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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 214/JP/2020
निर्धारण वर्ष/Assessment Year :2009-10

Smt. Priyanka Agarwal, D/o- Late Sh. Tulsi Das Agarwal, 2000, Khejaro Ka Rasta, Third Crossing Shop, Topkhana, Jaipur.	बनाम Vs.	I.T.O., Ward-1(5), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIKPA 7142 B		
Appellant		Respondent

निर्धारिती की ओर से/ Assessee by: Shri Shravan Kr. Gupta (Adv)
राजस्व की ओर से/ Revenue by: Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 06/04/2021
उदघोषणा की तारीख/ Date of Pronouncement : 24/05/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This is the appeal filed by the assessee against the order of the ld. CIT(A)-I, Jaipur dated 26/06/2019 for the A.Y. 2009-10. The grounds taken by the assessee are as under:

1.1 The impugned assessment order u/s 143(3)/148 dated 30/11/2016 as well as the notices issued are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

1.2. The action taken u/s 147 by the ld. AO is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same may kindly be quashed.

2.1. Rs. 5,17,894/-: The ld. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the action of the ld. AO in taxing the Long Term Capital Gain (LTCG) of Rs. 5,17,894/- as against Nil (-1119) and made the addition of Rs. 5,17,894/- on account of LTCG. Hence the addition so made or LTCG assessed by the ld. AO and confirmed by the ld. CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the penalty may kindly be deleted in full.

2.2 The ld. CIT(A) has further grossly erred in law as well as on the facts of the case in confirming the action of the ld. AO in allowing the reduction of the 1/3rd share of the indexed cost of acquisition at Rs. 55,548/- only as against the actual of Rs. 4,71,245/- claimed by the assessee without any justifiable basis. Hence the cost of indexed so denied by the ld. AO and CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be allowed.

2.3 The ld. CIT(A) has further grossly erred in law as well as on the facts of the case in confirming the action of the ld. AO in allowing the claim of legal expenses of Rs. 51,558/- only as against the actual claim of Rs. 1,54,674/- claimed by the assessee without any justifiable basis. Hence the claim so denied by the ld. AO and CIT(A) is being totally contrary to the provisions of law and facts on the record and hence the same may kindly be allowed.

3. The ld. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234 A,B,C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

2. The hearing of the appeal and C.O. were concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. There is delay of 178 days in filing this appeal, for which the assessee filed an application for condonation of delay and the contents of application for condonation of delay reads as under:

"1. In this connection it is submitted that the applicant assessee is an individual filling her return of income regularily. In this case the assessment was completed on 30.11.2016 u/s 147/148/143(3) at Rs. 6,96,144/- as against the return income of Rs.1,78250/- by making the adition on account of LTCG of Rs.5,17,894/- and raised the demand. Against which the assessee had filed an appeal before the Id. CIT(A)-1, Jaipur. The Id. CIT(A)-Jaipur has passed the order of appeal on dt. 26.06.2019, which was served on the counsel of the on dt. 08.07.2019. Hence the appeal was to be filed on or before Month of March 06.09.2019 but the same is being filed on 27.02.2020 i.e by delay of about 4 Month and 21 days late.

2. The reason of late filing of appeal was that as the order was received by the counsel of the assessee on dt. 08.07.2019 and at that time the assessee was pregnant of 8 Months and got delivery on 23rd August 2019, hence she was on bad rest and was unable to move out of home till 6 months as happened in these circumstances. Hence the counsel as well as the assessee could not contact to each other. The applicant could not come to know about the order of CIT(A) and its result. It is only few days before when the assessee inquired about the status of the order, then she come to know that her appeal has been dismissed by the Id. CIT(A), then she collect the order from the office of the counsel through the other known person and consult the other counsel about the same.

3. *That the other counsel or advocate has advised to her to file the appeal immediate with the prayer for condonation of delay being the reasonable ground and being a strong case in her favor.*

4. *That due to all this reason the appeal could not be filed within time. In support of these contention an affidavit of the assessee is enclosed.*

5. *It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:*

> *"The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy."*

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

6. *The action or inaction by an assessee, on the advice of its counsel, whether correct or incorrect, if caused a delay, has been held to be reasonable and sufficient cause in these cases also. Kindly refer N. Balakrishnan v. M. Krishna Murthy (1998) 7 SCC 123 published in 30*

BCAJ 922, Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi and Anothers 118 ITR 507 .

That it is also settled that for the mistake of the Counsel, the party cannot be suffered. Reliance on Mahaveer Prasad Jain v/s CIT, 172 ITR 331(MP), Concord India Insurance Co. Ltd v/s Smt. Nirmala Devi, 118 ITR 507(SC), Kripa Shankar v/s CIT/CWT 181 ITR 183(AII), N. Balakrishnan v/s M. Krishanmurthy 7 SSC 123.

7. *The Hon'ble Jaipur Bench of ITAT has also condoned the dealy in the case of Ganesh Himalaya Pvt.Ltd. v. ACIT 22 Tax World 415 (Jp) where the filing was delayed because the son of the Managing Director had become victim of some misdeeds committed by the Holigans, particularly when on the similar points in the earlier four years, the appeals were filed in time.*

   In the instant case also, the appeal could not be filed in time because of the above reasonable cause and was a sufficient cause and there was no melafide intention.

8. *Recent Decision of Apex Court: in a recent decision, the apex court have again reiterated that the expression "sufficient cause" should receive a liberal construction. The Hon'ble court have also held that advancing of substantial justice should be of prime importance. Kindly refer Vedbai vs. Shantaram Baburam Patil & Others 253 ITR 798 (SC).*

   Prayer: In view of above facts and circumstance and with the sympathy and settled legal position, the delay so caused may kindly be condoned."

4. On the other hand, the ld DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case **of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while

deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

6. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 178 days in filing the present appeal and admit the appeal for hearing.

7. The brief facts of the case are that the assessee is a regular IT assessee. She filed her ROI on 08.05.2009 declaring total income at Rs.1,78,250/- which was assessed u/s 143(1) of the Income Tax Act, 1961 (in short, the Act). Subsequently, on the basis of information from AST software, it was alleged that during the year under consideration, the assessee jointly sold a shop No.150 measuring 20.89 Sq. meter, at CHOKARI PURANI BASTI CHANDPOLE BAZAR JAIPUR along with her mother and sister, for a sale consideration of Rs. 18,75,000/- on 01.09.2008 in which the assessee had 1/3rd share i.e. 6,25,000/- but alleging the same was not disclosed. Hence alleging escapement of income, notice u/s 148 was issued on 18.03.2016, in response to which the assessee relied on the ROI filed earlier on dated 08.05.2009. During the course of assessment proceedings it has been submitted and the AO

has also noted that as per sale deed the shop was under dispute and case was filed in upper Civil judge, Lower Range West, Jaipur as the tenant was not vacating the shop and litigation was going for a long period, which came to be settled only on 03.10.2006. The shop was parental property acquired before 1981. On 05.09.2016, the assessee had submitted computation of incomes and claimed cost of Acquisition (COA) of property at Rs.80,970/- (after indexing Rs.4,71,245/-) in F.Y. 1981-82 and also claimed the legal expenses of Rs. 1,54,674/-incurred in this civil case. The AO asked to justify the claimed COA, the assessee submitted proposed rate of Zila committee as on 18.12.1991, which was attested by sub Registrar-ll, Jaipur, according to which, the FMV of the said property was @ Rs.20,000/- per sq. meter for the area of Bagruwaion ka Rasta, Jaipur. However, the AO relying upon some comparable case obtained a purchase deed dated 03.09.1981 from the Dy. Inspector General-III, JAIPUR vide her later 12279 dated 26.10.2016 for shop No. 881, Chokari Purani Basti, Chandpole Bazaar, wherein the purchase consideration was cost Rs.48,999/- + stamp Duty Rs.4,714/- totalling to Rs. 53,717/- for 46.88 Sq. meter (@ Rs.1145/- PSM). The AO considered Rs.1370.68 Sq. meter (Rs.53,717/-) for 39.19 Sq. meter (Despite the fact that he mentioned 46.88 Sq. meter at Pg-3) and thus worked out total COA Rs.28,633/- only, in the hands of all the three joint owners and

accordingly, worked out the assessee's 1/3rd share at Rs. 9,544/- (Indexed cost Rs. 55,548/) as against Rs. 80,970/- (after indexed cost Rs.4,71,245/-) claimed by the assessee. Resultantly, he made addition of Rs.4,15,697/- i.e more than 8.5 times. With regard to the legal expenses, the assessee stated that it has incurred expenses of Rs.1,54,274/- as the shop was under litigation with the tenant before Civil Judge lower range west Jaipur as mentioned in sale deed. In support of the same, the assessee submitted litigation papers of the same before the AO. However, the AO concluded that the assessee failed to file documentary evidence in support of the legal expenses incurred. The AO however, looking to fact that there was some dispute going on with the tenant, allowed Rs. 51,558/- only (1/3rd of Rs.1,54,674/-) as against Rs. 1,54,674/- claimed by the assessee. Thus he disallowed Rs.1,03,116/- and finally estimated the LTCG at Rs.5,17,894/- as against ` Nil' claimed by the assessee.

8. Being aggrieved by the order of the A.O., the assessee preferred appeal before the ld. CIT(A) and after considering the submissions of both the parties and well as material available on record, the ld. CIT(A) has confirmed the action of the AO by stating that the AO has estimated the cost of acquisition by obtaining comparable case from Dy. Director General, (registration &stamps), circle-3, Jaipur and adopted the cost by taking rate per square meter and after providing opportunity to the

assessee. Accordingly told CIT(A) the comparable case is of same vicinity and therefore, it is held that the AO was justified in adopting cost of acquisition at Rs.9,544/- (indexed to Rs.51558/-). As far as legal expenses are concerned, it was held that since the assessee is only 1/3rd owner of the property sold, therefore, the action of the AO is considered as reasonable and no interference is called for. Against the said order of the ld. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

9. Ground No. 1 of the appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in upholding the order of assessment U/s 143(3)/148 of the Income Tax Act, 1961 (in short, the Act) dated 30/11/2016. In this regard, the ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and has also submitted that the impugned order for assessment is liable to be quashed as the notice issued U/s 148 of the Act was without jurisdiction and bad in law. It was further submitted that the reasons recorded by the AO for forming his belief for reopening the assessment is based on factually incorrect fact. The ld. AR has also relied on the written submissions filed before the Bench and the same is reproduced below:

"1. Reason recorded is not valid but also incorrect: At the very outset it is submitted that in the present case the ld. AO in the reasons recorded stated that "the assessee has not file its return of income. Later on, it was noticed that the assessee has sold a property situated at Shop No. 150, Chandpole Bazar, Jaipur to Smt. Meena Sharma during the F.Y. 2008-09 for sale consideration of Rs. 18,75,000/-, however of the Sub-Registrar had adopted final face value of such property at Rs.16,37,653/- for the purpose of charging of stamp duty. But on verification of the department portal it is noticed that the assessee has not shown capital gain. I have reason to believe that the income to the extent of Rs.18,75,000/- has escaped assessment with in meaning u/s 147/- of the IT act."

Copy of reasons recorded is enclosed.

On the perusal of the above reasons it has to submit that the reasons itself incorrect, invalid without considering the material on record. Hence liable to be quashed. Due to following reasons.

(i) The ld. AO has stated that the assessee has not filed the return and not disclosed sale consideration for the relevant assessment year is absolutely wrong. Because the assessee was regularly Income Tax Assessee and filing her return of income for this year also. For the year under consideration she has filed her return of income on 08.05.2009 declaring the total income of Rs.1,78,250/- in which she has also shown loss from Long Term Capital Gain of -Rs.1,190/- vide computation(PB 2-3) and shown net income of Rs.1,78,250/- including the income from business with the ITO Ward 6(2) Jaipur. Copy of IT return with computation is enclosed (PB 1-4). In the return the assessee herself shown the capital gain/loss on such property and in page 2 of the assessment order the ld. AO himself admitted the same. Hence the concealed income if any must be recorded at Rs. 5,17,894/- and not entire sale consideration of Rs.18,75,000/- (of all three co-owners) in the reasons recorded.

Thus ld. AO has issued the notice on wrong facts and reasons that the assessee has not filled her return of income and not disclosed the said transaction or despite the material available on record which has not been taken in to consideration before recording the reasons. The notice has been issued only on the presumption, assumption and suspicion and without any material. Hence the reopening and issuance of notice u/s 148 itself illegal and liable to be quashed.

2. On this preposition we would like to draw your kind attention on direct decision Honble Gujrat High Court in the case of Mumtaz Hazi Mohamad Memon v/s ITO 408 ITR 268(Guj.) on the very same issue, wherein the Honble Court has held that

"11. In this context, we have noted that the reasons proceeded on two fundamental grounds. One, that the property in question was sold for a sum of Rs. 1,18,95,000/- and two; that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and income also offered his share of the declared sale consideration to tax as capital gain. The Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs. 1,18,95,000/- as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in which, the sale consideration disclosed was Rs. 50 lakhs.

12. The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs. 1,18,95,000/- therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, Revenue simply cannot hope to salvage the impugned notice. Through the affidavit-in-reply a faint attempt has been made to entirely shift the center of the reasons to a completely new theory viz. the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain."

In the case of Vijay Harishchandra Patel vs. ITO 400 ITR 167(Guj.) (2018) where it has been held that" When very basis for reopening no longer survives, assumption of jurisdiction u/s 147 by AO by issuing notice u/s 148 was without authority of law and could not be sustained.

However the ld. AO nowhere stated that what documents he was having with him at the time of recording the reason. Hence the observation are wrong and baseless and her own and liable to be ignored.

Thus the reassessment proceeding on the basis of wrong or incorrect reason and wrong material are illegal and liable to be quashed.

3. No income escaped: further it is submitted that the notice u/s 148 can be issued only when there is any escapement of income because S.147 provides that If the Assessing Officer has reason to believe that an income chargeable to tax has escaped assessment for any assessment year, here the assessee has not escaped any income because the assessee has declared the capital gain truly and fully in the return filed originally'. Which shows that there was no escapement of income by the assessee. Hence if the assessee has herself declared the sale consideration and capital gain and paid tax thereon voluntarily then it cannot be said that there is the escapement of income by the assessee nor proved then the notice issued u/s 148 is invalid.

4. Reason to believe and not reason to suspect:

4.1 It is further submitted that even under the amended law by the finance act 1989 the condition precedent or words, which continues right since inception till date, are "reason to believe" and not "reason to suspect". The word "believe" has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. Kindly refer Gangasharan & Sons Pvt. Ltd. 130 ITR 1 (SC), and ITO v. Lakhmani Mewal Das, (1976) 103 ITR 437 (SC).

4.2 The belief of the Officer should be as to escapement of income and the belief should not be a product of imagination or speculation. There must be reason to induce the belief. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court (Sheo Nath Singh v. AAC, (1971) 82 ITR 147 (SC).

In the case of Mukesh Modi & Ors. vs. DCIT 366 ITR 418 (Raj) held that Evasion of tax was menace to society but Assessee contributing to the exchequer in form of tax could not be allowed to suffer on mere

pretence that it had evaded payment of tax. Rowing and fishing enquiry in hands of AO on mere suspicion or change of opinion could not satisfy expression "reason to believe" exposing Assessee for reopening of assessment. Notice for reopening of assessment was not in consonance and in conformity with under Section 147 and made specified notice vulnerable. High Court pointed that, reasons given by AO for issuance of notice for Re-assessment were not plausible and convincing. In fact order, where objections were rejected by AO, was not self-contained speaking order. Upon perusal of the order, it was amply clear that the same contains conclusions and is bereft of reasons.(para 12)

5. No notice u/s 148 can be given or reopen for verification the doubtful transaction: Further it is also settled legal position that no notice u/s 148 can be given for reopen the case for verification the transaction because that indicates reason to suspect not reason to believe. And in the present case on the perusal of the reason recorded itself is clear that the AO was having reason to suspect not reason to believe and for that there is no provisions in law. kindly refer CIT v/s M/s Sahil Knit Fab 249 CTR 454(P&H) also kindly refer a direct decision of Bakul Bhai Raman Lal Patel 56 DTR 212(Guj.) .

6o Satisfaction or application of mind by the Add. CIT and Pr. CIT: Further on perusal of the reason recorded and approval u/s 151 by the competent authority it is clearly proved that they have not applied their mind on the reasons recorded they have only expressed or mentioned "yes" on the reason forwarded while as per decision of Pr. CIT vs. N. C. Cables Ltd.(2017) 98 CCH 0010 Del HC it has been held that Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner. In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. For these reasons, the Court is satisfied that the findings by the ITAT cannot be disturbed.

Here is also the same position copy of reason recorded is enclosed (PB10-11) because no satisfaction by the ld. Pr. CIT.

Also refer Maruti Clean Coal And Power Ltd. vs. ACIT (2018) 400 ITR 0397 (Chhattisgarh), CIT vs. S. Goyanka Lime & Chemicals Ltd. (2015) 231 TAXMAN 0073 (MP), Also refer PAC AIR SYSTEMS P. LTD. vs. ITO (2020) 58 CCH 0001 Del Trib , GORIKA INVESTMENT AND EXPORT (P) LTD. vs. ITO (2018) 53 CCH 0168 Del Trib, TARA ALLOYS LTD. vs. ITO (2018) 63 ITR (Trib) 0484 (Delhi)

Therefore the notice, reasons recorded, assessment all are the illegal bad void ab-initio and barred by limitation and liable to be quashed.

7. No income escaped due to disallowance of expenses of legal expenses: In the present case on the facts it can be proved that the ld. AO did not have any material direct or circumstantial to have based his belief, nor that his belief was bonafide and in good faith. Because the AO has issued the notice u/s 148 only on the basis of not disclosure of sale consideration on account of sale of shop while admittedly the same has been shown thereafter the ld. AO for the purpose of making the assessment he has estimated the disallowance of legal which has been duly declared in the original return and made the different addition. The AO neither made any inquiry or collected any material that the assessee has concealed any income before issuance of notice nor saw his record. He has proceed only on imagination or suspicion rather than to reason to believe. He has only information borrowed and no notice u/s 147 can be issued on the borrowed information till the he was of the opinion of reason to believe.

8. Further we are also relying upon the decision of Honble Gujrat High Court in the case of Shanta Devi Gaekwad (Dead) Through LRS v/s DCIT 250 CTR 0421(Guj.). Where it has been held Computation of capital gain—Cost of Acquisition—Fair market value—Reverse Indexing Method—Assessee is the mother of erstwhile ruler of Baroda—During year under consideration, assessee had sold certain jewellery/valuable articles made of gold diamonds and pearls for consideration of Rs.9,05,09,176, which she inherited from her son—Assessee, by following the method of reverse indexation worked out fair market value of said jewellery at Rs.3,47,25,492/-as on April 1, 1974 and computed capital gains at Rs.2,78,84,432—However, AO held that all items of jewellery were not sold during year under consideration and accordingly, estimated value of items as on April 1, 1974 at Rs.5.00 Lac as against the returned value of gold jewellery of Rs.6,65,270/-as on March 31, 1974 and calculated capital gain at Rs.4,49,97,090—CIT(A) held that the

cost of acquisition as per fair market value as on April 1, 1974 should be Rs.1,39,48,363/- instead of Rs.5,11,44,000/-adopted by the assessee—Issue as to whether, Tribunal below committed substantial error of law in holding that Fair Market Value of the disputed jewellery as on 1st April 1974 should be arrived at by reverse indexation from the date of sale held in December 1991 based on the sale price and not from the Fair Market Value as on 31st March 1989 on the basis of which the Revenue had imposed Wealth Tax upon the assessee—Held, when two equally efficacious and acceptable data for purpose of valuations are available, the one which is beneficial to the assessee should be preferred—Full value of consideration received as a result of transfer of this type of jewellery belonging to a royal family is generally higher than the market value of the selfsame material, were it not a regalia—Therefore, for purpose of ascertaining market value of such an item as on April 1, 1974 in order to deduct the same from actual sale price of the article for arriving at the figure of capital gain, it would be unsafe to base the actual sale price by the process of reverse indexation—Thus, valuation accepted by Revenue as market value for purpose of Wealth Tax Act is the safest base—The authorities below committed substantial error of law in making reverse indexation not from 31st March, 1989 which is nearer to April 1, 1974 than from December, 1991, the date of actual sale.

Also refer Satya Dev Sharma v/s ITO 149 ITD 725(Jp). Where it has been held that Capital Gains—Fair market value—There was dispute related on basis of Fair Market Value of Assessee's land—It was claimed that, basis of Fair Market Value of Assessee's land should be considered as on 01.04.1981 for purpose of computation of capital gain—Held, value of land differs drastically due to its surroundings, distance from road, disputes, possession etc.—AO given finding that multistoried projects had been developed near Assessee's land and buyer of Assessee's land was developing some project on land—No such development of comparable land had been brought on record by AO—CIT(A) had agreed that instance quoted by AO was not comparable—Where no comparable case was available, best way to estimate cost would be to compute Fair Market Value on basis of reverse calculation considering cost inflation index—Estimation could not be accepted—Appeal allowed.

Also refer Prembhai Kanjibhai Tandel v/s ITO 47 CCH 724(Ahd)(2016).

The ratio is also applicable in the present case as the assessee also filed the rate list and department has also taken incomparable case. Hence the value shown by the assessee should be taken and reverse indexation should also be accepted.

Therefore under these facts, circumstances legal position the additions so made may kindly be deleted in full and oblige."

10. On the other hand, the ld DR has vehemently supported the orders of the revenue authorities.

11. We have heard the ld. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that in the present case, the A.O. had recorded the reasons for reopening of assessment by mentioning *that "the assessee has not field its return of income. Later on, it was noticed that the assessee has sold a property situated at Shop No. 150, Chandpole Bazar, Jaipur to Smt. Meena Sharma during the F.Y. 2008-09 for sale consideration of Rs. 18,75,000/-, however of the Sub-Registrar had adopted final face value of such property at Rs.16,37,653/- for the purpose of charging of stamp duty. But on verification of the department portal it was noticed that the assessee had not shown capital gain. I have reason to believe that the income to the extent of Rs.18,75,000/- has escaped assessment with in meaning u/s*

147/- of the IT Act." After having gone through the facts of the present case, we noticed that the A.O. had recorded the reasons for reopening of assessment in the case of assessee on wrong facts as according to records put forth before us, it is reflected that the assessee was regularly income tax assessee and filing here return of income as well as for the year under consideration also. During the year under consideration, the assessee has filed return of income on 08/05/2009 declaring income of Rs. 1,78,250/- in which she has also shown loss from Long Term Capital Gain of Rs. 1,190/- vide computation which is at page No. 2-3 of the paper book and shown net income of Rs.1,78,250/- including the income from business with the ITO Ward 6(2) Jaipur. Copy of IT return with computation is enclosed at page No. 1-4 of the paper book. In the return, the assessee has shown the capital gain/loss on such property and at page 2 of the assessment order, the AO himself admitted the same. All the above factual position goes to show that the assessee had filled her return of income and disclosed the said transaction and despite the material available on record which had not been taken in to consideration before recording the reasons by the A.O. which shows that the notice has been issued by the A.O. only on factually incorrect facts and on the presumption, assumption and suspicion and without any material on record. Therefore, we are of the view that the very basis of reopening of

assessment is based on incomplete or wrong facts available on record as the said transaction of sale of the property has already been duly disclosed by the assessee in her return of income and the assessee had also filed her return of income. All these facts reflect non-application of mind by the A.O. while recording the reasons and it cannot be held that there is the nexus between the material available on record and formation of belief that the income has escaped assessment. Similar view has been taken by the Coordinate Bench of this Tribunal in the case of **Shri Narain Dutt Sharma Vs ITO in ITA No. 203/JP/2017 order dated 07/02/2018** wherein it was held as under:

> *"13. We have heard the rival contentions and purused the material available on record. Firstly, it is noted that in the instant case, the notice under section 148 in exercise of powers under section 147 has been issued on 23.03.2014 after the expiry of period of four years from the end of the impunged assessment year i.e, AY 2007-08. In terms of proviso to section 147 of the Act, an action under the said provisions can be taken by reason of failure on the part of the assessee to file his return of income or to disclose fully and truly all necessary facts necessary for his assessment for the subject assessment year. The contention of the Revenue at the time of recording the reasons was that the assessee had failed to file his return of income for the impugned assessment year and the same was not reflected in the IT system. Per contra, the ld AR has submitted that return of income for the AY 2007-08 was filed by the assessee manually with ITO- Ward 6(1) Jaipur vide acknowledgment no. 2611000925 on 21.05.2008. It is relevant to note that the return of income so filed manually is with ITO Ward 6(1) who is the same officer*

who has subsequently issued the notice u/s 148 of the Act and therefore, Revenue cannot take the plea that return was filed wrongly by the assessee with another officer not having jurisdiction over the assessee. The related contention of the Revenue that the return so filed manually not uploaded in the IT system therefore cannot be accepted more so in the context of reassessment proceedings and where there is fault on the part of the assessee in filing his return of income.

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 Rs 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."

The Hon'ble Gujarat High Court in the case of **Mumtaz Haji Mohmad Memon Vs ITO in Special Civil Application No. 21030 of 2017 decision dated 21st March, 2018 (2018) 408 ITR 0268 (Guj)** has held as under:

"11. In this context, we have noted that the reasons proceeded on two fundamental grounds. One, that the property in question

was sold for a sum of Rs. 1,18,95,000/- and two; that the assessee had not filed the return and that therefore his 1/3rd share out of the sale proceeds was not offered to tax. Both these factual grounds are totally incorrect as is now virtually admitted by the Revenue. It is undisputed that the assessee had actually filed the return of income for the said assessment year and income also offered his share of the declared sale consideration to tax as capital gain. The Assessing Officer may have dispute with respect to computation of such capital gain, he cannot simply dispute the fact that the assessee did file the return. Importantly, even the second factual assertion of the Assessing Officer in the reasons recorded is totally incorrect. He has referred to said sum of Rs. 1,18,95,000/- as a sale price of the property. The assessee had produced before the Assessing Officer, the sale deed in which, the sale consideration disclosed was Rs. 50 lakhs.

12. *The Assessing Officer may be correct in pointing out that when the sale consideration as per the sale deed is Rs. 50 lakhs but the registering authority has valued the property on the date of sale at Rs. 1,18,95,000/- for stamp duty calculation, section 50C of the Act would apply, of course, subject to the riders contained therein. However, this is not the cited reason for reopening the assessment. The reasons cited are that the assessee filed no return and that 1/3rd share of the assessee from the actual sale consideration of Rs. 1,18,95,000/-therefore, was not brought to tax. These reasons are interconnected and interwoven. In fact, even if these reasons are seen as separate and severable grounds, both being factually incorrect, Revenue simply cannot hope to salvage the impugned notice. Through the affidavit-in-reply a faint attempt has been made to entirely shift the center of the reasons to a completely new theory viz. the possible applicability of section 50C of the Act. The reasons recorded nowhere mentioned this possibility. Reasons recorded, in fact, ignored the fact that the sale consideration as per the sale deed was Rs. 50 lakhs and that the assessee had by filing the return offered his share of such proceeds by way of capital gain."*

In light of aforesaid discussion and following the decision referred supra, where the very foundation for reopening the case is vitiated given that the assessee has filed her return of income disclosing the transaction of sale of immovable property for the specified consideration and offering the same to tax, therefore, there cannot be any reason to believe that income has escaped assessment for the very same transaction. The assumption or jurisdiction u/s 147 of the Act cannot be sustained and thus, the subsequent proceedings are also liable to be set-aside and is therefore, set aside. It has also been brought to our notice that under similar circumstances, no reopening proceedings have ever been initiated against other co-owners.

12. In light of the aforesaid discussions, other contentions advanced by the ld AR including that on merits of the additions have become academic and thus not adjudicated upon.

13. In the result, this appeal of the assessee is allowed partly.

Order pronounced in the open court on 24th May, 2021.

Sd/-	Sd/-
(विक्रम सिंह यादव)	(संदीप गोसाई)
(VIKRAM SINGH YADAV)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 24/05/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Smt. Priyanka Agarwal, Jaipur.
2. प्रत्यर्थी/ The Respondent- I.T.O., Ward-1(5), Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 214/JP/2020)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar