आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 505/JP/2016
निर्धारण वर्ष/Assessment Year : 2007-08

I.T.O., Ward 3(1), Jaipur.	बनाम Vs.	Shri Roop Narayan Sharma, Kanak Pura, Sirsi Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEMPN 7375 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

प्रत्याक्षेपण/C.O. No. 21/JP/2016
(Arising out of आयकर अपील सं./ITA No. 505/JP/2016)
निर्धारण वर्ष/Assessment Year 2007-08

Shri Roop Narayan Sharma, Kanak Pura, Sirsi Road, Jaipur.	बनाम Vs.	I.T.O., Ward 3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEMPN 7375 K		
प्रत्याक्षेपक/Objector		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by: Shri Ashok Khanna (JCIT) &
Shri R.A. Ojha (A.O.)
निर्धारिती की ओर से/ Assessee by: Shri Mukesh Khandelwal &
Shri Nitin Bardia (CAs).

सुनवाई की तारीख/ Date of Hearing: 25/03/2019
उदघोषणा की तारीख/Date of Pronouncement : 09/04/2019

आदेश/ ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the revenue and the cross objection filed by the assessee against the order of ld.CIT(A)-I. Jaipur dated 05/02/2016

for the A.Y. 2007-07 in the matter of order passed U/s 143(3) read with Section 147 of the Income Tax Act, 1961 (in short, the Act).

2. First, we take up the appeal filed by the department wherein the revenue has raised following grounds of appeal:

> *"1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in directing the AO to re-compute the Long Term Capital Gain holding that the assessee is entitled for deduction uls 54F in respect of full value of consideration received by the assessee and not the value taken by the sub registrar for the purposes of stamp duty.*
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> *2. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing relief of Rs. 66,00,000/-out of total addition of Rs. 81,00,000/- made by the AO on account of unexplained bank deposits on the basis of additional evidences, which were never submitted before the AO despite providing various opportunities by the AO.*
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> *3. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing relief of Rs. 66,00,000/- out of total addition of Rs. 81,00,000/- made by the AO on account of unexplained bank deposits on the basis of additional evidences, which were admitted without satisfying the conditions mentioned in Rule 46A of the IT Rules."*

3. Rival contentions have been heard and record perused. Facts in brief are that during the year under consideration, the assessee has sold its agricultural land. The case of the assessee was reopened on the basis of the information that the assessee had purchased an immoveable property and in absence of any return, source was not verifiable. In response to notice u/s 148, the appellant had filed his return declaring income from agriculture and bank interest. The assessee alongwith his three brothers had sold two agricultural lands admeasuring 40.30 Bighas

for Rs. 6.80 Crores (in which share of the appellant is Rs. 1.70 Crore but valued by registering authority at Rs. 8.02 Crores in which share of the assessee is calculated at Rs. 2,00,50,000) and reinvested for purchase of agricultural lands as well as for purchase of residential house. Since as per opinion of the assessee the said lands were not capital assets u/s 2(14) of the Act and hence no such transaction of sale of agricultural lands was shown in the return filed in pursuance to notice u/s 148. During the assessment proceedings the AO not convinced with the arguments and submissions taxed the capital gain by curtailing eligible deductions to the assessee u/s 54B and u/s 54F of the Act. During the reassessment proceedings, the A.O. found that out of the sale proceeds, the assessee acquired residential house for which deduction was claimed U/s 54F of the Act in respect of value of consideration paid by the assessee. As per the A.O., the assessee is entitled for deduction U/s 54F of the Act only if the assessee has invested full amount of sale consideration of agricultural land as taken by the Sub-Registrar for the purpose of stamp duty. Thus, the A.O. restricted the deduction claimed U/s 54F of the Act. By the impugned order, the ld. CIT(A) directed the A.O. to allow exemption U/s 54F in respect of full value of consideration received by the assessee and not the value taken by the Sub-Registrar for the purpose of stamp duty. Against the order of the ld. CIT(A), the revenue is in further appeal before the ITAT.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the year, the assessee had sold agricultural land of Rs. 70.00 lacs which was valued by the Registering Authority at Rs. 1,00,50,000/- and it had invested Rs. 35,26,740/- for purchase of residential house. The assessee claimed exemption U/s 54F of the Act in respect of actual amount of sale consideration received by him and not on the amount adopted for stamp duty purposes. However, the A.O. allowed a sum of Rs. 30,98,385/- as deduction U/s 54 by taking the amount invested at Rs. 33,26,700/-. The ld. CIT(A) has correctly held that the assessee is entitled for deduction U/s 54F in respect of full value of consideration received and not the value taken by the Sub-Registrar for the purposes of stamp duty. The issue is squarely covered by the decision of the Hon'ble Delhi High court in the case of CIT Vs. Nilofar Singh, which has been followed by the ITAT Jaipur Bench in the case of Nand Lal Sharma Vs. ITO (2015) 61 taxmann.com 271 (JP Trib) 61 taxmann.com 271 and also in the case of Gyan Chand Batra 133 TTJ 482, respectfully following the same, we do not find any infirmity in the order of the ld. CIT(A) in directing the A.O. to allow the assessee's claim of deduction U/s 54F of the Act in respect of full value of consideration actually received by him.

5. The revenue is also aggrieved for deleting the addition of Rs. 66.00 lacs out of total addition of Rs. 81.00 lacs made by the A.O. on account of unexplained bank deposits.

6. Rival contentions have been heard and record perused. From the record we found that the A.O. made addition of Rs. 81.00 lacs to the income of the assessee on account of unexplained credits (including cash deposit of Rs. 15 lacs) in the bank account of the assessee as per the following details:

26/07/2006 to 29/09/2006 (cash deposits)	Rs. 15.00 lacs
16/03/2007	Rs. 55.00 lacs
24/03/2007	Rs. 11.00 lacs

7. Against the order of the A.O. in appeal filed appeal before the ld. CIT(A), the assessee filed additional evidence. The ld. CIT(A) called for the remand report and also rejoinder of the assessee on the same. After considering the remand report, the ld. CIT(A) deleted the addition of Rs. 66.00 lacs after observing as under:

"Credit entry of Rs. 55 lac on 16.03.2007

(iv) Regarding credit entry of Rs. 55 lac on 16.03.2007, it was submitted that the appellant had received a sum of Rs. 55 lac from M/s. Megha Colonisers as advance against sale of its agricultural land which was registered on 19.05.2007 and as per the said sale deed at page 4, it has been stated that the appellant had received said

sum through cheque no. 977801 dated 14.03.2007 drawn on bank of Baroda and this cheque was credited in its bank account with Oriental bank of Commerce on 16.03.2007. It also filed confirmation from M/s. Megha Colonisers in this regard.

(v) I have duly considered the above contention of the appellant and found merit in it. It is evident from the sale deed dated 19.05.2007, executed by the appellant along with his three brothers in favour of Ms/ Megha Colonisers that cheque No. 977801 dated 14.03.2007 amounting to Rs. 55 Lac was provided by M/s Megha Colonizers to the appellant and the same was credited into the OBC bank account of the appellant on 16.03.2007. Further, the appellant has also filed a confirmation from M/s Megha Colonisers in this regard. Therefore, looking to the totality of facts and circumstances, the credit entry of Rs. 55 Lac stands explained.

Credit entry of Rs. 11 lac on 11.03.2007

(vi) Regarding credit entry of Rs. 11 lac on 24.03.2007, it was submitted that it received this sum from his brother Shri Satya Narain which is duly verifiable from the bank statement of Shri Satya Narain as the appellant had made a payment of Rs. 11 lac to M/s. Megha Coloniser through cheque no. 739215 from its bank account on behalf of its brother and its brother returned this money to the appellant through his cheque no. 257397.

(vii) I have duly considered the above contention of the appellant and found merit in it. It is evident from the saving bank account of the appellant with OBC that cheques bearing no. 739214 and 739215 of Rs. 11 Lac each were debited in the said bank account on 19.03.2007. Further, as the per saving bank account of Satya Narayan Sharma with OBC, it is observed that a sum of R.s 11 Lac was transferred through cheque No. 257397 on 24.03.2007 and on

the same date, a sum of Rs. 11 Lac has been credited in the bank account of the appellant. The appellant has also filed confirmation from Shri Satya Narayan Sharma in this regard. Therefore, looking to the totality of facts and circumstances, the credit entry of Rs. 11 Lac stands explained."

8. The revenue is in further appeal before the ITAT against the above deletion.

9. We have considered the rival contentions and carefully gone through the orders of the authorities below and the remand report so sent by the A.O. on which the ld. CIT(A) has already called for a rejoinder. A categorical finding has been recorded by the ld. CIT(A) after considering the remand report, to the effect that the assessee has received a cheque of Rs. 55.00 lacs from M/s Megha Colonizers which was deposited in his bank account maintained with OBC bank on 16/3/2007. The confirmation of M/s Megha Colonizers was also filed before the lower authorities. Accordingly, there is no infirmity in the order of the ld. CIT(A) in deleting the addition of Rs. 55.00 lacs.

10. Similarly with regard to Rs. 11.00 lacs, the ld. CIT(A) found that the assessee has received a cheque from his brother Shri Satya Narain which is duly verifiable from the bank statement of Shri Satya Narain who has issued cheque to the assessee on 24/3/2007. The assessee has also filed confirmation from his brother Shri Satya Narain. Detailed findings so recorded by the ld. CIT(A) with regard to receipt of Rs. 11.00 lacs by the

assessee from his brother through account payee cheque and confirmation have been filed by the brother has not been controverted by the ld. DR by bringing any positive material on record. Accordingly, we do not find any infirmity or illegality in the impugned order of the ld. CIT(A) in deleting the addition of Rs. 11.00 lacs.

11. Since the additions have been deleted by the ld. CIT(A) after giving proper opportunity to the A.O. and calling a remand report, there is no contravention of Rule 46A of the IT Rules. In view of above, the total addition of Rs. 66.00 lacs (55,00,000/- + 11,00,000/-) so deleted by the ld. CIT(A) are correct and duly supported by the remand report and findings so recorded by the ld. CIT(A) which is as per material on record.

12. In the result, appeal of the revenue is dismissed.

13 In the C.O. filed by the assessee, following grounds have been taken.

> *"1. That under the facts and circumstances of the case the assessment order is liable to be annulled ab-initio as the same has been passed without issuing notice u/s 143(2) of the Income Tax Act, 1961.*
>
> *2. That under the facts and circumstances of the case the whole proceedings of assessment are liable to be quashed as the basic reasons on the basis of which proceedings of reassessment were initiated have not been even discussed in the assessment order and no addition was made thereon. Hence the order has been passed against the provisions of section 147 of the IT Act, 1961.*

3. *That under the facts and circumstances of the case, the Id. CIT (A) has erred in sustaining the action of the Id. AO in treating the lands sold by the appellant as capital assets in place of Agricultural lands.*

4. *That under the facts and circumstances of the case, the Id. CIT (A) has erred in sustaining the action of the Id. AO in not allowing the deduction u/s 54B in connection with an agricultural land purchased for Rs. 74,00,000.*

5. *That under the facts and circumstances of the case, the Id. CIT (A) has erred in sustaining the action of the Id. AO in considering a sum of Rs. 15,00,000 being amount deposited in bank account as undisclosed income of the appellant and erred further in enhancing the amount of Rs. 15,00,000 to Rs. 16,50,000 on said account by modifying the claimed opening cash balance.*

6. *That the assessee craves leave to add, amend, alter, withdraw any of the grounds of appeal before the hearing."*

14. In the C.O., the assessee has basically taken legal ground with regard to completion of assessment U/s 143(3) of the Act without issuance of notice U/s 143(2) of the Act. In this regard, the ld AR has drawn our attention to page 1-2 of paper book containing acknowledgment of return filed with ITO ward 3(1), Jaipur on 13th March, 2015 for the A.Y. 2007-08. Since it is a purely legal issue, it can be admitted at Tribunal level for the first time in terms of decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 97 Taxman 358 (SC). During the course of hearing on 16/10/2017, the ld DR was directed to produce the assessment records and to furnish evidence of service of notice U/s 143(2) of the Act. The case was again fixed for hearing on 19/09/2018, however, the

department could not place any evidence on record to substantiate the issue and service of notice U/s 143(2) of the Act. Appeals were finally fixed for hearing on 25/3/2019 and the ld. DR was specifically asked to substantiate the issue and service of notice U/s 143(2), but noting could be produced by the ld DR. Exactly Similar issue under identical facts and circumstances have been decided by the Bench in the case of assessee's brother Shri Hansraj Sharma in ITA No. 504/JP/2016, wherein following reasoning have been given:

"11. We have considered the rival contentions and carefully gone through the orders of the authorities below. It is clear that in respect of issue raised by the assessee. Specific query was raised by the Bench on 16/10/2017, 19/09/2018 and 15/11/2018 giving time to the department for producing the case record to substantiate proper sanction by the JCIT of the Range U/s 151(2) of the Act. However, even after expiry of more than seventeen months when the case was again fixed on 25/3/2019, the department could not produce the evidence of sanction having been issued U/s 151(2) of the Act. Accordingly, considering the judicial pronouncements referred above and applying to the facts of the case, we do not find any merit in the notice issued U/s 148 of the Act without obtaining sanction by the JCIT of the Range U/s 151(2) of the Act.

12. The assessee has also challenged the framing of assessment without issue of notice U/s 143(2) of the Act.

13. We have considered the rival contentions and found from the record that the assessee filed its return of income in response to the notice u/s 148 of the Act on 13.03.2015. The AO had concluded the assessment without issuing notice under section 143(2) of the

Act after the return was filed by the assessee in response to notice under section 148 of the Act.

14. *Thus, it is clear that the AO had concluded the reassessment considering the Return of Income filed by the assessee on 13.03.2015 but failed to issued notice u/ s 143(2) of the Act in order to process the said return. The department was precisely asked by the Bench on 16/10/2017, 19/09/2018 and 15/11/2018 to substantiate the issue and service of notice U/s 143(2) of the Act, but the same could not be produced even on the specific query by the bench. Without issue of notice U/s 143(2) completing the reassessment proceedings are liable to be quashed in view of the following judicial pronouncements:*

(i) ***ACIT v/s Hotel Blue Moon 321 ITR 362 (SC)*** *wherein it was held by the Hon'ble SC that issuance of notice u/s 143(2) is mandatory even in block assessments.*

(ii) ***CIT v/s Salarpur Cold Storage 50 taxmann.com 105 (All. HC):*** *For framing order u/ s 143(3) it is necessary to issue a notice u/ s 143(2) of the Act, and in absence of notice u/s 143(2) the assumption of jurisdiction itself would be invalid.*

(iii) ***Travancore Diagnostics P Ltd. v/s ACIT 390 ITR 167 (Kerela HC):*** *Omission to issue notice u/s 143(2) is incurable defect even u/s 292BB of the Income Tax Act, 1961.*

(iv) ***PCIT - 08 v/s Jai Shiv Shankar Traders P Ltd. 383 ITR 448 (Delhi):*** *Issue of notice u/s 143(2) is not a procedural requirement and is mandatory and completion of assessment without issue of notice u/s 143(2) is fatal to the assessment. In this case return was filed after issuance of notice u/s 142(1) and since no notice was issued u/s 143(2) the assessment was held to be invalid.*

(v) ***ITO v/s Neeraj Goel (ITAT Delhi Bench SMC)*** *: Assumption of jurisdiction to frame an assessment or non-assumption of jurisdiction to frame an assessment goes to the root of the judicial act of framing an assessment order and in event of non-assumption of jurisdiction u/s 143(2) of the Act to frame an assessment the act of the assessing officer in framing an assessment order without issuing notice u/s 143(2) cannot be saved under the provisions of section 292B of the IT Act, 1961 or under section 292BB of the IT Act, 1961 and therefore the assessment order so framed will be void ab initio.*

(vi) ***Kamla Devi Sharma v/s ITO (ITAT, Jaipur Bench):*** *In this case decided on 06.02.2018 this Hon'ble Bench discussed all the above orders and reached on the conclusion that non-issue of notice u/s 143(2) in reassessment proceedings, prior to finalizing reassessment order cannot be condoned by referring to section 292BB and is fatal to the order of reassessment.*

15. Applying the proposition of law laid down in the above judicial pronouncements, we do not find any merit in the assessment so framed U/s 143(3) without issue of notice U/s 143(2) of the Act."

As the facts and circumstances in the instant case are similar, following the above reasoning, we do not find any merit in the assessment so framed without issue of notice U/s 143(2) of the Act. Accordingly, the assessment order so passed is liable to annulled ab-initio as the same has been passed without issue of notice U/s 143(2) of the Act.

15. As we have already annulled the assessment, we are not going into the other grounds taken by the assessee on merit of the addition so upheld by the ld. CIT(A).

16. In the result, appeal of the revenue is dismissed and the C.O. of the assessee is allowed in terms indicated hereinabove.

Order pronounced in the open court on 09th April, 2019.

Sd/-	Sd/-
(विजय पाल राव)	(रमेश सी शर्मा)
(VIJAY PAL RAO)	(RAMESH C SHARMA)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 09th April, 2019
*Ranjan
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- The I.T.O., Ward 3(1), Jaipur.
2. प्रत्यर्थी/ The Respondent- Shri Roop Narayan Sharma, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 505/JP/2016 & C.O. 21/JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar