingredients of section 147 of the IT Act that the AO has reason to believe that any income chargeable to tax has escaped assessment for the assessment year under appeal. The ITO 4(2), Agra on the basis of the order of ADM, determining the higher valuation for the purpose of stamp duty, formed his opinion that the long term capital gain has escaped assessment. The last order passed by the ADM, Agra is dated 11.06.2008, which was also challenged by the buyers, i.e. Jagdish Arora and Others in writ petition before the Hon'ble Allahabad High Court and the Hon'ble High Court admitted the writ petition and directed that the amount paid in the documents will be subject to the result of this petition. The finding of Hon'ble High Court, admitting the writ petition, dated 10.07.2008 in para 3 & 4 are reproduced as under :

"3. Having head Sri Ravi Kant, learned Senior Counsel in our view the matter requires consideration. Hence the writ petition is admitted.

4. The petitioners will deposit this amount of Rs.74,36,400/- with the stamp authority, if not already deposited. We direct the officer concerned to register the document without insisting upon the penalty amount. The amount paid on the document will be subject to the result of this petition.

6.2 It is, therefore, pleaded that the matter is subjudice before the Hon'ble Allahabad High Court with regard to determination of valuation of property for the purpose of stamp duty. The valuation determined by ADM, Agra is subject to the result of this writ petition, therefore, could not be said to be final decision arrived by ADM, Agra. Therefore, when the matter is subjudice before the Hon'ble High Court on admission of writ petition, there should not have been any satisfaction of the AO or to have reasons to belief that income chargeable to tax has escaped assessment on account of determination of higher value for the purpose of stamp duty by ADM, Agra. Further, no order has been passed by the ADM, Agra in the case of assessee, therefore, there

should not have been any satisfaction on the part of the AO to initiate the re-assessment proceedings against the assessee at Agra. The ld. DR contended that the assessee was having two addresses at the time of initiation of re-assessment proceedings and when the reasons were recorded by the AO at Agra and on change of jurisdiction, the matter was transferred to the ITO, Aligarh, there is not illegality in initiating the re-assessment proceedings at Agra and there is no bar at the Assessing Officer, Aligarh to continue with the same proceedings. The contention of the ld. DR is not legally sustainable and is rejected because the provisions of section 127 of the IT Act would operate in such circumstances. Section 127 of the IT Act provides that Director General or Chief Commissioner or Commissioner may after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any of the Assessing Officer. It is also provided that no opportunity is required to be given where such transfer is from Assessing Officer or Assessing Officers to any Assessing Officer or Officers where the offices of all such officers are situated in the same city, locality or places. In the present case, the reasons for reopening of assessment have been recorded by the ITO, Agra and as per assessment order, on change of jurisdiction, the record was transferred to ITO, Aligarh, but no material or evidence is produced before us to prove if any order or reasons have been recorded before transferring the jurisdiction from Agra to Aligarh or any opportunity of being heard have been granted to the assessee before doing so because office of ITO, Agra and Aligarh are not situated in the same city, locality or places. Contention of the ld. DR is, therefore, rejected. It is, therefore, clear that the ITO at Aligarh did not have any reason to believe that any income chargeable tax has escaped assessment. ITO at Agra also did not examine the issue that the final order of ADM, Agra dated 11.06.2008 is subject matter in writ petition before the High Court and has not yet reached finality.

7. Considering the above discussion, it is clear that the ITO, Agra was not having jurisdiction over the assessee, therefore, should not have recorded the reasons for reopening of assessment and further, he was having no reasons to believe that income chargeable to tax has escaped assessment because the order of ADM, Agra has not reached finality on admission of writ petition by the Hon'ble High Court. The Assessing Officer at Aligarh did not do anything in the matter and merely followed the reasons recorded by the ITO at Agra and continued with the re-assessment proceedings against the assessee on borrowed satisfaction of ITO, Agra, who has also borrowed satisfaction from the office of DCIT-2, Agra. The reasons which are not in accordance with law have been recorded at Agra by the ITO, who was not authorized to do so, as was having no jurisdiction over the assessee and the Assessing Officer having jurisdiction over the assessee at Aligarh did not do anything with regard to the initiation of re-assessment proceedings and has not recorded any reasons for re-assessment proceedings and merely acted on the borrowed satisfaction. The issue is, therefore, squarely covered by the order of ITAT, Agra Bench in the case of Late Shri S.N. Bhargava (supra). In view of the above discussion, we are of the view that the initiation of re-assessment proceedings u/s. 147 of the IT Act is clearly bad in law and

> against the provisions of law. The AO at Aligarh has, therefore, no validly assumed the jurisdiction to pass re-assessment order because he has merely followed the reasons recorded by the ITO, Agra, who was having no jurisdiction over the assessee. We accordingly set aside the orders of the authorities below and quash the re-assessment proceedings u/s. 147 of the IT Act. In the result, all additions would stand deleted. There is no need to decide the addition on merit, which is wholly academic in nature."

Respectfully following the judgment of Co-ordinate Bench and other case laws relied by the assessee, we are of the opinion that the reopening of assessment is bad in law and not sustainable being valid. Therefore, the impugned assessment deserves to be quashed and consequential addition to be deleted. Since the assessment stands quashed as per above discussion, we need not to adjudicate upon the merits of the addition on factual aspects of the case. Accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 7th September, 2018.

Sd/- Sd/-

(Bhavnesh Saini)
Judicial member

(L.P. Sahu)
Accountant Member

Dated: 7th September, 2018
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi