

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. 219/JP/2020  
निर्धारण वर्ष/Assessment Years : 2010-11

Apoorva Sharma 57 1 Pancholi Vihar, Hem Marg New Sanganer Road, Jaipur	बनाम Vs.	ITO Ward- 6(4) Jaipur
ज्वस्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CWLPS8581F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by: Sh. Vinod Kumar Gupta (CA) &  
Sh. Deepak Sharma (CA)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 22/09/2021  
उदघोषणा की तारीख / Date of Pronouncement : 06/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 30.12.2019 wherein the assessee has raised the following grounds of appeal.

"1. The impugned order u/s 147 r.w.s 144 dated 18.12.2017 is bad in law and on facts of the case, for want of jurisdiction and for various other reasons and hence, the same may kindly be quashed and in any case, the impugned addition be deleted.

2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the action of the AO by framing the

*assessment u/s 144 despite the assessee regularly attended the proceedings. The impugned order having been framed u/s 147 r.w.s. 144 dated 18.12.2017 in gross breach of natural justice, kindly be quashed.*

*3. The very action taken u/s 147 r/w 148 is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently the impugned assessment framed u/s 144/148 dated 11.02.2014 also kindly be quashed.*

*4. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 21,75,286/- on account of commission earned in the hands of the assessee as against her father despite the facts that she was minor and was studying in Class XII at Sant Anslam School, Mansarover, Jaipur at the relevant point of time. The addition so made and confirmed by the Id. CIT(A) is totally contrary to the provisions of law and facts on the record and hence the same kindly be deleted in full."*

2. Briefly stated, facts of the case are that basis receipt of certain information by the Assessing officer, the case of the assessee was reopened by issuing notice u/s 148. In response to the notice, it was submitted by the assessee that she was minor during the previous year relevant to impugned assessment year and it was requested to drop the reassessment proceedings initiated against her. It is also noted that no return of income was filed by the assessee in response to notice u/s 148. Thereafter, notices were issued u/s 142(1) and replies were submitted by the assessee. However, not accepting the replies submitted by the assessee, commission income of Rs. 21,60,840/- was

brought to tax in the hands of the assessee. Besides, interest income of Rs. 14,446/- was also brought to tax and assessment was completed at Rs. 21,75,290/- vide order dated 18.12.2017 passed u/s 144 read with 147 of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before Id. CIT(A) wherein the Id. CIT(A) has confirmed the action of the AO. Against the said findings and the order of Id. CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that the notice u/s 148 was issued by ITO, Ward 6(2), Jaipur and the case of the assessee falls under ITO Ward 6(3), Jaipur. Therefore, the very initiation of proceedings by non-jurisdictional Assessing Officer cannot be sustained in eyes of law. It was further submitted that the reasons have been recorded on incorrect assumption of facts and law, and non application of mind by the Assessing Officer at the time of recording of the reasons and even the approval has been mechanically granted by the concerned sanctioning authority. It was submitted that the assessee was a minor girl, studying in Class 12<sup>th</sup> during the previous year relevant to impugned assessment year. It was submitted that the nature of income which has been brought to tax is commission income which requires the person to work as an agent of the principal for which existence of an agency contract is a pre-requisite. The assessee being a minor was not eligible to enter into any kind of agreement in view of section 11 of Indian Contract Act, 1872. It was further submitted that mere deduction of TDS does not implies that certain services have been

provided by the minor assessee. It was accordingly submitted that the addition made by the AO and sustained by the Id. CIT(A) applying the proviso to section 64(1A) of the Act is completely unjustified being contrary to the law and facts. It was accordingly submitted that both on factual and legal basis, the addition made by the Assessing Officer and confirmed by the Id CIT(A) deserves to be deleted. Further, he has relied on the written submissions and contents thereof read as under:-

“1. Notice u/s 148 issued by Non Jurisdictional AO:

1.1 At the outset it is submitted that the PAN of the assessee has been falling under the jurisdiction of ITO Ward 6(3), Jaipur. Same is evident from the PAN jurisdiction appearing on income tax portal. An image of the same is placed hereunder for your kind perusal:

The screenshot displays the 'My Profile' page on the Income Tax e-Filing portal. The user is identified as APOORVA SHARMA, an Individual, with a language preference for English. The 'Jurisdiction Details' section is highlighted, showing the following information:

Area Code RJN	AO Type W	AO Number 3
Range Code 106	Jurisdiction ITD WD 6(3), JPR	Email Id JAIPUR.ITD6.3@INCOMETAX.GOV.IN
Building Name C.R. BUILDING, JAIPUR		

A '< Back' button is visible below the jurisdiction details.

As jurisdiction of the assessee was falling under ITO Ward 6(3), therefore Notice u/s 148 being the jurisdictional notice, was required to be issued by the Jurisdictional Assessing Officer, however, in the instant case, notice u/s 148 has been issued by ITO Ward 6(2) (PBP-1), after recording the reasons (PBP 2-3).

1.2 In the assessment order, at Page-1, Para-1, assessing officer has made the incorrect assumption of the fact that "assessment was reopened by issuing notice u/s 148 of the Income Tax after duly recording reasons by ITO W 6(3)", whereas from the perusal of Notice u/s 148 (PBP-1) and reasons recorded (PBP 2-3), it is evident that Notice has been issued by ITO Ward 6(2) and reasons have also been recorded by ITO Ward 6(2). Moreover, we made the inspection of assessment records after making the official request before Hon'ble ITAT during the course of hearing on 04.03.2021, and in the entire assessment records there is no such Notice u/s 148 or reasons recorded being issued by ITO Ward 6(3).

1.3 The subsequent Notices (Notice u/s 133(6), 142(1) etc.) have been issued by ITO Ward 6(3) i.e. jurisdictional assessing officer. Thereafter, for the purpose of completion of assessment, jurisdiction was transferred from ITO Ward 6(3) to 6(4) vide order of PCIT-2, Jaipur dated 03.11.2017.

1.4 The basic requirement of section 147 is that the assessing officer must have a reason to believe that income chargeable to tax has escaped assessment and such belief must be of jurisdictional assessing officer and not of any other assessing officer or authority or department and valid Notice u/s 148 shall be issued by jurisdictional AO. In the

instant case, the facts and circumstances mentioned above makes it evidently clear that Notice u/s 148 has not been issued by Jurisdictional Assessing Officer therefore the entire proceeding taken by become void for want of jurisdiction.

1.5 In this regards, we place our reliance on the following case laws:

- Pankajbhai Jaysukhlal Shah Vs ACIT in SCA 230/2019 vide order dated 09.04.2019. (Case Law#1)
- Resham Petrochem Ltd Vs ACIT in ITA No. 2777/Ahd/2011 vide order dated 10.02.2012 (Para 15 to 25) (Case Law#2)
- Tejpal Singh Vs ITO in ITA No. 3087/Del/2017 vide order dated 22.11.2017 (Case Law#3)

2. Reasons Recorded on Incorrect Assumption of Facts:

2.1 A perusal of the reasons recorded reveals that the AO was of belief that the assessee has received the gross receipts amounting to Rs. 21,60,840/- and on this ground the action of initiation u/s 148 was taken, whereas in fact, the assessee received the amount of Rs. 14,28,318/- only as evident from the bank statements submitted by the assessee as well as obtained by the AO u/s 133(6).

2.2 At Para-6 of assessment order, Ld.AO has categorically stated that bank statements were obtained and examined. At Page-2 of assessment order, Ld.AO proceeded to determine the commission income at Rs.21,60,840/- on the sole ground that ledger or confirmation of party was not submitted, however, the factual position clarified by the assessee that commission of Rs.14,28,318/- only was received has

been admitted after due examination of bank statements, without recording anything contrary.

2.3 Therefore, the ground so taken by the AO to form belief of escapement is factually incorrect. The reasons were recorded on wrong presumption and without looking into the correct facts of the case. In support of our contention we rely upon following case laws:

- Hon'ble Jurisdictional ITAT in the case of Smt. Meena Baldua Vs ITO in ITA No.872/JP/2018 vide order dated 08.03.2019 by holding as under: (Case Law#4)  
*"Hence, we hold that the reasons recorded by the AO based on incorrect fact is not sustainable in law and liable to be quashed. Since, we quashed the reopening being invalid therefore, we do not propose to go into ground no. 2 of the assessee's appeal on the merits of the addition."*
- Ram Mohan Rawat Vs ITO in ITA No.1014/JPR/2018 (Jaipur Trib.) vide order dated 08.03.2019 (Case Law#5) by holding as under:  
*"Thus making the wrong statement in the reasons recorded and ignoring the relevant and correct facts available on record established that the AO has not applied his independent mind while forming the opinion. The Chandigarh Bench of the Tribunal in case of Baba Kartar Singh Dukki Educational Trust vs. ITO (supra) has also considered an identical issue and held that the AO proceeded for reopening of the assessment for non-existent and*

*factually incorrect reasons and has not applied his mind. The Tribunal has concluded in para 19 as under :-*

*" 19. In view of the above discussion, I hold that the AO had taken an irrelevant fact into consideration and reopened the assessments on the basis of suspicion. Further more, the Assessing Officer proceeded for re-opening of the assessment on non-existent and factually incorrect basis/reasons and has not applied his mind and did not verify the assessment records/returns filed by the assessee prior to recording of the reasons, therefore, re-opening of the assessments for assessment year 2001-02, 2002-03 and 2003-04 is invalid and liable to be set aside/quashed. Accordingly, the orders of the authorities below are not sustainable and hence deserve to be quashed. I order accordingly."*

Accordingly, in view of the above facts and circumstances of the case, when the AO has initiated the proceedings on the basis of non-existent and factually incorrect facts and reasons without application of mind and without verification of the facts available on record, then the proceedings initiated under section 147/148 are not sustainable in law. The same are set aside and consequential reassessment order is quashed."

- Harjeet Singh Vs ITO in ITA No.2013/DEL/2015 (Delhi Trib.) vide order dated 12.11.2018

"10. It can be seen from the above that there is no mention of any cheque number and amount shows is Rs.10 lacs. As per bank statement which is at page 36 of the paper book on 09.09.2004 there is a cheque entry of Rs. 1 lacs cheque number is 00884535/-. It can be seen that the Assessing Officer has proceeded on wrong assumption fact. The amount of Rs. 10 lacs is not supported by any cheque number whereas the allegation is that the assessee has received accommodation entry from Sh. Gupta through Deposits in proprietors accounts Transfer to 1st intermediately company Date Particulars Amount Bank Ch.No. Date Intermediate Amount 18-09-04 Cash deposit 200)300 Federal 763281 08/09/04 Fenderal Chandrabrabha Fin. 200000 Transfer by cheque to Actual beneficiary MEDIATORY SOURCE OF EXTRA FUND IF INTERMIDIATORY COMPANY Date Amount Actual beneficiary Address PAN No. Mediatory Address PAN 400000 Cash deposit Mahalaxmi Finance co. 09/09/04 1000000 Harjeet 11/01, Gurudwara Road, Jangpura, .Bhogal, new delhi110014. AARPS3442 H Aneja Ji 5C/13, New Rohtak Road, Karol bagh, New Delhi AAEP5548H 400000 Cash deposit Mahalaxmi Finance co. cheque. In my considered opinion the basis of reopening itself is based on wrong facts therefore, the same cannot be upheld. I accordingly set aside the notice u/s 148 of the Act the reassessment based on such notice deserves to be quashed. Since the assessment itself has been quashed the other ad-hoc disallowance stand deleted. "

### 3. Non Application of Mind by AO at the time of recording of Reasons:

3.1 It is important to note that in the instant case the reasons were recorded by the AO on 17.03.2017 on the basis of Individual Transaction Statement (ITS) showing the details of Form 26AS. In which certain entries were appearing showing total payment of Rs. 21,60,840/- and TDS deducted of Rs. 2,17,807/- and on the basis of said information and non filing of return, it was concluded that the income has escaped the assessment.

3.2 After recording the reasons by recording a categorical finding that assessee has received gross receipts amounting to Rs.21,60,840/- a notice u/s 133(6) dated 22.08.2017 (PBP-17) was issued to Punjab National Bank to obtain copies of bank statements of the account in which such alleged receipts were credited.

3.3 It view of the these facts, it emerges that the AO was having information from two sources viz. information received in the form of ITS Report and Information (Bank Statements) obtained from the Punjab National Bank by way of Notice u/s 133(6). It is important to note that the bank statements were obtained by the AO after recording the reasons, thus, at the time of recording the reasons, there was not any tangible material in the hands of the AO to have a reason to believe that income to the extent of Rs.21,60,840/- has escaped the assessment and the AO was having the ITS Information only.

3.4 The report of the ITS was only sufficient to make a prima facie reason to suspect that the some amounts have been shown by some deductor on the PAN of the assessee but it was not sufficient enough to

draw a conclusion that the income has escaped the assessment. To convert reason to suspect into reason to believe some tangible material was needed. Therefore, to reach to such a decisive finding the AO was expected to obtain the bank statement or other material suggesting that amount to this extent has been received by the assessee, before recording the reasons, from Bank or from the father of assessee, but nothing of this sort was done. This shows that the AO has merely gone by the report of ITS. In this regard reliance is placed on the decision of Hon'ble Delhi HC in the case of Meenakshi Overseas Pvt Ltd Vs ITO (2017) 395 ITR 677 (Delhi HC) wherein the Hon'ble Court returned the finding that " The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act."

3.5 Thus, from the reasons recorded it clearly gets manifested that Ld.AO simply made the totals of figures appearing in Form 26AS without any verification or examination of the same.

3.6 It is also a settled law that the information used by the AO for having a reason to believe must be specific & reliable but not vague and factually incorrect. A bare perusal of the reasons recorded reveal that

same are completely vague. Instead of recording a clear finding, merely gross receipts has been mentioned without giving any specific as to nature of alleged income or the bank account in which alleged receipts have been received by the assessee.

3.7 As mentioned above, after recording the reasons, the assessing officer has subsequently written a letter u/s 133(6) to Punjab National Bank to obtain the copy of Bank Statements. Given that, on the basis of this transaction, AO formed a reason of escapement in the hands of the assessee, therefore, it was essential on his part to at least examine the correct facts of the transaction beforehand. There is no dispute that the AO can rely upon the information received but at the same time, where he is assuming jurisdiction u/s 147, he is required to carry out further examination to make a establish formation of belief that income has escaped, whereas, nothing of this sort was done.

3.8 The Hon'ble Delhi High Court recently in the case of South Yarra Holdings vs. ITO, vide Writ Petition No.3398 of 2018, order dated 1st March, 2019, at para 7 (Case Law#6) of the order has observed as under:-

*"7. It is a settled position in law that re-opening of an assessment has to be done by an Assessing Officer on his own satisfaction. It is not open to an Assessing Officer issue a reopening notice at the dictate and/or satisfaction of some other authority. Therefore, on receipt of any information which suggests escapement of income, the Assessing Officer must examine the information in the context of the facts of the case and only on satisfaction leading to a*

*reasonable belief that income chargeable to tax has escaped assessment, that re-opening notice is to be issued.”*

3.9 In support of our contention, we rely upon the decision of Hon'ble Bench, in the case of M/S. Balaji Health Care Pvt. Ltd.V/s. ITO in ITA Nos. 566 & 567/JP/2018 vide order dated 30.1.2019 holding as under:

*20.....Further, it is noted that after recording of the reasons, the Assessing officer has subsequently written a letter on 30.08.2013 to ACIT, New Delhi requesting for copy of statements of Surendra Kumar Jain, Virendra Kumar Jain at whose premises the search was conducted and P C Agarwal, so called mediator in these transactions. Given that search proceedings in respect of these two persons have formed the basis for the present reassessment proceedings in the hands of the assessee, it was essential to at least examine the statements of these three persons and seized material if any found during the course of search which in any ways indicate that these two persons have carried out certain transactions with the assessee and prima facie these transactions are suspected to be accommodation entries and not actual transactions. However, there is nothing in the reasons so recorded that the Assessing officer has gone through the statements so recorded during the course of search and the seized material to show prima facie linkage of assessee's undisclosed income being routed back in form of share capital. This shows that the Assessing officer has merely gone by the report of the DIT, Investigation Wing and the said report even didn't have the statements of these persons which either find mention in the report or as enclosures when the*

*same was forwarded to the Assessing officer. Therefore, it transpires that there is no further examination which has been carried out by the Assessing officer. The fact that the assessee has filed its return of income u/s 139(1) was very much in the knowledge of the Assessing officer and the latter could have verified the transactions with the reported transactions in the financial statements and could have asked for more information to establish the necessary nexus, however nothing of that sort has been done by the Assessing officer and he has merely gone by the report of DIT, Investigation Wing. It is true that the Assessing officer can rely on the report of DIT, Investigation Wing but at the same time, where he is assuming jurisdiction u/s 147, he is required to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment and in absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. Our view is fortified by the decision of the Hon'ble Delhi High Court in case of Meenakshi Overseas Pvt. Ltd. (supra) wherein it was held as under:-*

*"....."*

*In light of above discussions and in the entirety of facts and circumstances of the case, the assumption of jurisdiction and initiation of the proceedings under Section 147 of the Act to reopen the assessment proceedings does not satisfy the requirement of law and is hereby set-aside. In the result, ground no. 1 of the assessee's appeal is allowed."*

3.10 Similar view has been taken by Hon'ble Bench in the case of Shri Shujaat Ali Khan Vs ITO in ITA No.170/JP/2019 vide order dated 05.01.2021. (Case Law#7) and Meena Baldua Vs ITO in ITA No.872/JP/2018 (Jaipur Trib.) vide order dated 08.03.2019.

3.11 In view of these facts and circumstances, once the AO reached to a finding that the assessee received gross amount of Rs.21,60,840/- which has escaped the assessment, he was to make some inquiry to bring some tangible material rather than completely relying upon a one line information and then was to examine the correct facts to establish the nexus between the material and formation of belief that income has escaped. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons but as there was no such tangible material with the AO and only conclusions have been drawn. Therefore, in absence of these pre conditions, the assumption of jurisdiction u/s 147 has no legal basis and resultantly the assessment made u/s 148 deserves to be quashed. In support of our contention we rely upon the following case laws:

#### 4. Non Application of mind by Concerned Sanctioning Authority:

4.1 The copy of approval granted by PCIT-II, Jaipur vide letter dated 25.03.2017 is placed at PBP 2 To 3. A perusal of the Approval letter reveal that the approval has been granted merely mentioning "Yes" against the column which queried "whether the Pr.CIT is satisfied on the reasons recorded by the AO that it is a fit case for the issue of notice u/s 148". This shows that PCIT-II, Jaipur has not recorded

proper satisfaction and without application of mind gave the approval in mechanical manner. In support of our contention we rely upon the following case laws:

- CIT Vs S Goyanka Lime & Chemical Ltd (2015) 64 taxmann.com 313 (SC)

*"Section 151, read with section 148 of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Recording of satisfaction) - High Court by impugned order held that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of 8 assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]"*

*Search and Seizure-Procedure for block Assessment- Search was conducted at residential and business premises of Assessee and notice for block assessment u/s. 158-BC was issued- For block period, returns were filed that were processed u/s. 143 (1)- However, notice u/s. 148 was issued by AO, on basis of certain reasons recorded-Assessee objected to same before AO, that was rejected and assessment was completed u/ss. 143(3) and CO No.57/Del/2012 147- CIT(A) found that reason recorded by Joint Commissioner of Income Tax, for according sanction, was merely recording 'I am Satisfied'- Action for sanction was alleged to be without application of mind and to be done in mechanical manner-*

*Held, while according sanction, Joint Commissioner, Income Tax only recorded "Yes, I am satisfied"- Mechanical way of recording satisfaction by Joint Commissioner, that accorded sanction for issuing notice u/s. 147, was clearly 9 unsustainable-On such consideration, both Appellate authorities interfered into matter No error was committed warranting reconsideration-As far as explanation to S. 151, brought into force by Finance Act, 2008 was concerned, same only pertained to issuance of notice and not with regard to manner of recording satisfaction-Amended provision did not help Revenue-No question of law involved in matter, that warranted reconsideration-Revenue's Appeals dismissed."*

- The Hon'ble Delhi High Court has also decided this legal issue in case cited as Pr. CIT vs. N.C. Cables Ltd. in ITA 335/2015 order dated 11.01.2017 by returning following findings :-

*" Reassessment-Issuance of Notice Sanction for issue of Notice Assessee had in its return for A Y 2001-02 claimed that sum of Rs. 1 Crore was received towards share application amounts and a further sum of Thirty Five Lakhs was credited to it as an advance towards loan-Original assessment was completed u/s 143(3)-However, 10 pursuant to reassessment notice, which was dropped due to technical reasons, and later notice was issued and assessments were taken up afresh-After considering submissions of assessee and documents produced in reassessment proceedings, AO added back a sum of Rs.1,35,00,000-CIT(A) held against assessee on legality of*

*reassessment notice but allowed assessee's appeal on merits holding that AO did not conduct appropriate enquiry to conclude that share inclusion and advances received were from bogus entities-Tribunal allowed assessee's appeal on merits Revenue appealed against appellate order on merits-Assessee's cross appeal was on correctness of reopening of assessment- Tribunal upheld assessee's cross-objections and dismissed Revenue's appeal holding that there was no proper application of mind by concerned sanctioning authority u/s Section 151 as a pre- condition for issuing notice u/s 147/148-Held, Section 151 stipulates that CIT (A), who was competent authority to authorize reassessment notice, had to apply his mind and form opinion- Merly appending of expression 'approved' says nothing-It was not as if CIT (A) had to record elaborate reasons for agreeing with noting put up-At same time, satisfaction had to be recorded of given case which could be reflected in briefest possible manner- In present case, exercise appears to have been ritualistic and formal rather than meaningful, which was rationale for safeguard of approval by higher ranking officerRevenue's appeal dismissed."*

- The case of assessee is squarely covered by the decision of Hon'ble Jaipur ITAT in the case of M/s Angel Infrastructure Pvt Ltd Vs DCIT in ITA No.464/JP/2018 vide order dated 06.12.2018 (Case Law#8)

- The case of assessee is squarely covered by the decision of Hon'ble ITAT, Delhi Bench in the case of Blue Chip Developers P Ltd Vs ITO in ITA No.1061/Del/2019 vide order dated 02.12.2019 wherein it was held as under:

*"4.2 Since in the present case the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by only mentioning in Column No. 12 "YES", in the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl. Commissioner of Income Tax, Delhi-2, New Delhi, a copy of which is placed at page no. 103 of the Paper Book No. 2, and therefore, the legal issue in dispute is squarely covered by the aforesaid finding of the Tribunal, hence, respectfully following the aforesaid precedent i.e. ITAT, SMC, Bench, New Delhi order dated 16.10.2019 in the case of Dharmender Kumar vs. ITO decided in ITA No. 2728/Del/2018 (AY 2008-09), as relied by the Ld. Counsel for the assessee, the reassessment is hereby quashed and accordingly the ground no. 2 is allowed. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed."*

- Hon'ble ITAT, Delhi bench in a recent decision in the case of Rajendra Agrawal Vs ITO in ITA No.4624/Del/2014 vide order dated 02.12.2019 held as under:

*"5.3 Since in the present case the approving authority has given approval to the reopening of assessment in a mechanical manner without due application of mind by mentioning only that "ON THE BASIS OF 'A' ABOVE, I AM SATISFIED", in the Reasons for Initiating Proceedings u/s. 147 and For obtaining the Approval of the Addl. Commissioner of Income Tax, Range-23, New Delhi, a copy thereof is placed at page no. 1 of the Paper Book, and therefore, the legal issue in dispute is squarely covered by the aforesaid finding of the Tribunal, hence, respectfully following the aforesaid precedent i.e. ITAT, SMC, Bench, New Delhi decision dated 21.8.2019 in the case of Gopal Chand Manudhra and Sons; DamyantiMundhra; Ramdev Mundhra; Shriya Devi Mundhra and Gopal 24 Chand Mundhra vs. ITO, Wards 55(5), New Delhi decided in ITA No. 1375; 1721; 1722; 1523-1524/Del/2019 respectively relevant to assessment year 2011-12, the reassessment is hereby quashed and accordingly the additional ground no. 2 is allowed. Since the assessee succeeds on this legal ground challenging the validity of reassessment proceedings, the addition on merit is not being adjudicated being academic in nature. The appeal filed by the assessee is accordingly allowed. "*

- Dharmendra Kumar Vs ITO in ITA No.2728/Del/2018 vide order dated 16.10.2019 held as under:

*"5. I have heard both the parties and carefully considered the case laws and the relevant documents available on record*

*especially the assessment order, impugned order, reasons/satisfaction/approval recorded for issue of notice u/s. 148 of the Act as well as the Paper Book filed by the Assessee containing pages 1-41 of the Paper Book in which he has attached the copy of AIR information; copy of reasons recorded; copy of approval Performa u/s. 151; letter dated 26.2.2015 issued by AO; letter dated 12.3.2015 issued by AO; cash flow statement; confirmation from Rama Devi; bank statement of Ram Devi; copy of PAN card of Rama Devi; confirmation from Shyam Sunder; bank statement of Shyam Sunder; copy of PAN card of Shyam Sunder; confirmation from Virender Kumar; confirmation from Eshwar Dutt; Confirmation from Dayanand Sharma; jewellery sale bill to assessee; jewellery sale bill to Rohtash (2 in no's); jewellery sale bill to Kumud; sub. To CIT dated 18.8.17; RR dated 27.10.17; Sub. To CIT(A) dated 7.12.17 (Rejoinder to RR) and Sub. To CIT(A) dated 15.2.2018 and especially the page no. 2- 3 of the Paper Book which is a copy of Performa for recording the reasons for initiating proceedings u/s. 148 and for obtaining approval of Addl. CIT, Range-65, New Delhi in which Addl. CIT, Range-65, New Delhi has granted the approval in a mechanical manner for issuing notice u/s. 148 of the Income Tax Act, 1961. It is noted that approval u/s. 151 of the Act was granted by the Addl. CIT, Range-65, New Delhi vide Column No. 11 by mentioning as under:-"Yes, I am satisfied on the reasons recorded by AO that it is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961."5.1 After*

*perusing the aforesaid remarks of the Addl. CIT, Range-65, New Delhi, I find that the approval granted by the Addl. CIT, Range-65, New Delhi is a mechanical and without application of mind, which is not valid for initiating the reassessment proceedings, because from the aforesaid remarks, it is not coming out as to which material; information; documents and which other aspects have been gone through and examined by the Addl. CIT, Range-65, New Delhi for reaching to the satisfaction for granting approval. Thereafter, the AO has mechanically issued notice u/s. 148 of the Act. Keeping in view of the facts and circumstances of the present case and the case laws applicable in the case of the assessee, I am of the considered view that the reopening in the case of the assessee for the asstt. Year in dispute is bad in law and deserves to be quashed. ”*

5. The Ld. CIT(A) erred in law as well as on the facts of the case in confirming the addition of Rs. 21,75,286/- on account of commission earned in the hands of the assessee as against her father despite the fact that she was minor and was studying in Class-12<sup>th</sup> at Saint Anselm's School, Mansarovar, Jaipur at the relevant point of time.

5.1 At the outset, it is submitted that Ld. AO proceeded to assess the commission in the hands of appellant on the ground that income has been earned out of manual work done by him or activity involving application of his skills, talent or specialized knowledge and experience. In this regards, following peculiar facts need kind consideration:

(i) During the subjected assessment year, the appellant was studying in Class-12, as regular student with Saint Anslems School, Jaipur. The same is evident from the her 12<sup>th</sup> Class Marks Sheet which is placed hereunder.

(ii) The nature of income is commission, which requires the person to work as an agent of the principal for which existence of an agency contract is a pre-requisite. Assessee being a minor was disqualified for entering into any kind of agreement in view of section 11 of India Contract Act, 1872. For the sake of convenience the same is being reproduced hereunder:

*"Section 11 of India Contract Act, 1872*

*11. Who are competent to contract.—every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject"*

In view of this, it is evident that assessee was disqualified for entering into any kind of agreement, therefore there was no such agency arrangement between the appellant and Eve Jewels Limited and in the absence of any agency agreement, treating the alleged commission income in the hands of assessee is unreasonable and contrary to the law.

(iii) Under Clause (a) of proviso to section 64(1A), the manual work done by minor has been provided to be assessed in his/her own hand. Here, the purposive interpretation to the word manual work used in the

said proviso needs to be given. Here the manual work denotes the activities in the nature of painting or sculpture making or any other work involving manual efforts by the minor. In the instant case, the nature of income is commission, which is purely a business receipt, requiring the person to work as an agent of the principal. Thus, certainly the same does not fall under the category of any manual work done by the appellant and the commission income does not come under the ambit of Clause (a) of Proviso to section 64(1A).

(iv) Ld. AO as well CIT(A) has stressed upon the fact that TDS has been deducted on the income on which tax was deducted at source by Eve Miracle Jewels Limited u/s 194H and the assessee provided certain services for which commission was paid by the deductor which proves that assessee's own efforts were involved in earning the income. In this regards it is submitted that mere deduction of TDS does not implies that certain services has been provided by the minor. The Ld.AO as well as CIT(A) failed to brought on record that service as an agent has been provided by the appellant to the Eve Jewels Limited or no such inquiry has was made from Eve Jewels Limited to establish this fact. The onus in on the department to prove the that the income qualifies to be assessed in her own hand, which the lower authorities failed to discharged and merely going by the fact that TDS has been deducted, it has been concluded that services has been provided by minor.

(v) Ld. AO has mentioned that income has been earned out of application of her skills, talent or specialized knowledge and experience but it is nowhere mentioned that what kind of skills or talent or

specialized knowledge has been possessed by appellant. First, the appellant being a full time student, it is improbable that she was having any time or skills to run an agency to earn commission income. Moreover, at that time, appellant was mere 17 years of age, therefore it cannot be said that she was having sort of experience in the agency business as in preceding years no such income has been earned by her. Thus these bald assertions are nothing more than surmises in the absence of any evidence to prove the same.

(vi) Ld. AO as well as CIT(A) Proceeded to tax the alleged commission income in the hands of appellant on the ground that vide duly notarized affidavit she has admitted the income in her hands. A perusal of Affidavit dated 17.08.2017 reveals that only certain factual position were mentioned i.e. the bank account in which commission was received and amount of commission received. In the affidavit, it was no-where admitted that appellant was working as an agent and received the commission in her own capacity or provided any service to M/s Eve Jewels Limited. There is no denial from the fact that amount was received in the bank account of appellant. More importantly, affidavit dated 17.08.2017 (PBP 11-12) was filed in support of letter dated 14.08.2017 (PBP-6) to substantiate the claim that reassessment action has been taken on the factually incorrect assumption of fact because instead of commission receipts of Rs.21,60,840/- (as alleged in reasons recorded), the actual receipts of appellant are Rs.14,28,318/- only (as evident from copy of bank statements submitted by assessee and obtained by AO u/s 133(6) of the act). Therefore, the meaning of

affidavit has been taken completely out of context for the sake of making addition.

(vii) Evidently, the income was not earned by the appellant out of her manual work or any skill or specialized knowledge or experience, therefore, the same cannot be taxed in her individual hands only on the ground that income has not been shown by her father in his return of income.

(viii) Under the facts and circumstances, it is evidently clear that the addition made by AO and sustained by CIT(A) applying the proviso to section 64(1A) is completely unjustified being contrary to the law and facts, hence the same may kindly be quashed.

In view of these above mentioned fact and circumstances, and case laws relied upon, the action of the AO is excessive, illegal and without jurisdiction and resultantly the assessment made u/s 148 kindly to be quashed.”

5. Per contra, the Id. DR submitted that contention of the Id AR regarding initiation of proceedings by non-jurisdictional Assessing Officer cannot be accepted as the assessee never objected to the Assessing officer exercising jurisdiction on receipt of notice u/s 148 and anytime during the course of reassessment proceedings. The provisions of section 124(3) are clearly attracted in the instant case.

6. It was further submitted by the Id DR that the AO was in receipt of information that assessee was in receipt of income on which TDS has

been done and in view of the fact that the assessee has not filed the return of income, the Assessing officer had reasons to believe that the income has escaped assessment and therefore, the AO was justified in initiating the proceedings u/s 148 which have been rightly upheld by the Id CIT(A).

7. The Id. DR further submitted that during the course of assessment proceedings, assessee no doubt claimed that the income was received as minor and therefore it should be clubbed in the income of father. However as per the proviso to section 64(1A), the clubbing provisions shall not apply in respect of income as arises or accrues to the minor child on account of any manual work done by him or activity involving application of his skill, talent or specialized knowledge and experience. In the case of the assessee, she received income on which tax was deducted at source by EVE Miracle Jewels Limited. The assessee provided certain services for which commission was paid by the deductor which proves that assessee's own efforts were involved in earning the income. Further, even if it is assumed that the income earned was not due to the efforts of the assessee, why the same was not clubbed by her father while filing his return of income for the year 2010-11. Since father has not clubbed the income, it proves that assessee's claim is an afterthought only to escape tax in her hand. Therefore in view of the above facts claim of the assessee was rightly rejected by the AO and entire commission income of Rs. 21,60,840/- was brought to tax in her hands and which has rightly been confirmed by the Id CIT(A). It was accordingly submitted that there is no

infirmity in the findings and order of the Id CIT(A) and same should be upheld and the appeal of the assessee be dismissed.

8. We have heard the rival contentions and perused the material available on record. Firstly, regarding the contention of the Id AR challenging the issuance of notice u/s 148 by non-jurisdictional Assessing officer, it is noted that on receipt of such notice u/s 148 and thereafter, during the entirety of the reassessment proceedings, there is not a whisper on part of the assessee in challenging and objecting to issuance of notice u/s 148 by non-jurisdictional Assessing officer in terms of section 124(3) of the Act. In the instant case, the assessee has not filed any return of income earlier and even no return of income has been filed in response to notice u/s 148 of the Act forgot about filing the return of income prescribed in notice u/s 148 of the Act. Therefore, in such facts and circumstances of the case, where the assessee has not raised any objections as so provided in terms of section 124(3) thereby accepting and not objecting to the jurisdiction of the Assessing officer within the timelines as so prescribed in the statute, the assessee cannot plead and take a legal defence challenging the jurisdiction of the Assessing officer after completion of the assessment proceedings. Thus, we agree with contentions advanced by the Id DR and the contents so advanced by the Id AR in this regard cannot be accepted.

9. Now, coming to the second contention raised by the Id A/R challenging the jurisdiction of the Assessing officer in initiating the reassessment proceedings on the basis of reasons recorded on incorrect assumption of facts and non application of mind by the Assessing

Officer at the time of recording of the reasons and even the approval granted mechanically by the concerned sanctioning authority. In this regard, we refer to the reasons recorded by the Assessing officer before issuance of notice u/s 148 which read as under:-

*"On the basis of the information available on the record, it is gathered that during the year under consideration the assessee has received the gross receipts amounting to Rs.21,60,840/- on which TDS of Rs.2,17,807/- has been deducted but he/she/it has not filed return of income for the year under consideration. Letter of NMS has also been issued but no compliance was made. Therefore, I have reason to believe that the above income of Rs.21,60,840/- which is chargeable to tax has escaped assessment."*

10. On perusal of the reasons so recorded, it is noted that it talks about certain information available on record with the Assessing officer. What is the nature and the source of such information and what the contents of such information and more importantly, how the said information pertains to or connected with the assessee and whether such information forms a tangible material in possession of the Assessing officer for forming a reasonable belief that income has escaped assessment is not discernable from the reasons so recorded.

11. It has been submitted by the Id AR that the reasons were recorded on the basis of Individual Transaction Statement (ITS) showing the details of Form 26AS in which certain entries were appearing showing total payment of Rs. 21,60,840/- and TDS deducted of Rs. 2,17,807/- and on the basis of said information, the reasons have been recorded. It has been further submitted that after recording the

said reasons, a notice u/s 133(6) dated 22.08.2017 was issued to Punjab National Bank to obtain copies of bank statements of the account in which such alleged receipts were credited. It was accordingly submitted that at the time of recording the reasons, there was no tangible material in the hands of the Assessing officer to have a reason to believe that income to the extent of Rs.21,60,840/- has escaped the assessment and the Assessing officer was having only ITS Information which could be a basis to suspect and not the basis to draw a conclusion that the income has escaped assessment. We find that the fact that the Assessing officer was having only ITS information which ideally should have been evident from the reasons and the information in terms of section 133(6) has been collected from the bank subsequent to recording of the reasons is a matter of record and has not been disputed by the Revenue. In such circumstances, we agree with the contentions of the Id AR that possession of ITS information that the assessee has received certain amount could be basis for making further enquiries and in absence of such enquiries being conducted prior to recording of the reasons, there is absence of tangible material in possession of the Assessing officer at the time of recording of reasons and subsequent enquiries after recording of the reasons could not be used to supplement the reasons so recorded by the Assessing officer. Similar view has been taken by us in case of Sh. Shujaat Ali Khan vs. ITO (supra) wherein our findings read as under:

*"12. On perusal of the reasons so recorded, we find that the Assessing officer had received certain information that the assessee had sold an immovable property for consideration of Rs 7 lacs and which has been valued at Rs 7.17 lacs for the purposes of charging stamp duty. The nature and source of such*

*information is not discernable from the reasons so recorded nor the specific of the immovable property in terms of location, size, purchaser, etc has been stated, therefore, the question that has been raised before us is about the tangible nature of such information and material in possession of the AO and the nexus thereof with formation of belief that the income has escaped assessment. It has been contended by the Id AR that the information so referred in the reasons recorded is only the CIB report received by the Assessing officer, a fact which is corroborated by the Assessing officer where he had issued a notice u/s 133(6) to Sub-Registrar-2 to obtain copy of the sale deed. It is an admitted fact that the said notice u/s 133(6) was issued on 3.08.2015 subsequent to recording of reasons by the AO on 25.03.2015. Therefore, we find that as on the date of recording of reasons by the AO, only piece of information in possession of the AO was the CIB report that the assessee has sold certain immoveable property and the AO was not even having a copy of the sale deed or the specifics of the immoveable property, which to our mind, raises a question mark on the tangible nature of such information in terms of whether it is real or actual rather than imaginary and whether it actually relates to the assessee or not. Where the AO still wishes to rely on the report of CIB, given that such report is more of a generic report and not containing exact specifics of of immoveable property and other particulars of the transaction, it is expected that the AO on receipt of such report should carry out further examination before arriving at the prima facie view that income has escaped assessment and the matter is fit for issuance of notice u/s 148 of the Act. Such examination is required to be carried out before issuance of notice u/s 148 as the same is required for the Assessing officer to form his own independent opinion that the income has escaped assessment. In the instant case, there is no such examination and investigation carried out by the AO and infact, only after recording of the reasons, he has sought copy of the sale deed from the Sub-Registrar where the assessee has*

*been shown as power of attorney holder of the owner of the immoveable property which again raises a question mark on the tangible nature of the CIB report. We therefore find that the AO has merely gone by the CIB report and was not even in possession of the sale deed and the exact specifics of the transaction at the time of recording of reasons and therefore, it is a case where the proceedings are vitiated for want of tangible material in possession of the AO and lack of reason to believe which is more in the realm of suspicion rather than formation of opinion that income has escaped assessment. The reasons thus recorded and/or the documents available on record, therefore, don't show a link/nexus and relevancy to the opinion formed by the Assessing Officer regarding escapement of income. Further, even though the reopening in the present case was after the expiry of four years from the end of the relevant A.Y 2008-09, given that there was no original return of income filed by the assessee and consequent assessment, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment in terms of proviso to section 147 of the Act which is not applicable in the instant case. Similar view has been taken by the Coordinate Bench in case of Balaji Healthcare Pvt Ltd (supra) wherein the relevant findings read as under:*

*"20.....Further, it is noted that after recording of the reasons, the Assessing officer has subsequently written a letter on 30.08.2013 to ACIT, New Delhi requesting for copy of statements of Surendra Kumar Jain, Virendra Kumar Jain at whose premises the search was conducted and P C Agarwal, so called mediator in these transactions. Given that search proceedings in respect of these two persons have formed the basis for the present reassessment proceedings in the hands of the assessee, it was essential to at least examine the statements of these three persons and seized material if any found during the course of search which in any ways*

*indicate that these two persons have carried out certain transactions with the assessee and prima facie these transactions are suspected to be accommodation entries and not actual transactions. However, there is nothing in the reasons so recorded that the Assessing officer has gone through the statements so recorded during the course of search and the seized material to show prima facie linkage of assessee's undisclosed income being routed back in form of share capital. This shows that the Assessing officer has merely gone by the report of the DIT, Investigation Wing and the said report even didn't have the statements of these persons which either find mention in the report or as enclosures when the same was forwarded to the Assessing officer. Therefore, it transpires that there is no further examination which has been carried out by the Assessing officer. The fact that the assessee has filed its return of income u/s 139(1) was very much in the knowledge of the Assessing officer and the latter could have verified the transactions with the reported transactions in the financial statements and could have asked for more information to establish the necessary nexus, however nothing of that sort has been done by the Assessing officer and he has merely gone by the report of DIT, Investigation Wing. It is true that the Assessing officer can rely on the report of DIT, Investigation Wing but at the same time, where he is assuming jurisdiction u/s 147, he is required to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment and in absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside. Our view is fortified by the decision of the Hon'ble Delhi High Court in case of Meenakshi Overseas Pvt. Ltd. (supra) wherein it was held as under:-*

*"19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.*

*20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the above said instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given(sic giver)". The AO adds that the said accommodation was "a known entry operator" the source being "the report of the Investigation Wing".*

*21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "*

*22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining*

*the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow there from.*

*23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.*

*24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.*

*25. At this stage it requires to be noted that since the original assessment was processed under Section 143(1) of the Act, and not Section 143(3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.*

*26. The first part of Section 147(1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment."*

*"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to*

*demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

*37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law."*

*Subsequently, the Hon'ble Delhi High Court in case of RMG Polyvinyl Ltd. (supra) has held as under:-*

*"12. Recently, in its decision dated 26th May, 2017 in ITA No. 692/2016 Pr. CIT v. Meenakshi Overseas, this Court discussed the legal position regarding reopening of assessments where the return filed at the initial stage was processed under Section 143(1) of the Act and not under Section 143(3) of the Act. The reasons for the reopening of the assessment in that case were more or less similar to the reasons in the present case, viz., information was received from the Investigation Wing regarding accommodation entries provided by a 'known' accommodation entry provider. There, on facts, the Court came to the conclusion that the reasons were, in fact, in the form of conclusions "one after the other" and that the satisfaction arrived at by the AO was a "borrowed satisfaction" and at best "a reproduction of the conclusion in the investigation report."*

*13. As in the above case, even in the present case, the Court is unable to discern the link between the tangible material and the formation of the reasons to believe that*

*income had escaped assessment. In the present case too, the information received from the Investigation Wing cannot be said to be tangible material per se without a further inquiry being undertaken by the AO. In the present case the AO deprived himself of that opportunity by proceeding on the erroneous premise that Assessee had not filed a return when in fact it had."*

*In light of above discussions and in the entirety of facts and circumstances of the case, the assumption of jurisdiction and initiation of the proceedings under Section 147 of the Act to reopen the assessment proceedings does not satisfy the requirement of law and is hereby set-aside. In the result, ground no. 1 of the assessee's appeal is allowed."*

12. Moving further, the reasons so recorded talks about the assessee receiving gross receipts of Rs 21,60,840/- on which TDS of Rs 2,17,807/- has been deducted. The assessee's PAN number is also mentioned while recording the said reasons and the PAN number carries the date of birth of the assessee and on perusal thereof, it is noted that the assessee was a minor during the financial year 2009-10 relevant to assessment year 2010-11. The nature of gross receipts is again not discernable from the reasons so recorded and in absence thereof, it would be taken and understood as any gross receipts which is received by the assessee, being a minor and on which there is deduction of tax at source.

13. The question that arises is whether receipts in hands of the minor can be brought to tax in her own hands or in the hands of either of her parents in terms of section 64(1A) and whether there is application of

mind by the Assessing officer and whether there is a prima facie finding to this effect which is discernable from the reasons so recorded. It is a settled legal proposition that the satisfaction of the Assessing Officer for assumption of jurisdiction U/s 147 of the Act should be discernable from the reasons so recorded and the reasons alone should be considered for determining whether the Assessing Officer is in possession of the material/information basis which he has formed the reasonable belief that the income of the assessee has escaped assessment for the impugned assessment year. For assumption of jurisdiction u/s 147, the Assessing Officer must form a prima facie view on the basis of tangible material in his possession that there is an escapement of income, the opinion so formed may be subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion, the reasons recorded and/or the documents available on record must show a link/nexus and relevancy to the opinion formed by the Assessing Officer regarding escapement of income and the reasons are required to be read as they were recorded by the Assessing officer. And it is for the Assessing officer to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons that the income chargeable to tax has escaped assessment. In the instant case, we find that the reasons so recorded are silent as to how receipts in hands of the minor can be brought to tax in her own hands in terms of section 64(1A). How the Assessing officer has reached a prima facie view and formed a reasonable belief that such receipts can be brought to tax in the hands of the minor and not in hands of either of her parents is not discernable from the reasons so recorded. The provisions of Section 4 relating to charge of tax,

provisions of Section 5 regarding scope of total income have to be read along with the provisions of Section 64 regarding clubbing of income of spouse, minor child, etc and in particular, section 64(1A) regarding clubbing of minor's income as applicable in the instant case. The assessee, being a minor, a fact which is clearly emerging from the records, the Assessing officer has to arrive at a prima facie finding while recording the reasons as to how the receipts can be brought to tax in her own hands instead of either of her parents and cannot ignore the existence of the said provisions in terms of section 64(1A) read with proviso thereto as provided in the statute and having not considered the said provisions, it shows non-application of mind by the Assessing officer to the information in his possession and the legal provisions as the matter is not restricted to arriving at the reasonable belief that income has escaped assessment rather the matter is whether the income has escapement assessment in the hands of the assessee to whom it has accrued/arisen/received and can lawfully be brought to tax in her hands. To our mind, the applicability of section 64(1A) or the exclusion as so provided in the proviso to the said provisions have to be examined atleast prima facie at the time of recording of the reasons itself and not subsequent during the course of reassessment proceedings. Further, we find that the reasons so recorded were sent for recommendation to the Additional Commissioner of Income Tax, Range 6, Jaipur and then to the approving authority, the PCIT-II, Jaipur and we find that these two authorities have also recommended and approved the reasons so recorded by the Assessing officer without considering the fact that the AO while recording the reasons that income has escaped in the hands of the minor has not considered the

impact and applicability of provisions of section 64(1A) of the Act. The said act thus again reflect a mechanical approach on part of the sanctioning authority and non-application of mind before granting such approval and various authorities cited at the Bar regarding non-application of mind by the sanctioning authority at the time of granting the approval thus support the case of the assessee.

14. In light of above discussions and in the entirety of facts and circumstances of the case and following the decisions referred supra, the assumption of jurisdiction and initiation of the proceedings under Section 147 of the Act to reopen the assessment proceedings are vitiated in the instant case and does not satisfy the requirement of law and such action on the part of the Assessing Officer cannot be accepted and the notice under section 148 and consequent proceedings are thus set-aside.

15. In view of the above discussions where the reassessment proceedings have been quashed and set-aside, the other grounds of appeal taken by the assessee have become academic and are thus dismissed as infructious.

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

Order pronounced in the open Court on 06/10/2021.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/10/2021.

**Ganesh Kumar**

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

1. अपीलार्थी / The Appellant- Sh. Apoorva Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(4), 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. 219/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar