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

श्री संदीप गोसाईं, 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. 975/JP/2019
निर्धारण वर्ष/Assessment Year :2010-11

Satyaveer Singh, S/o- Sh. Roop Singh, Vill-Barso, Bharatpur (Raj)-321001.	बनाम Vs.	I.T.O., Ward-1, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: CMBPS 4345 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashish Sharma (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख/ Date of Hearing : 15/09/2021
उदघोषणा की तारीख/ Date of Pronouncement : 13/10/2021

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the assessee against the order of ld. CIT(A), Alwar dated 28/03/2019 for the A.Y. 2010-11 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act), wherein following grounds have been taken.

"1. That the notice issued U/s 147 is per se illegal, arbitrary and ab-initio void and invalid and therefore deserve to be quashed and annulled.

2. That the assessment order dated 26/12/2017 is per se illegal and invalid.

3. That the A.O. and CIT(A), Alwar has grossly erred in treating the amount of Rs. 12,22,000/- as unexplained money and making an addition of Rs. 12,22,000/- U/s 69A.."

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. Brief facts of the case are that the department got information that the assessee made cash deposits of Rs. 19,00,500/- during the year under consideration in SBBJ Bank, Jaipur Branch, therefore, in order to verify the source of the same, notice U/s 148/147 of the Act were issued and after providing opportunity of hearing, assessment U/s 143(3)/147 of the Act was passed thereby making additions U/s 69A of the Act.

4. Aggrieved by the order of A.O., the assessee carried the matter before the ld. CIT(A) and the ld. CIT(A) after considering the case of both the parties, dismissed the appeal filed by the assessee and upheld/sustained the additions made by the A.O.

5. Being aggrieved by the order of ld. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned hereinabove.

6. Grounds No. 1 and 2 of the appeal raised by the assessee are interrelated and interconnected and relate to challenging the notice issued U/s 147 of the Act by the A.O. and consequent assessment order dated 26/12/2017, therefore, we fit to decide these grounds through the present consolidated order.

7. The ld AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and even the ld. AR relied upon the written submissions submitted before us and the same are reproduced below:

"That the re-assessment proceedings have been initiated in violation of the provisions of section 151 in as much as the Commissioner sanctioning the initiation has only stated 'yes' without assigning any reasons for approval and thus the sanction has been done without application of mind by the Commissioner which practice has been deprecated by the High Courts.

4. That the relevant extract which is at page number 3 of the paper book of is reproduced as under:-

12	*Whether the Pr.CIT is satisfied on the reasons recorded by the AO that it is a fit case of the issue of notice u/s 148*	*Yes*

5. That from the above extract it is clear that the sanction has been granted without application of mind by the Commissioner of Income-tax which is in negation of the settled principles of law as the learned Commissioner has only written the words 'yes' which according to the settled position of law is not sufficient to grant the sanction.

6. In the case of Principal Commissioner of Income-tax v. N.C. Cables Ltd. [2017] 88 taxmann.com 649 (Delhi) Hon'ble Delhi High Court has held as under:-

"11.Section151 of the Act clearly stipulates that the Commissioner of Income-tax (Appeals), who is the competent authority to authoriie 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 Commissioner of Income-tax (Appeals) 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 reason's, the court is satisfied that the findings by the Income-tax Appellate Tribunal cannot be disturbed."

7. In the case of Commissioner of Income-tax, Jabalpur (MP) v. S. Goyanka Lime & Chemical Ltd [2015] 64 taxmann.com 313 (SC) Hon'ble Apex Court has dismissed the SLP of department against the judgement of Hon'ble Madhya Pradesh High Court where appeal was decided by the Hon'ble High Court in favour of the assessee for sanction was granted without application of mind.

Section l5l, 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 assessment was invalid - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of assessee]

8. In the case of Asmarlal Bajaj v. Assistant Commissioner of Income-tax, Circle -19(1), Mumbai (2013) 37 taxmann.com 7 (Mumbai - Trib.) Hon'ble Mumbai ITAT has held as under:-

"9. The observations of the Hon'ble High Court are very much relevant in the instant case as in the present case also the Commissioner has simply mentioned "approved" to the report submitted by the

concerned AO. In the light of the ratios/observations of the Hon'ble High. Court mentioned hereinabove, we have no hesitation to hold that the reopening proceedings vis-a-vis provisions of Sec. 151 are bad in law and the assessment has to be declared as void al) initio. Ground No. 1 of assessee's appeal is allowed."

9. That the Hon'ble Delhi High Court in the case of Synfonia Tradelinks (P) Ltd. vs. Income tax Officer (2021) 202 DTR 13 (Del) has held as under:-

"... a bare perusal of the endorsement would show that there is no application of mind as to whether the information received by the AO had any nexus with the formation of the honest belief that the assessee's taxable income had escaped."

10. That thus the reasons recorded, re-opening of the assessment by issuing notice under section 148 and consequential re-assessment order are illegal, arbitrary and in violation of the settled principles of law.

8. On the other hand, the ld. DR has relied upon the orders passed by the lower authorities.

9. We have considered the rival contentions and carefully perused the material placed on record. From the facts of the present case, we noticed that reopening of the assessment in the present case were initiated on the ground that the department got information that the assessee made cash deposits of Rs. 19,00,500/-. In order to verify the source of the same, the proceedings of reopening were initiated. However, the ld. AR has vehemently submitted that before us, reassessment proceedings have been

initiated in violation of the provisions of Section 151 of the Act inasmuch as the Commissioner sanctioning the initiation has only stated "YES" without assigning any reasons for approval and thus the sanction has been done without application of mind by the Commissioner. The ld. AR has further submitted that from the extract of sanction, it is clear that the sanction has been granted without application of mind by the Commissioner of Income-tax which is in negation of the settled principles of law as the ld. Commissioner has only written the words 'yes' which according to the settled position of law is not sufficient to grant the sanction. In order to support his contention, the ld. AR relied upon the decision of Hon'ble Delhi High court in the case of Principal Commissioner of Income-tax v. N.C. Cables Ltd. [2017] 88 taxmann.com 649 (Delhi) , Commissioner of Income-tax, Jabalpur (MP) v. S. Goyanka Lime & Chemical Ltd [2015] 64 taxmann.com 313 (SC), Asmarlal Bajaj v. Assistant Commissioner of Income-tax, Circle -19(1), Mumbai (2013) 37 taxmann.com 7 (Mumbai - Trib.) and Synfonia Tradelinks (P) Ltd. vs. Income tax Officer (2021) 202 DTR 13 (Del). Therefore, it was prayed by the ld AR that the reasons recorded for reopening of the assessee by issuing notice U/s 148 of the Act were illegal, arbitrary and in violation of the settled principles of law, therefore, the same deserves to be quashed. Whereas on the contrary, the ld. DR has supported the orders passed by the revenue authorities and also relied upon the decision of Hon'ble Rajasthan High Court in the

case of **CIT Vs Uttam Chand Nagar (2007), 295 ITR 403 (Raj)** and submitted that due compliance of Section 151 of the Act was made by the CCIT and CIT has recorded his satisfaction and such satisfaction was on the basis of reasons recorded by the A.O. and not de hors it. It was further submitted that the satisfaction independent of reasons recorded by the A.O. is not envisaged as per provisions of Section 151 of the Act. Therefore, according to the ld. DR, the Revenue authorities if properly adhered to the principles of Section 151 of the Act, therefore, sanction granted by the competent authority is not illegal.

10. After having gone through the facts of the present case and after hearing the arguments of the respective parties, we found that reopening of the assessment in the present case is under the provisions of Section 147(1) of the Act and it was doing so, the A.O. was having an information that the assessee had made deposit of Rs. 19,00,500/- during the year under consideration in SBBJ Bank Branch, jaipur. Therefore, in order to verify the source of the same, reopening proceedings were initiated. The expression 'reason' as the Hon'ble Supreme Court in the case of ACIT Vs Rajesh Jhaveri Stock Broker Pvt. Ltd. has held, means a cause of justification. In this case, the A.O. had justification for initiating the proceedings for reopening of the assessment on the basis of information received by him with regard to cash deposit

of Rs. 19,00,500/- during the year under consideration and therefore, the A.O. had had a cause or justification to know or suppose that income had escaped assessment. Therefore, he could or will be said to have reasons to believe that income had escaped assessment. The Hon'ble Supreme Court has held that expression cannot be read to mean that the A.O. should have finally ascertained the fact by legal evidence or conclusion and at this stage what is required is 'reason to believe' and not the establishment of escapement of income, therefore, now we have analysed as to whether the materials would conclusively prove an escapement of income is not the concern at that stage and as far as the procedural defects is concerned, the same according to us, is not a defect at all as we have considered all the judgments cited by the respective parties as the Hon'ble Jurisdictional High Court in the case of **CIT Vs Uttam Chand Nahar** (supra) has categorically held that if conditions U/s 151(1) or (2) require satisfaction by Dy. Commissioner or Chief Commissioner or Commissioner as the case may be, before issuance of such notice, such satisfaction must also be only on the basis of reasons recoded by A.O. and not de hors it i.e. to say the satisfaction recorded by the A.O. must be endorsed by the Dy. Commissioner or Chief Commissioner or Commissioner as the case may be, before the A.O. assumes jurisdiction. It was further laid down by the Hon'ble Jurisdictional High court that satisfaction independent of reasons

recorded by the A.O. is not envisaged as per provisions of Section 151 of the Act which clearly indicates that foundation of initiating the proceedings is the reason to believe held by the A.O. Reasons for holding such belief are to be recorded in writing by the A.O. . The satisfaction by the Dy. Commissioner or Chief Commissioner or Commissioner, as the case may be, has to be only about the fitness of case to be subject to proceeding by reassessment U/s 148 only on the basis of reasons recorded by the A.O. Thus, in our view, although the assessee has cited the judgments of other Hon'ble High Courts but since as per judicial proprietory, we bound by the direct decision of Hon'ble Jurisdictional High Court on the issue in question. Therefore, while drawing strength from the decision of Hon'ble Rajasthan High court in the case of **CIT Vs Uttam Chand Nahar** (supra), we are of the view that in the present case, the conditions U/s 151 of the Act for recording satisfaction by the Commissioner has been validly done as the said satisfaction was on the basis of reasons recorded by the A.O. and not de hors it and thus according to us, the satisfaction independent of reason recorded by the A.O. is not envisaged any way in Section 151 of the Act. Therefore, considering the totality of facts and circumstances of the case, we dismiss this ground of appeal raised by the assessee.

11. The 3rd ground of appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in upholding the addition of Rs. 12,22,000/- as unexplained income of the assessee. In this regard, the ld. AR of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and relied upon the written submissions filed before us the same is reproduced below:

"GROUND NO. 3:-

11. That the addition has been made under section 69A according to which if the addition has to be done the alleged investment should not have been recorded in the books of account maintained by assessee. In the case under consideration the assessee is a agriculturist and had not been maintaining any books of accounts and therefore the addition made under section 69A is not sustainable as one of the twin conditions, i.e. not recording the transactions in the books of accounts has not been satisfied.

12. That the additions have been made on the basis of exparte evidence of Smt. Pushpa Arora and Nutan Sharma copies of which were not provided to the assessee before passing the assessment order and also the cross examination of Smt. Pushpa Arora and Nutan Sharma was not granted.

13.That it is the settled position of law that the addition on the basis of exparte evidence taken at the back of assessee ought not to be made and if made is null and void. Moreover, the cross examination was not allowed and therefore the addition deserves to be deleted in view of the settled position of law laid by Hon'ble Supreme Court in the case of Andaman Timber Products V. CCE (281 CTR 241).

14. That the statements of co-owners have not been considered by the Assessing Officer while making the addition. The co-owners have during the course of assessment have stated on oath wherein in response to question no. 8 Ajeet Singh (paper book page no. 6) has stated that his share of receipts have been deposited in the account of his paternal uncle Satyaveer Singh and the same was withdrawn after 2-3 days. The other two owners have also given affidavits which have not been rebutted and it is settled position of law that the unrebutted affidavit cannot be overlooked by the Assessing Officer.

15. Thus even according to the statements of the co-owners the total receipts belongs to the four co-owners and thus should be divided amongst them. The share of the assessee is only 5,20,000/- (20,80,000 X 'A). The capital gain in the hands of the assessee is therefore only on 5,20,000/- and that too after deduction of the cost of acquisition and " other allowable deductions.

16. That the Assessing Officer has treated the cash received and deposited in the bank by the assessee as unexplained investment of the assessee contrary to the provisions of section 50C. The DLC of the property has been taken to be RS. 20,80,000/- (paper book page no. 19 and 23) and therefore the value of the property should be taken to be Rs. 20,80,000/-. Even the certificate given in the sale deed page no. 23 states the property to be of value 20,80,000/-. Both the authorities below have not considered this fact.

17. That thus, considering all the evidences to-gather viz. statements and affidavits of the co-owners, DLC value of the property, the addition of Rs. 12,22,000/- by treating the cash deposited as unexplained investment deserves to be deleted in view of the decision of Pappu Ram Saran V ITO, Ward -2, Kishangarh (ITA No. 1303/JP/2018) (copy enclosed)

18. That this Tribunal in the case of Pappu Ram Saran V ITO, Ward -2, Kishangarh (ITA No. 1303/JP/2018) has held as under:-

"In view of the facts and circumstances of the case when the deposit of cash in the bank account is contemporaneous to the transaction of sale of land then in the absence of any contrary material the source explained by the assessee cannot be rejected."

It is therefore prayed to allow the appeal of the assessee and delete the addition."

The ld AR has also relied upon the order passed by the Coordinate Bench of this Tribunal dated 03/09/2020 passed in ITA No. 1303/JP/2018 in the case of Shri Pappu Ram Saran Vs ITO.

12. On the other hand, the ld. DR has vehemently supported the orders of the lower authorities.

13. We have considered the rival contentions and carefully perused the material placed on record. As per facts of the present case, we found that from the record, in order to justify the source or cash deposit of Rs. 19,00,500/- in the bank account by the assessee, it was submitted that the assessee is a salaried persons and did not carry our any business activity. He further submitted that during the year under consideration, he sold a rural agricultural land situated at Gram-Barso, Tehsil and Distt.- Bharatpur which is excluded from the purview of capital asset as per provisions of Section 2(14) of the Act and the said sale consideration received from the

sale of the land was deposited in his bank account. In order to support his contentions, the ld. AR has drawn our attention to the paper book which contains statement dated 14/12/2017 of Ajit Singh and statement of Smt. Shyamwati, affidavits of Smt. Shyamwati, Ajit Singh, Jagveer Singh and Kartaar Singh etc. It was specifically submitted by the ld AR that the land of the assessee was in fact sold out for the total consideration of Rs. 20.80 lacs and as per the sale agreement, the consideration was to be distributed in five equal parts amongst the assessee and his brother. Accordingly, Rs. 18,97,000/- out of total sale consideration was deposited on 15/07/2009 in the assessee's bank account and later on Rs. 19,00,000/- was withdrawn on 19/07/2009 and distributed amongst the co-owners as per the sale agreement. It was submitted by the ld. AR that initial sale consideration was decided at Rs. 6,75,000/- which was amended to Rs. 20,80,000/- i.e. at par with the stamp duty valuation. But the sale agreement was not amended/revised. It was further submitted that the assessee was having $1/5^{th}$ share in the land in question. The ld AR relied upon the documents by way of paper book. In order to support his contention, the ld AR has relied upon the statements of co-brothers who were seller of the land. On the other hand, the ld DR has submitted that there was no documents evidence which shows that the land in question was sold by the assessee or his co-owners. It was submitted that no revised sale deed was placed on record by the assessee at any stage and even there was no agreement to sell which

reflects total sale consideration at Rs. 20.80 lacs. It was submitted by the ld. DR that a letter dated 14/12/2017 U/s 133(6) of the Act was issued to the purchases i.e. Smt. Nutan Sharma and Smt. Pushpa Arora in order to ascertain the real transaction and both Smt. Nutan Sharma and Smt. Pushpa Arora i.e. purchasers of the land had categorically submitted that the aforesaid transaction was made @ 6.75 lacs as is mentioned in the sale deed. After gone through the arguments of both the parties, we found that it is an undisputed fact that the assessee was one of the owner of the land in question located at Gram-Barso, Tehsil and Distt.- Bharatpur which was sold through registered sale deed executed in favour of Smt. Nutan Sharma and Smt. Pushpa Arora but in the said registered documents, total sale consideration of the land was shown as Rs. 6.85 lacs and not Rs. 20.80 lacs as alleged by the assessee. It is an admitted fact that there is no occasion of sale which reflects Rs. 20.80 lacs as valuation of the land in question and nothing has been placed on record that even on the scrutiny of the registered sale deed, there is no waiver with regard to any sort of agreement of sale the valuation of the land at Rs. 20.80 lacs. Apart from this, the specific statement of the purchasers i.e. Smt. Nutan Sharma and Smt. Pushpa Arora separated by the A.O. that purchase of land was between her and the assessee and total consideration of land was paid by them of Rs. 6.75 lacs as is recorded in the conveyance deed. The ld. AR also raised an argument that no opportunity of cross examination was

granted to the assessee with regard to recording of statement of Smt. Nutan Sharma and Smt. Pushpa Arora and thus the statement of Smt. Nutan Sharma and Smt. Pushpa Arora cannot be relied upon. On this aspect, we are of the view that there was registered conveyance deed before the A.O. which contains the total value of sale consideration was Rs. 6.75 lacs and the statement of Smt. Nutan Sharma and Smt. Pushpa Arora are only corroborative in nature and moreover, at any stage, the assessee had ever requested to provide opportunity of cross examination of Smt. Nutan Sharma and Smt. Pushpa Arora and more so, nobody has been prevented the assessee to call for the said Smt. Nutan Sharma and Smt. Pushpa Arora before the A.O. for cross examination or from leading their statements. We also relied upon the provisions of Section 106 of the Indian Evidence Act, 1872 which clearly lays down the burden of proving the fact which is especially within the knowledge of a person is upon that person, therefore, it was the duty of the assessee to prove the facts which were especially within their notice and knowledge and since the assessee has failed to discharge their onus, therefore, they are legally stopped from raising any arguments on this aspect. More so, the provisions of Section 92 of the Indian Evidence Act, 1872 specifically deals with such type of situation and excludes oral evidence where the contract of the terms are to be reduced into writing as required by law. In the present case, the document of transfer is required by law to be reduced in writing and needs

registration as has been done by executing sale deed which was got registered, therefore, the terms contained in the sale deed are to be believed which exclusively contains that a sum of Rs. 6.75 lacs were sale consideration of the entire land belonging to the assessee as well as his co-owners and thus when once an specific evidence by way of registered document has been placed on record, then in that eventuality as per Section 92 of the Indian Evidence Act, 1872, no contrary oral evidence is permissible. Thus, considering the totality of facts and circumstances more particularly when the registered sale deed has been executed between the parties which specifically contains that a sum of Rs. 6.75 lacs were paid by the purchasers to the assessee and his co-owners in lieu of purchase of the entire land in question and the said conveyance deed has also been corroborated by the statement of Smt. Nutan Sharma and Smt. Pushpa Arora recorded U/s 133(6) of the Act and no contrary evidence has been lead by the assessee in order to controvert or rebut the said presumption which is attached with the registered document. The case law relied by the ld. AR in the case of Shri Pappu Ram saran Vs ITO in ITA No. 1303/JP/2018 order dated 03/09/2020 is not applicable on the facts and circumstances of the present case under consideration, therefore we are not conveniencd with the arguments put forth by the assessee before us. Therefore, we feel no reasons to interfere into or to deviate from the findings so recorded by

the ld. CIT(A) and hence, the same is upheld and consequently this ground raised by the assessee is dismissed.

14. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 13th October, 2021.

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

जयपुर / Jaipur
दिनांक / Dated:- 13/10/2021
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Satyaveer Singh, Bharatpur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-1, Bharatpur.
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. 975/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar