

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.5442 & 5443/MUM/2017 (A.Y: 2007-08)**

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| DCIT (IT) – 2(3)(1)<br>1702, 17 <sup>th</sup> Floor,<br>Air India Building<br>Nariman Point<br>Mumbai – 400 021 | v. | Bhavesh R Gokal<br>C/o Sachin Romani CAs<br>202, Rajshala Building<br>597 J.S.S. Road<br>Princess Street<br>Mumbai – 400 002<br><br><b>PAN: AAOPG3120B</b> |
| <b>(Appellant)</b>  |    | <b>(Respondent)</b>  |

**ITA.NO.5477/MUM/2017 (A.Y: 2007-08)**

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| Shri Bhavesh Ravindra Gokal<br>2 <sup>nd</sup> Floor, Kasturi Building<br>171/172, J. Tata Road<br>Churchgate, Mumbai – 400 020<br><br><b>PAN: AAOPG3120B</b> | v. | DCIT (IT) – 2(3)(1)<br>Air India Building<br>Nariman Point<br>Mumbai – 400 021 |
| <b>(Appellant)</b>  |    | <b>(Respondent)</b>  |

**Assessee by : Shri Sachin Romani**  
**Department by : Shri Rajesh Kumar Mishra**

**Date of Hearing : 30.08.2019**  
**Date of Pronouncement : 20.09.2019**

## ORDER

### PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee and Revenue against different orders of the Ld. Commissioner of Income-tax (Appeals) – 55, Mumbai, [hereinafter in short “Ld. CIT(A)”] dated 31.05.2017 and 30.06.2017 for the A.Y. 2007-08.

2. Assessee and Revenue filed appeals against the order of the Ld.CIT(A) dated 31.05.2017 against quantum proceedings which arise from the assessment order passed u/s. 143(3) r.w.s 147 of the Act and the Revenue appeal in ITA No. 5443/Mum/2017 arises from the order of the Ld.CIT(A) in deleting the penalty u/s. 271(1)(c) of the Act. Assessee in its appeal in ITA No. 5447/Mum/2017 challenges the order of the Ld.CIT(A) in confirming the re-opening of assessment made u/s. 147 of the Act by the Assessing Officer.

3. Grounds of appeal raised by the assessee are as under: -

*“1) The Commissioner of Income-tax (Appeals)-55, Mumbai [‘CIT(A)’] erred confirming the action of the Assessing Officer in re-opening the assessment under Section 147 by issuing notice under Section 148 of the Income-tax Act, 1961 (‘the Act’).*

*The Appellant submits that on the facts and circumstances of the case, the AO neither had reasons to believe nor there was any escapement of income in the case of Appellant and hence the proceedings initiated under Section 147 for re-opening the assessment and notice issued under Section 148 of the Act is bad in law, ultra vires and contrary to the provisions of the Act.”*

4. Briefly the facts are, Assessee a non-resident Indian filed his return of income on 16.10.2007 declaring income of ₹.1,22,28,080/-. Subsequently, based on the information received from the office of DIT(Investigation)-II, Mumbai, according to which the assessee is holding an account in HSBC Bank, Geneva where a peak amount of USD 7,04,006/- was said to have reflected on the basis of the Base Note obtained from the Government of France, a notice u/s. 148 of the Act dated 31.10.2014 was issued to the assessee by the Assessing Officer stating that he has reason to believe that the income to the extent of USD 7,04,006/- has escaped assessment within the meaning of para (d) to the Explanation 2 to section 147 of the Act. Assessee filed his objections on 11.11.2014 against re-opening of assessment and the objections were disposed off by the Assessing Officer on 14.11.2014 and subsequently assessment was completed on 30.03.2015 u/s. 143(3) r.w.s 147 of the Act bringing to tax USD 7,04,006/- equivalent to Rs. 3,10,95,945/- as income of the assessee.

5. On appeal the Ld.CIT(A) sustained the re-opening of assessment. On merits he deleted the addition made by the Assessing Officer observing as under: -

**"7. Decision-:**

*I have considered written submissions of the Appellant, remand report and the rejoinder submitted by the Appellant and also analyzed the legal position on the issue involved in this matter.*

*The Assessee has raised several grounds, however, the issue is only one and effectively there are two grounds which are summarised as under:*

- a. Challenging the re-opening of the case under the provisions of Section 147 of the Act; and*
- b. Challenging the additions made on account of peak balance of the HSBC bank account.*

*In the present case, AO has initiated the re-assessment proceedings on the basis of Base Note which was received from the office of the DIT(Inv)-II, Mumbai and according to such information the Assessee was holding an account in HSBC Pvt Bank, Geneva. The peak account mentioned in the Base Note is USD 7,04,006-in AY 2007-08 and on the basis of this, the AO has made the additions in the hands of the Assessee.*

*As regards the validity of the re-opening of the case, I am of the view that for the AO to initiate re-assessment proceedings all that is required by the AO to do is to form a belief that any income has escaped assessment. It is not necessary for the AO to conclusively prove at that stage to show that income has actually escaped assessment. The sufficiency or adequacy of the AO's reason to believe at the time of initiation of reassessment proceedings is not open for judicial scrutiny. If the Appellant's case was that the material available with the AO is absent or inadequate / insufficient that no prudent person on the basis of the material can reasonably form a belief regarding escapement of income then a judicial authority can certainly examine the sufficiency and adequacy of the material on the basis of which the AO formed his reasons to believe. Thus, the fact that the information received in the form of Base Note regarding existence of an account with HSBC Bank, Geneva, Switzerland, a fact which has not been denied by the Assessee, is sufficient reason for the learned AO to initiate reassessment proceedings in the present case.*

*Further, the AO has duly followed the procedure provided by the Supreme Court in" e case of GKN Driveshafts (India) Ltd. V. ITO (259 ITR 19) to have any technical defaults the validity of the re-assessment proceedings. Hence, I am of the view that the reassessment proceedings initiated on the basis of the Base Note is valid. In view of the above, Ground No 1 and 2 are adjudicated against the Appellant and are dismissed."*

6. Before us, the assessee is in appeal against the order of the Ld.CIT(A) in sustaining the action of the Assessing Officer in re-opening of assessment u/s. 147 of the Act and the Revenue in its appeals challenged the order of the Ld.CIT(A) in deleting the addition made by the Assessing Officer in respect of the deposits in HSBC Bank, Geneva and also in deleting the penalty levied u/s. 271(1)(c) of the Act.

7. As far as the re-opening of assessment is concerned the Ld. Counsel for the assessee submits that the Assessee is a Non-Resident Indian ('NRI') engaged in business (food sector) in United Arab Emirates ('UAE') and Assessee is of Indian origin and moved to UAE and settled in UAE since the year 2001-02. The Assessing Officer has made the assessment u/s. 147 r.w.s 143(3) of the Act considering the status of Assessee as NRI. The Assessing Officer issued notice u/s. 148 of the Act dated 31.10.2014 for re-opening the case of the Assessee on the ground that he has certain deposits in his foreign bank account and he has not filed his tax return in India. It was contended before the Assessing Officer by raising preliminary objections that the Assessee has filed his return of income in India disclosing his Indian income, investments, assets & liabilities and provided the acknowledgement of filing his Indian tax return. Ld. Counsel for the assessee submits that the Assessing Officer while

disposing the preliminary objection raised by the Assessee did not deal with the main/primary objection of the Assessee that he has filed his Indian tax return and hence the reasons recorded for re-opening the case which states otherwise is not valid. The Assessing Officer in his order disposing the preliminary objection has further observed that for non-residents, income sourced from India is taxable in India. However, such reason/belief has never been part of the reasons recorded for the re-opening the case. Referring to page No. 9 and 10 of Paper Book counsel submits that Department has issued summons dated 16.12. 2011 u/s 131 calling for details like return of income filed from 2004-2005 till date (AY 2011-12). Referring to Page No. 11 of the Paper Book counsel submits that such details were filed by Assessee vide letter dated 29.12.2011 along with copies of all the returns filed from 2004-2005 till date of the summons.

8. Ld. Counsel for the assessee further invited our attention to page No. 19 of the Paper Book which is the notice issued u/s. 148 of the Act dated 31.10.2014 and page No. 20 of the Paper Book the reasons for reopening of assessment furnished along with the notice. The reasons recorded for reopening of assessment are as under: -

**“Reason for re-opening the assessment.”**

*The case of BHAVESH RAVINDRA GOKAL was centralized with the undersigned vide order No. DIT(IT)-II/Juris-127(2)/2012-13, dated 6.8.2012. Information has been received in respect of him from the office of DIT(Inv.)-II, Mumbai. The information pertains to his having a bank account with HSBC Bank, Geneva bearing a number BUP\_SIFIC\_PER\_ID - 5090180317. From the said bank statement, it is seen that he is having a peak balance of USD 704006 in the said account during the period 2006-07. The records of this office show that there is no return of income filed by him for the relevant assessment year and this income therefore has escaped assessment. This evidence has come into the possession of the undersigned; therefore, I have reason to believe that the income to the extent of atleast USD 704006 has escaped assessment within the meaning of para (d) to the Explanation 2 below section 147 of the Act*

*In light of this, notice u/s 148 of the Income Tax Act, 1961 is issued.”*

9. Referring to the reasons recorded, Ld. Counsel for the assessee submits that Assessing Officer records that no return of income was filed by the assessee for the relevant A.Y. 2007-08 and therefore this income referred to in the reasons had escaped assessment. The Ld. Counsel for the assessee submits that this is factually incorrect, as the assessee had in fact filed his return of income on 16.10.2007 which fact was also accepted by the Assessing Officer in the assessment order itself and such return was also treated as return filed in response to notice u/s. 148 of the Act. Ld. Counsel for the assessee referring to page No. 21 of the Paper Book submits that detailed objections were filed before the assessing officer bringing to his notice that the assessee has already filed his return of income for the assessment year 2007-08 on 16.10.2007 in the status of NRI, and also brought to the notice of the Assessing Officer that assessee has been filing returns as NRI since F.Y. 2001-02. Ld. Counsel

for the assessee submits that this fact has been brought to the attention of the Assessing Officer vide letter dated 13.05.2013 which was filed on 16.05.2013 itself. Ld. Counsel for the assessee submits that it was brought to the notice of the Assessing Officer through declaration filed on 16.05.2013 that assessee had no personal bank account at HSBC Bank, Geneva and that the bank account in question belongs to Fortune Pacific Investments Limited a Non-Resident Company.

10. Ld. Counsel for the assessee further submits that, in his objections assessee stated that mere deposits in the foreign bank account by a Non-Resident Company cannot be an income taxable in India in the case of Non-Resident and therefore, cannot be a reason for invoking the provisions of section 147 of the Act. In its objections assessee stated that reason to believe that income had escaped assessment must be honest and not based on the suspicion or conjecture. Inference must be based on the reason to believe but not on reason to suspect. Ld. Counsel for the assessee referring to page No. 23 of the Paper Book submits that Assessing Officer disposed off the objections without meeting the points raised by the assessee in his objections. Referring to the objections Ld. Counsel for the assessee submits that the Assessing Officer stated that for non-resident income sourced from India is taxable in India and the ownership of these account and details thereof has never been disclosed

by the assessee in his return of income. Ld. Counsel for the assessee submits that no such allegations have been made in the reasons recorded and in fact the reasons recorded itself stated by the Assessing Officer that the assessee has not filed return of income for the year under consideration and there is an escaped assessment.

11. Therefore, the Ld. Counsel for the assessee submits that the Assessing Officer does not deal at all with the objections referred by the assessee on filing of tax return and diverts or basis his entire reasoning on an altogether different ground of receiving information from the investigation wing and presuming that for non-resident income sourced from India is taxable in India. Therefore, Ld. Counsel for the assessee submits that the Assessing Officer has failed to pass valid order in respect of the preliminary objections filed by the assessee challenging the initiation of re-assessment proceedings and hence not followed the principles laid down by the Hon'ble Supreme court in the case of GKN Driveshafts (India) Ltd v. ITO [259 ITR 19] and reliance is also placed on the decision of the Hon'ble Bombay High Court in the case of Shivalik Venture Private Limited in W.P. No. 3019 of 2016 dated 08.03.2017.

12. Ld. Counsel for the assessee further submits that reasons recorded on incorrect fact about filing of return of income is bad in law and hence

the entire reopening of assessment proceedings are invalid and consequently the re-assessment order passed u/s. 147 r.w.s 143(3) of the Act is invalid and is required to be quashed. In support of his contentions reliance was placed on the following decisions: -

- (i) *Sagar Enterprises [257 ITR 335 (Guj)]*
- (ii) *Pal Gram Hindu Sarajanik Trust v. ITO [241 Taxman 84 (Guj)]*
- (iii) *Narain Dutt Sharma [91 taxmann.com 463 (Jp)]*

13. Ld. DR on the other hand vehemently supported the orders of the Ld.CIT(A) in sustaining the re-opening of assessment. However, Ld. DR submits that the Ld.CIT(A) is not at all justified in deleting the addition on merits. He strongly supports the order of the Ld. Assessing Officer.

14. We have heard the rival submissions and perused the orders of the authorities below. On a perusal of the reasons recorded for reopening of assessment the Assessing Officer records that *“the records of this office shows that there is no return of income filed by him for the relevant assessment year and this income therefore has escaped assessment”*. This reason recorded by the Assessing Officer that the assessee has not filed return of income for the relevant assessment year is factually incorrect and contrary to record as the assessee has filed his return of income on 16.10.2007 wherein income of ₹.1,22,28,080/- was declared. It appears that Assessing Officer before recording reasons he

has not examined the case records of the assessee and the returns filed by the assessee who is an NRI and was regularly filing returns right from the Financial Year 2001-02. Apparently the reasons were recorded based on wrong facts.

15. We find that identical issue as to whether the Assessing Officer can assume jurisdiction u/s.147 of the Act for reopening of assessment based on the reasons recorded which are factually incorrect, has come up for consideration before the Hon'ble Gujarat High Court in the case of Sagar Enterprises v. ACIT (supra) and the Hon'ble High Court held as under: -

*"3. When the matter came up for hearing earlier, it was submitted on behalf of the petitioner that the reasons recorded to the following effect are factually incorrect.*

*"The assessee-firm is engaged in the business of construction. The said firm came into existence vide partnership deed dated October 1, 1990. Therefore, the relevant previous year for the firm for filing its first return of income would be October 1, 1990 to March 31, 1991. On a perusal of the records it is noted that no return for the assessment year 1991-92 has been filed by the assessee-firm. As per Explanation 2(a) to Section 147 the following shall be deemed to be a case where income chargeable to tax has escaped assessment".*

*4 Therefore, Mr. Kaji, learned counsel appearing on behalf of the petitioner, sought time to place on record the details about the filing of the return. Along with the affidavit-in-rejoinder, xerox copies of the following documents have been annexed.*

*(i) Intimation dated March 9, 1992, issued under Section 143(1)(a) of the Act.*

*(ii) Acknowledgment dated August 28, 1991, of filing of return for the assessment year 1991-92.*

(iii) *Statement of income for the assessment year 1991-92.*

5. *At the time of hearing, originals of all the three documents have been produced for perusal of the court.*

6. *On going through the reasons recorded and the documents which have been produced on affidavit, it is apparent that the reasons which are recorded are de hors the facts available on record. Mr. Mihir Joshi, learned standing counsel appearing on behalf of the respondent, stated that in para. 2 of the reasons recorded, the respondent has also referred to action under Section 132 of the Act which was carried out at the premises of one Shri G.D. Shah in February, 1992, and has submitted that at least that part of the reasons would survive vesting the respondent with jurisdiction to initiate and continue action under Section 147 of the Act.*

7. *On going through the entire reasons recorded, it can be seen that in the penultimate paragraph, the respondent has further recorded as under :*

*"Further, the assessee was required to file the return of the income for the assessment year 1991-92 which the assessee has failed. Moreover, it was the duty of the assessee to declare this transaction and to file the return of income for the assessment year 1991-92. The assessee has failed on both these counts. Therefore, the escapement of assessment of income is solely attributable to the assessee."*

8. *Therefore, it is apparent that the factor of non-filing of the return for the assessment year 1991-92 has overbearingly weighed with the respondent for arriving at the satisfaction about the failure on the part of the assessee and escapement of assessment of income.*

9. *On the basis of the same, even for the sake of argument, if the contention raised by Mr. Joshi is taken into consideration, the settled legal position is that in such circumstances, it would not be possible to say with certainty as to which factor would have weighed with the officer concerned and once it is shown that an irrelevant fact has been taken into consideration, to what extent the decision is vitiated would be difficult to say. On this count alone, the petition requires to be accepted."*

16. Similarly, in the case of Pal Gram Hindu Sarvajanik Trust v. ITO

(supra) the Hon'ble Gujarat High Court held as under: -

*"Insofar as assessment year 2008-09 is concerned, there is an additional factor which renders the impugned notice unsustainable. As pointed out by the assessee, for assessment year 2002-03, the assessee had filed computation showing surplus and for this it had filed Form No. 10. Evidently, therefore, the Assessing Officer has not properly verified the facts from the record of assessment. This court in Sagar Enterprises v. Asstt. CIT [2002] 257 ITR 335/124 Taxman 641 (Guj.) has held that when the officer concerned has taken into consideration an irrelevant fact, it cannot be said with certainty as to which factor would have weighed with him for the purpose of arriving at the belief that income chargeable to tax has escaped assessment and to what extent the decision is vitiated. The Assessing Officer, having taken into consideration facts which are contrary to the record for the purpose of forming the belief that income chargeable to tax has escaped assessment, for this reason also it cannot be said that he could have formed the belief that income chargeable to tax has escaped assessment so as to assume jurisdiction under section 147. [Para 14]"*

17. We also find that identical issue also came up before the coordinate bench of this Tribunal in Jaipur Bench in the case of Narain Dutt Sharma v. ITO (supra) wherein the Tribunal observed as under:

*"14. Interestingly, during the course of reassessment proceedings, the ITO in his reassessment order stated clearly in Para 5 that "in the return of income filed under the head Business, you have declared income of ₹.175,510 on gross receipts of Rs. 21,93,870 u/s. 44AD." It is relevant to note the said return of income "was not filed in pursuance to issuance of notice u/s. 148 but the same was the return of income which was originally filed by the assessee u/s. 139 of the Act. It is therefore clear that the whole foundation of the Revenue's reasoning is contradictory and self-defeating where at the time of issuance of notice u/s. 148, it says that the assessee has failed to file his return of income and subsequently, during the proceedings u/s. 147, it admits that the assessee has filed his return of income originally under section 139. On this ground itself, the assumption of jurisdiction u/s. 147 cannot be sustained and the subject proceedings are liable to be quashed.*

15. Now, coming to the reasons which have been recorded by the ITO Ward 6(1), Jaipur for initiating proceedings u/s. 147 of the Act which are reproduced as under:

*"As per AIR information generated from the system, the assessee has made investment of Rs. 1057000/- for purchase of units and SB Account during FY 2006-07 relevant for AY 2007-08.*

*Since as per system no return of income has been filed for A Y 2007-08 the above transaction is not verifiable. I have, therefore, reasons to believe that on account of not filing of return by the assessee, income chargeable to tax has escaped assessment. Therefore, it is requested to accord approval for issuance of notice u/s. 148 of the Act."*

*16. The reasons so recorded by the ITO refers to information gathered from AIR database of the Revenue department whereby certain data/information regarding purchase of units and its linkage with I assessee's saving bank account during the financial year 2006-07 has been reported by the concern Bank. As per ITO, said information is not verifiable for the reason that assessee has failed to file its **return** of income for the subject assessment year as per the Revenue's department IT system. The basis of formation of belief by the ITO that the assessee's income for the impugned assessment year has escape assessment is therefore the receipt of certain AIR information from an external source i.e., banking institution with which the assessee maintains his saving bank account and the fact that assessee has failed to file his return of income for the impugned assessment year. In this regard, we refer to the decision of the Hon'ble Gujarat High Court in case of Harikishan Sunderlal Virmani (supra) where it was held as under*

*"5.03.....It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information and material received from other source, AO is required to consider the material on record in the case of the assessee and thereafter is required to form an independent opinion that the income has escaped assessment. Without forming such an opinion, solely and mechanically, relying upon the information from other source, there could not be any reassessment for verification."*

*17. Similar proposition has been laid down by the Hon'ble Delhi High Court in case of Indo Arab Air Services (supra) wherein it was held as under:*

*"20. Keeping the above legal position in view when the cases on hand are examined, it is seen that as far as Indo Arab is concerned while the AO set out the information received from the ED, he failed to examine if that information provided the vital link to form the 'reason to believe' that income of the Assessee had escaped assessment for the AY in question. While the AO has referred to the fact that the ED gave information regarding cash deposits being found in the books of the Assessee, the AO did*

*not state that he examined the returns filed by the Assessee for the said AY and detected that the said cash deposits were not reflected in the returns.*

*In fact, the AO contradicted himself in the reasons recorded by him by noticing the information of the ED to the above effect and then stating that on perusal of the records for the AY in question it was noticed that the Assessee "had not disclosed these transactions in its books of account." Further the AO refers to the ED's information that Mr. Chetan Gupta, partner of the Assessee, failed to explain the sources of the cash deposits as shown in the books of account. However, that by itself could not have led the AO to even prima facie conclude that income of the Assessee had escaped assessment. The explanation or the lack of it of the entries in the books of account may have certain relevance as far as ED is concerned but that by itself does not provide the vital link for concluding that for the purposes of the Act any part of cash deposits constituted income that had escaped assessment. There is a long distance to travel between a suspicion that income had escaped assessment and forming reasons to believe that income had escaped assessment. While the law does not require the AO to form a definite opinion by conducting any detailed investigation regarding the escapement of income from assessment, it certainly does require him to form a prima facie opinion based on tangible material which provides the nexus or the link to having reason to believe that income has escaped assessment."*

*18. In the instant case, pursuant to receipt of AIR information from an external agency that cash has been found deposited in assessee's savings bank account, there has been no further examination by the AO as to whether the cash so found deposited in the assessee's bank account has been reflected or has any connection with the reported turnover in the return of income so filed by the assessee. The reason for the said action on part of the AO is not hard to found out as the AO has concluded that the assessee has not filed any return of income after looking at the Department's IT system and without verifying the physical records maintained by the department which shows that the assessee has filed the return of income. When such a conclusion has already been reached, where is the question of examination of such information and its linkage with the return of income. As we have noted above, there is a clear contradiction on part of the AO to hold that assessee has not filed his return when the records so filed before us shows, and a fact which remain undisputed, that the return of income has been filed even though manually and which has been duly acknowledged. In the instant case, the AO has thus failed to examine the AIR information so received which would have provided the nexus or the vital link to form a prima facie opinion that income of the assessee had escaped assessment for the impugned assessment year. In absence of necessary nexus*

*between the tangible material and formation of belief, the reassessment proceedings cannot be sustained in the instant case.*

*19. In light of above discussions, we are of the view that the jurisdictional required as provided in section 147 read with the proviso has not been fulfilled in the instant case, hi the result, the reassessment proceedings are hereby quashed and set-aside. In the result, ground no. 1 of the assessee's appeal is allowed."*

18. On a reading of the facts of the decision rendered by the Hon'ble High Court, we notice that the Assessing Officer on incorrect assumption of facts that the assessee has not filed return of income and therefore income has escaped assessment, the assessment was reopened. The Hon'ble High Court observed that the factor of non-filing of return for the assessment year as overbearingly weighed with the respondent for arriving at the satisfaction about the failure on the part of the assessee and escaped assessment of income. It was also observed by the Hon'ble High Court that the settled legal position is that in such circumstances it would not be possible to say that certainty as to which factor would have weighed with the officer concerned and once it is shown that an irrelevant fact has been taken into consideration, to what extent the decision is vitiated would be difficult to say. Therefore, it has been held that on this count alone the assessee's petition should be allowed.

19. Similarly, in the case of Jaipur Bench decision, the Assessing Officer recorded a reason that as per system no return has been filed, the

transactions are not available and therefore he has reason to believe that on account of non-filing of return, income chargeable to tax has escaped assessment.

20. The ratio of the above judgments squarely applicable to the facts of the assessee's case. No other contrary judgment has been brought to our notice by the Revenue. Thus, respectfully following the above decisions, we hold that since reasons recorded are based on incorrect facts about filing of return of income, the notice issued u/s. 148 of the Act is bad in law and the entire re-assessment proceedings are invalid and consequently the reassessment order passed u/s. 143(3) r.w.s 147 of the Act is invalid and hence the same is quashed.

21. As we have annulled the reassessment order on the preliminary issue, we are not inclined to go into other legal aspects and merits of the issues in the appeal of the assessee as well as the Revenue as they become only academic at this stage. Consequently, the appeal of the Revenue become infructuous.

22. Since we have annulled the reassessment order passed u/s. 143(3) r.w.s 147 of the Act the penalty imposed u/s. 271(1)(c) of the Act will not

survive and consequently the appeal of the Revenue becomes infructuous.

23. In the result appeal of the assessee is allowed and the appeals of the Revenue are dismissed as infructuous.

Order pronounced in the open court on the 20<sup>th</sup> September, 2019

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 20/09/2019

Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**