

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.263/ASR/2003
Assessment Year 1998-99

ACIT,
Circle-II,
Jammu

vs. Shri M.K. Ajat Shatru,
The Palace,
Jammu.

ITA No.267/ASR/2007
Assessment Year 1998-99

ACIT,
Circle-II,
Jammu

vs. Dr. Karan Singh,
The Palace,
Jammu.

CO NO.43/ASR/2007
Arising out of
ITA No.267/ASR/2007 - Assessment Year 1998-99

Dr. Karan Singh,
The Palace,
Jammu

vs. ACIT,
Circle-II,
Jammu

ITA No.268/ASR/2007
Assessment Year 1998-99

ACIT,
Circle-II,
Jammu

vs. Yashorajya Lakshmi
Dr. Karan Singh, Legal Heir of
Smt. Yashorajya Lakshmi,
The Palace,
Jammu.

*ITA.Nos.263/Asr/2003, 267 to 269/Asr/2007 &
C.O.Nos.43 to 45/Asr/2007
Shri M.K. Ajatshatru, Jammu & Others,*

CO NO.44/ASR/2007

Arising out of

ITA No.268/ASR/2007 - Assessment Year 1998-99

Yashorajya Lakshmi
Dr. Karan Singh, Legal Heir vs. ACIT,
of Smt. Yashorajya Lakshmi, Circle-II,
The Palace, Jammu
Jammu.

ITA No.269/ASR/2007
Assessment Year 1998-99

ACIT,
Circle-II, vs. Shri Vikramaditya Singh,
Jammu The Palace,
Jammu

CO NO.45/ASR/2007

Arising out of

ITA No.269/ASR/2007 - Assessment Year 1998-99

Shri Vikramaditya Singh,
The Palace, vs. ACIT,
Jammu Circle-II,
Jammu

(Appellant)

(Respondent)

Assessee by : Shri C.S. Aggarwal, Sr.
Advocate; Shri Ravi
Pratap Mall & Shri
Madhur Aggarwal,
Advocates; & Shri V.S.
Raju, AR.

Revenue by : Shri S.D. Kapila, Spl.
Counsel; &
Shri R.K. Maurya, Shri
Pravesh Sharma &
Shri Sushil Kumar,
Advocates.

Date of Hearing : 29.10.2021
Date of Pronouncement : 24.01.2022

ORDER

PER R.K. PANDA, AM:

ITA.No.263/ASR/2003 filed by the Revenue is directed against the order dated 18.03.2003 of the Ld. CIT(A), Jammu (HQ at Amritsar) relating to the A.Y. 1998-99. ITA.No.267/ASR/2007 filed by the Revenue is directed against the order dated 21.03.2007 of the Ld. CIT(A), Jammu (HQ at Amritsar) relating to the A.Y. 1998-99. The assessee filed C.O.No.43/ASR/2007 against the appeal filed by the Revenue. ITA.No.268/ASR/2007 filed by the Revenue is directed against the order dated 22.03.2007 of the Ld. CIT(A), Jammu (HQ at Amritsar) relating to the A.Y. 1998-99. The assessee filed C.O.No.44/ASR/2007 against the appeal filed by the Revenue. ITA.No.269/ASR/2007 filed by

the Revenue is directed against the order dated 22.03.2007 of the Ld. CIT(A), Jammu (HQ at Amritsar) relating to the A.Y. 1998-99. The assessee filed C.O.No.45/ASR/2007 against the appeal filed by the Revenue. Since common issues are involved in all these appeals and cross objections, therefore, these were heard together and are being disposed of by this common order.

2. First we take-up the appeal vide ITA.No.263/ASR/ 2003 in the case of Shri M.K. Ajat Shatru, Jammu as the lead case.

2.1. Facts of the case, in brief, are that the assessee is an individual. He filed his return of income on 28.01.2000 declaring income of Rs.5,85,071/-. Later on notice under section 139(9) of the I.T. Act, 1961 was issued on 18.02.2000 asking the assessee to remove certain defects. Since the defects were not removed within the time, the return was declared invalid and non-est vide order under section 139(9) of the I.T. Act, 1961 dated 22.02.2000. Subsequently, notice under section 148 of the I.T. Act, 1961

was issued to the assessee on 10.01.2001 by recording the following reasons:

“In this case return declaring an income of Rs.585071/- was filed in this office on 28.1.2000. The return filed was defective as Form No.16 in r/o salary from J&K Govt. was not enclosed with the said return of Income. The assessee was issued a notice dated 18.02.2000 by which the assessee was asked to remove the defect within a period of 15 days. It was also made it clear to the assessee that if the defect was not rectified within 15 days from the date of receipt of the notice, the return of income would be treated as invalid without any further notice. But no reply was received from the assessee in the office of the undersigned upto 22.12.2000.

In the light of the above facts, the return of income so filed was treated as invalid vide this office order dated 22.12.2000. Since an invalid return is no return in the eyes of the law, as such, I have reason to believe that income amounting to Rs.585071/- declared by the assessee in the invalid return has escaped assessment in terms of sec. 147 of the Act. Accordingly notice u/s.148 is issued.”

2.2 In response to the said notice no return was filed. Subsequently, the assessee through his Counsel appeared on 23.01.2002 and filed written reply stating that the original return filed on 28.01.2000 be treated as return filed in response to notice under section 148 of the I.T. Act, 1961.

2.2.1 During the course of assessment proceedings, the A.O. noted from the computation sheet attached to the return of income where it has been mentioned as under :

“Sale of shares in M/s. Jyoti Private Ltd:- The assessee has sold his shares in Jyoti Pvt. Ltd. The total assets of the company as on 1-4-1981 were Rs.2,491.87 Lacs and the total liabilities of the company were Rs.123.49 Lacs. The net value of the shares of the company amounts to Rs.2368.38 Lacs i.e (2491.87-123.49) since sale value of the shares of the company amounts to Rs.3000.00 Lacs and hence there is no capital gain”

2.3. The A.O, therefore, asked the assessee to justify the exemption/claims with evidence. However, no evidence or copy of return of M/s. Jyoti Pvt. Ltd., was furnished, for which the A.O. held that assessee could not discharge the onus cast on him. The A.O. noted that the assessee during the course of assessment proceedings vide letter dated 18.03.2002 had stated that it had held 10,000 shares @ Rs.100/- each in M/s. Jyoti Pvt. Ltd., amounting to Rs.10 lakhs by way of gift. from his father since long, however, no

proof of the same has been attached. During the year assessee sold all the 10,000 shares of the face value of Rs.100/- each to M/s. Bharat Hotels Ltd., Barakhamba Road, New Delhi through its CMD Mr. Lalit Suri. Copy of agreement to sell these shares has been filed on 3.10.1997 for consideration of Rs.4,76,19,048/-. As per this deed an amount of 56 lakhs was received in the shape of pay order and the balance was to be received within 60 days. As no final deed has been filed by the assessee till date so he presumed that the balance amount was received by the assessee during the financial year under consideration. He noted that the assessee in his case has received 10,000 shares as gift from father. Cost of shares is 10000 @ 100/- is Rs.10,00,000/- which has been stated and is disputed by the counsel of the assessee. The Assessing Officer therefore held that it is not understandable as to how against the cost of Rs.10 lakhs assessee has claimed the value as on 1.4.1981 by revaluing the asset of the company. According to him in this case cost of assessee is value of shares and not the assets of the company. The Assessing Officer

accordingly valued the shares of Rs.10,00,000/- and after indexation computed the capital gain at Rs.4,43,09,048/- and added the same to the taxable income of the assessee, the details of which are as under:-

Cost of share X Indexing of the year under consideration.

100

i.e., $\frac{10,00,000 \times 331}{100} = \text{Rs. } 33,10,000/-$

Sale price of share Rs.4,76,19,048/-

Cost of shares after indexing Rs. 33,10,000/-

Capital Gain - Rs.4,43,09,048/-which is added in the taxable income.

2.4. The assessee has also shown agricultural income of Rs.1 lakhs as against NIL income in the preceding year. In absence of any proper explanation given by the assessee to his satisfaction, the A.O. treated the same as income from other sources. The A.O. accordingly determined the total income of the assessee at Rs.90,40,365/-.

2.5. Before the Ld. CIT(A), the assessee challenged the action of the A.O. in making the addition of Rs.4,43,09,048/- on account of capital gain on shares. It was submitted that assessee was holding 10,000 equity shares of M/s. Jyoti Pvt. Ltd., much before 01.04.1981. Therefore, the fair market value of these shares is relevant for the purpose of capital gain on shares. It was submitted that the fair market value of the shares of the company was determined by taking market value of all the assets of the company as on 31.03.1981 and actual liabilities as on such date have been deducted from that value. The valuation of the assets of the company has been valued by the Registered Valuer Shri S.P. Gupta, a Government Approved Valuer, Ministry of Finance. Referring to the decision of Hon'ble Gujarat High Court in the case of A.V. Industries vs., CIT reported in [2002] 125 Taxman 59 it was submitted that once there is report by the Registered Valuer, it is incumbent upon the assessing authority to disclose the same by bringing adequate material on record. It was submitted that A.O. has not done such exercise. It was

further argued that the A.O. nowhere in the assessment order has mentioned that the valuation report by the Registered Valuer is incorrect in any manner whatsoever. Further the A.O. has also not objected to such valuation report, which means that he has accepted the valuation report submitted by the assessee. Further the A.O. without confronting the assessee on this issue, has made the addition which is not justified. The provisions of Section 55(2) (b)(1) of the I.T. Act, 1961 was brought to the notice of the Ld. CIT(A) and it was submitted that as per the said provision the right of choice is conferred on the assessee solely for the benefits of the assessee and unless there is anything in the enactment to the contrary, the right of the assessee so conferred, to choose one of the modes to determine the cost of acquisition cannot be curtailed.

2.5.1 It was submitted that it is at the option of the assessee to take fair market value as on 01.04.1981 or cost of acquisition. In the present case, the assessee has opted for fair market value as on 01.04.1981 for his shares which

has never been disputed by the A.O. at the time of assessment proceedings. Further the fair market value adopted by the assessee was duly supported by the valuation report of the Registered Valuer which was never disputed by the A.O. at the time of assessment proceedings. Relying on various decisions, it was submitted that the addition made by the A.O. on account of capital gain should be deleted.

2.6. So far as addition of Rs.1 lakh treating the agricultural income as income from other sources is concerned, it was submitted that the assessee belongs to a royal family of the State having sufficient agricultural land. Merely because in the preceding assessment years the assessee has not declared such agricultural income, cannot be a ground to disallow the claim. It was submitted that during the course of assessment proceedings it was stated before the A.O. that assessee has planted apple orchard and cherry trees for the last 3/4 years and this was the first year of the crop. The agricultural produce has been sold and the

payment receipts were submitted before the A.O. However, the A.O. did not consider such receipts. The owning of agricultural land and payment receipts to whom the agricultural produce has been sold were produced before the Ld. CIT(A). It was accordingly argued that the addition made by the A.O. should be deleted.

2.7. Based on the arguments advanced by the assessee, the Ld. CIT(A) deleted both the additions made by the A.O. So far as the addition of capital gain is concerned, the Ld. CIT(A) deleted the same by observing as under :

“3. The appellant submitted the valuation report from the Govt Approved Valuer, Shri S.P. Gupta. The deed of Family Settlement between Dr Karan Singh, Maharani Yashoraja Laxmi and the appellant. The receipts regarding the payment on account of sale of apple orchard at Karan Mahal, Srinagar has also been submitted. The case was partly heard on 16-01-03. On 18-03-2003, the appellant came forward with a certificate from Division Commission, Kashmir regarding

the market value of the land pertaining to the Grand Palace Hotel Sinagar (Oberoi Palace Hotel). The counsel in the appeal submitted the arguments regarding the system of valuation of unquoted shares of private companies. The counsel submitted that the market value of unquoted equity shares of Company other than investment Companies shall be determined as per rule 1D of the Wealth Tax as mentioned below :-

“The value of all the liabilities as shown in the Balance Sheet of such Company shall be deducted from the value of all assets of the Company. The net amount so arrived at shall be divided by the total amount of its paid-up Equity share capital as shown in the Balance Sheet. The resultant amount multiplied by the paid-up value of each equity share shall be the break-up of each unquoted equity share. The market value of each such share shall be 80% of the break-up value so determined.

On the basis of this the valuation of the shares has been rightly worked out as under :-

	(Rs. in lacs)
Total Assets of the Company as on 1-4-1981 (Market value)	2491.97
Less: Liabilities as per shown in the Balance Sheet	23.99
Net worth of the Company as on 1/4/1981	2368.38
Cost Index of shares of the Company as the shares were transferred in the financial year 1997-98	$2368.38 \times \frac{331}{100}$ = 7839.34
Total No. of shares of the Company as on 1-4-1981	38500
Share value of per Equity share as on 1-4-1981.	Rs.20361.92
Market value of each Equity Share 80% of Break-up	Rs.16289.53

The Assessee was holding 10000 Equity shares of Rs.100/- each which were sold to M/S Bharat Hotel Ltd. Bharakhamba Road, Delhi at a consideration of Rs.4,76,19,048. The sale value of per equity share is

Rs.4761.90 whereas as per the cost index method the cost price of per equity share is Rs. 16289.53. Since the sale value of the share is Rs.4761.91, hence there is no capital gain.

Though, these provisions have been omitted w.e.f. 1-4-1989, but there is no any other method enacted in Income Tax or in rules which lays down any proposition contrary to the one discussed supra.

This view point has also find support from the Hon'ble Supreme Court decision in the case of CIT Vs Stewards & Lloyds (Overseas Ltd) (SPL Civil No 9164 of 1982 : (1992) 197 ITR (St) 406 (SC).

Another point has also been confirmed by the Divisional Commissioner Kashmir in his letter that since there has been no sale or purchase ever taken in this place. However, this plot of land being situated in the most upmarket and elite part of Srinagar and taking into account the historical value.”

4. *I have considered the rival submissions. The Central issue to ground of appeal no.2 is valuation of the capital asset(shares) as on 1-4-1981. The A.O. has adopted the value of share at Rs.100/- on this date and thereafter applied index over the same. However, he has not given any reason as to how the value of share on 1-4-1981 was Rs.100/-. The value of share at Rs.100/- dates back to the inception of the Company and it's value would naturally must have grown till 1981. The question is to what extent it has grown.*

5. *The appellant has drawn my attention towards rule 1D of the old Wealth Tax Act with the plea that there is no other way that we can proceed with the matter of share valuation particularly when it is not quoted and it belongs to a private limited Company. If we are focusing on the issue of valuation on 1-4-1981, we must therefore keep in mind the considerations dwellings in the mind of buyer seeking to buy these share. Naturally he would be driven by the net value*

(Assets- liabilities) of the Company to which these shares belong.

6. *I find that rule 1D exactly deals with valuation in this manner. Although the rule was framed to determine Wealth, it would naturally be help to determine value for our purpose. It is a logical accounting procedure particularly since no specific methodology is suggested in Income Tax law book for this. I, therefore agree with the computations submitted by the Counsel supported by rule 1D mechanism.*

7. *The hurdle however remains pertaining to valuation of land of the hotel since the Regd. Valuer has not based his valuation report on any sales instance. No body however can blame him for this apparent lapse since turmoil in the valley has left no land transactions to depend upon for estimation of value. This has been certified by the Divisional Commissioner in his Certificate issued vide No.Divcom/3290/AC/67/CA dated 17.01.2003 in which he states*

“The question has arisen as to what would be a reasonable price for the land within the premises of what is now called the Grand Palace Hotel, which was known as the Oberoi Palace Hotel till 1990 and which was the residence of the erstwhile rulers of J & K till 1947.

It would be extremely difficult to place a value on this land because no sale or purchase has even taken place in that area. However, this plot of land is situated in the most up-market and elite part of Srinagar. It has a unique historical value and is also much sought after for the construction of hotels and similar facilities.

Therefore, even in 1981, people would have been prepared to pay upwards of Rs.5-6 lakh per kanal for land within the said premises.”

7. We, are therefore left with no alternative to turn our attention to the means of estimation other than

sales instances. It is here that the estimation provided by the Divisional Commissioner come handy to us. He has estimated the value around Rs. 5-6 lakh per Kanal. Even if we adopt the lower side of the figures provided by him, the computations reveal that there is no capital gain.

8. *I also agree with the observations of Gujarat High Court decision reported in 125 taxman 59 referred to by the appellant that we cannot interfere into the expert report of the authorised valuer, the Regd. valuer, unless we can find fault with the ingredients of the Report. Since, the Assessing Officer has also not disputed any content/ part of the said report, it is ought to be accepted without incorporating any variation therein. Once the valuation report is accepted as such, the computations depict no capital gains.*

9. *Considering the facts and circumstances enumerated above, I delete the addition of Rs.4,43,09,048/- on this account.*

10. So far as the addition of Rs.100000/- as income from undisclosed sources as against agricultural income is concerned, he allowed the claim of agricultural income by observing as under:

“I have examined the details of land submitted by the counsel for the appellate and find that the appellant is owning quite a big chunk of land since 1970. The appellant so far had never declared any agriculture income. It is for last 3 to 4 years that plantation of Apples and cherry trees had been undertaken and this is the First year when the orchard yield has been sold by the appellant. If the intentions of the appellant were otherwise, he might have introduced the agriculture income ever since it came into the possession of the agricultural land the documents of which have been submitted before the undersigned. Moreover the payment receipts have also been submitted by the appellant. The years prior to the current year are irrelevant to be considered because

there was no agricultural income claimed/shown by the appellant. In view of this there is no doubt that the appellant had genuine agricultural income and the observations of the Assessing Officer that this is from undisclosed sources is unwarranted.

11. *Appeal is, therefore, allowed”.*

3. Aggrieved with such order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds :

“On the facts and in the circumstances of the case.

1. *The Ld. CIT (A) erred in law in deleting the addition of Rs.4,43,09,048/- under the head 'capital gain' arising from sale of equity shares held by the assessee in M/s Jyoti Pvt. Ltd..*
2. *The Ld. CIT (A) erred in applying wrong text of rule 1DD of W.T. Rules 1957 even though the said rule was otherwise invoked by the Ld. CIT(A) for the purpose of*

determining the fair market value of the impugned shares as on 1.4.1981.

3. *The Ld. CIT(A) erred in law in admitting additional evidence by way of certificate from the Divisional Commissioner without giving any opportunity to the AO.*
4. *The Ld. CIT(A) erred in law in relying on certificate of valuation of land by approved valuer for the purpose of valuation of equity shares under Rule 1DD of W.T. Rules.*
5. *Erred in deleting addition of Rs.1,00,000 made by the ld. A.O. as income from undisclosed source.*
6. *That the appellant craves leave to add or amend or alter any grounds of appeal before or time of hearing. ”*

4. Identical grounds have been raised by the Revenue in other appeals which are as under:

ITA No.267/ASR/2007 (A.Y. 1998-99)

“On the facts and in the circumstances of the case.

1. *The Ld. CIT (A) erred in law in deleting the addition of Rs.7,66,76,700/- under the head 'capital gain ' from sale of equity shares held by the assessee in M/s Jyoti Pvt. Ltd.*
2. *The Ld. CIT (A) erred in applying wrong text of rule 1DD of W.T. Rules 1957 the rule which the assessee as well as the Ld. CIT(A) had otherwise invoked for the purpose of determining the fair market value of the impugned shares as on 1.4.1981.*
3. *The Ld. CIT(A) erred in law in admitting additional evidence by way of certificate from the Divisional Commissioner without giving any opportunity to the AO.*
4. *The Ld. CIT(A) erred in law in relying on certificate of valuation of land by approved valuer for the purpose of valuation of equity shares under Rule 1DD of W.T. Rules.*
5. *That the appellant craves leave to add or amend or alter any grounds of appeal before or time of hearing. ”*

ITA No.268/ASR/2007 (A.Y. 1998-99)

“On the facts and in the circumstances of the case.

- 1. The Ld. CIT (A) erred in law in deleting the addition of Rs.4,34,39,380/- under the head 'capital gain ' from sale of equity shares held by the assessee in M/s Jyoti Pvt. Ltd.*
- 2. The Ld. CIT (A) erred in applying wrong text of rule 1DD of W.T. Rules 1957 the rule which the assessee as well as the Ld. CIT(A) had otherwise invoked for the purpose of determining the fair market value of the impugned shares as on 1.4.1981.*
- 3. That on the facts and circumstances of the case and in law CIT(A) erred in accepting the land measuring 225.85 Kanals valued at Rs. 19,87,48,000/- by the valuer in his report.*
- 4. The Ld. CIT(A) erred in law in relying on certificate of valuation of land by approved valuer for the purpose of valuation of equity shares under Rule 1DD of W.T. Rules.*

5. *That the appellant craves leave to add or amend or alter any grounds of appeal before or time of hearing”.*

ITA No.269/ASR/2007 (A.Y. 1998-99)

“On the facts and in the circumstances of the case.

1. *The Ld. CIT (A) erred in law in deleting the addition of Rs.3,88,08,572/- under the head 'capital gain' from sale of equity shares held by the assessee in M/s Jyoti Pvt. Ltd.*
2. *The Ld. CIT(A) erred in applying wrong text of rule 1DD of W. T. Rules 1957 the rule which the assessee as well as the Ld. CIT(A) had otherwise invoked for the purpose of determining the fair market value of the impugned shares as on 1.4.1981.*
3. *That on the facts and circumstances of the case and in law CIT (A) erred in accepting the land measuring 225.85 Kanals valued at Rs.19,87,48,000/- by the valuer in his report.*

4. *The Ld. CIT (A) erred in law in relying on certificate of valuation of land by approved valuer for the purpose of valuation of equity shares under Rule 1DD of W. T. Rules. That the appellant craves leave to add or amend or alter any grounds of appeal before or time of hearing.”*

5. The assessee in his C.O.No.43/ASR/2007 in ITA.No.267/ASR/2007 relating to the A.Y. 1998-99 has raised the following grounds :

1. *“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in upholding the validity of initiation of proceedings u/s 147 read with section 148 of the Income Tax Act.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in not disposing and without prejudice deciding the non levy of interest under section 234A and 234B of the I.T. Act.*

3. *The assessee craves leave to add or amend the grounds of cross objections before these are heard and disposed off.”*

6. The assessee in his C.O.No.44/ASR/2007 in ITA.No.268/ASR/2007 relating to the A.Y. 1998-99 has raised the following grounds :

1. *“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in upholding the validity of initiation of proceedings u/s 147 read with section 148 of the Income Tax Act.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in not disposing and without prejudice deciding the non levy of interest under section 234A and 234B of the I.T. Act.*
3. *The assessee craves leave to add or amend the grounds of cross objections before these are heard and disposed off.”*

7. The assessee in her C.O.No.45/ASR/2007 in ITA.No.269/ASR/2007 relating to the A.Y. 1998-99 has raised the following grounds :

1. *“The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in upholding the validity of initiation of proceedings u/s 147 read with section 148 of the Income Tax Act.*
2. *The Ld. Commissioner of Income Tax (Appeals) has erred in not disposing and without prejudice deciding the non levy of interest under section 234A and 234B of the I.T. Act.*
3. *The assessee craves leave to add or amend the grounds of cross objections before these are heard and disposed off.”*

8. Ld. Counsel for the assessee at the outset submitted that cross objections are filed by three assesseees namely, Dr. Karan Singh, Shri Vikramaditya Singh and Smt. Yashorajya Lakshmi wherein the respective assesseees have challenged the proceedings u/s. 147 of the IT Act, 1961

since the same has not been validly initiated and therefore not tenable. However, in the case of Mr. Ajat Shatru Singh contention is being raised under Rule 27 of the ITAT Rules and the assessee is contending that no valid assessment could have been framed u/s. 143(3)/147 of the Income Tax Act, 1961. He also relied on various decisions to the proposition that the respondent is entitled to raise a legal ground at any stage of the proceedings, even though he may not have filed an appeal against such an order.

9. Ld. Special Counsel on the other hand submitted that the question of validity of notice u/s. 148 is not the subject matter of assessment or appeal either before the CIT(A) or before the ITAT. The assessee is not the appellant. Therefore, the assessee as respondent is precluded from raising this new plea for the first time before the ITAT under Rule 27 of the ITAT Rules. Referring to the decision of the Co-ordinate Bench of the Tribunal in the case of ST Ericson he submitted that under identical facts, the Tribunal has declined to entertain such a plea. He accordingly submitted that the ground raised by the assessee challenging the

validity of reassessment proceedings by invoking Rule 27 of ITAT Rules should be dismissed.

10. We have heard the rival arguments made by both the sides. Provisions of Rule 27 of the ITAT Rules enshrines a right to the respondent before the Tribunal to support the order of the CIT(A) on any ground decided against him notwithstanding the fact that the assessee has neither filed a cross appeal nor cross objection. We find the Hon'ble Delhi High Court in the case of Sanjay Sawhney vs. PCIT vide ITA No.834/2019 order dated 18.05.2020 has observed as under:

26. The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can

be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent - assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant - assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant - assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under [Section 153C](#) of the Act.”

10.1. Since all material facts and documents for adjudication of this legal ground are already on record, therefore, we admit the legal ground raised by the assessee under Rule 27 of the ITAT Rules.

10.2. Both the sides made extensive arguments and filed written synopsis.

11. Ld. Special Counsel for the Revenue while explaining the history of the case submitted that the Ld. CIT (Appeals) Jammu passed the order disposing of the appeal of Shri Ajatshatru Singh on 18.3.2003, against which the Department filed appeal before the ITAT, Amritsar bench. In other three assesseees the Dept, also filed appeals before the Amritsar Bench of the Tribunal in 2007. These three assesseees also filed C.O. Later, these were transferred to Delhi Bench on the request of all concerned parties. He submitted that in the case of Dr. Karan Singh, Shri Vikramaditya Singh and late Smt Yashoraja Laxmi returns were originally accepted u/s 143(1) of the Act. Thereafter, relying on the assessment order in Ajatshatru Singh, notice

u/s 148 was issued on 24.3.2005. That on April 19, 2005 the assessee wrote to the AO requesting that the original returns may be treated as return u/s 148 of the Act. The AO made the assessment u/s 143(3) on 31.3.2006. The CIT(A) in the case of Dr. Karan Singh allowed assessee's appeals on merit vide order dt 21.3.2007. but dismissed the ground challenging the validity of notice u/s 148. The successor CIT(Appeal) in the case of Dr. Karan Singh & Ors. essentially followed the appellate order of his predecessor in the case of Shri Ajatshatru Singh as similar facts were involved.

12. Ld. Special counsel submitted that the Department had subsequently made an application for admission of amended grounds of appeal and the Bench vide order dated 5.1.2017 admitted the amended grounds of appeal, which are all similarly worded in the case of all shareholders for Jyoti (P) Ltd. (excepting the amount of addition deleted by the CIT(Appeal)).

12.1 He submitted that the entire share holding in M/s Jyoti Pvt. Ltd., which was incorporated in 1963 was held by the four respondents in their individual capacity. Initially, there were only two shareholders i.e. Dr. Karan Singh and, his wife Late Smt. Yashorajaya Laxmi. During 1972-73, shares were also allotted to Shri Vikramaditya Singh and Shri Ajatshatru Singh. The details of share holding are as follows:-

Share Holding:-

Table-1

s NO.	Name of the shareholder	No. of shares held	Acquired prior to 01.04.1981	F.Y. 85-86	F.Y. 90-91	F.Y. 94-95
1	Dr. Karan Singh	21,000	7,150	2,850	5,000	6,000
2	Shri Ajatshatru Singh	10,000	10,000	—	—	—
3	Shri Vikramadiya Singh	15,000	10,000	—	5,000	—
4	Smt. Yashorajaya Laxmi	17,000	11,500	3,500	—	2,000
	TOTAL:	63,000	38,650	6,350	10,000	8,000

Note: Out of total 63000 shares in Jyoti (P) Ltd. sold by the 4 shareholders, only 38650 shares were held as on 1.4.1981. The balance 24,350 shares cannot be reflected to the provisions of section 55.

12.2 He submitted that under four separate agreements, each of which is dated 3-10-1997 all the four shareholders of M/s Jyoti (P) Ltd transferred their shareholding to M/s Bharat Hotels Ltd. the details of which are as under:

Table -2

S No.	Name of the shareholder	No. of shares held and transferred	Aggregate consideration received (Rs.)	Consideration per share (Rs.)
1	Dr. Karan Singh	21,000	10,00,00,000/-	4,761.90/-
2	Shri Ajatshatru Singh	10,000	4,76,19,048/-	4,761.90/-
3	Shri Vikramadiya Singh	15,000	7,14,28,572/-	4,761.90/-
4	Smt. Yashorajaya Laxmi	17,000	8,09,52,380/-	4,761.90/-
	TOTAL:	63,000	30,00,00,000	

13. Ld. Special Counsel for the Revenue submitted that the following are important facts:

- a) That Jyoti (P) Ltd. was incorporated on 22.1.1969
- b) That on 31.3.1981, Jyoti (P) Ltd. was a going concern and was far from being consideration for liquidation.

- c) That on 31.3.1981 there was no uncertainty of conditions was shown, which could have affected the profit earning capacity of the Company. In fact, vide letter 5.02.2007 in the case of Dr. Karan Singh, the assessee makes it clear that it was since 1989 only that deteriorating social & political conditions came into existence in the valley because of terrorist activities and the price of properties in Srinagar started falling. (Pg. 224 at 253 of Assessee P.B. Vol.-I& Pg. 33/CIT(A) in Dr. Karan Singh).
- d) The four shareholders transferred their shares in Jyoti (P) Ltd. to Bharat Hotels Pvt. Ltd. in 1997.
- e) That the assets transferred are unquoted equity shares in Jyoti Pvt. Ltd.
- f) Quantity of shares held and transferred is correct.
- g) All the shares were transferred to Bharat Hotels on October 3, 1997 by each member of the Group.

- h) The assessee had furnished to the A. O., the regd. valuer's report on valuation of the market value of land & building of the property 'Gulab Bhawan' as on 31.3.1981 assuming that the company was the owner of land. (Pg. 10/AjatShatru PB).
- i) The approved valuer does not make valuation with reference to the balance sheet of Jyoti (P) Ltd. as on 31.3.1981. He values the impugned land without of which company was not the owner.
- j) Even the valuation of land was made not on the basis that it was lease-hold land as per lease deed of 1973 for 30 years and the new lease deed, which was entered into between Vikramaditya Singh (owner) and the company in 1997, could not be taken into account for valuation of land as on 31.3.1981.
- k) No valuation certificate by any valuer (approved or otherwise) valuing shares of Jyoti (P) Ltd. as on 1.4.1981 was ever filed.

1) The CIT(A) either in the case of Ajatshatru Singh or Dr. Karan Singh did not consider the B/S of Jyoti (P) Ltd. as on 31.3.1981.

14. Ld. Special Counsel for the Revenue submitted that the dispute is in regard to quantum of capital gains arising from transfer of shares in Jyoti Pvt. Ltd. Specifically, the dispute is regarding 'Cost of acquisition' of the shares held by the assessee prior to 1.4.1981 in Jyoti (Pvt.) Ltd. He submitted that this is because all the assessees have exercised option under section 55(2)(i) of the I. T. Act that the market value of the shares held as on 1.4.1981 may be substituted for the actual cost of acquisition. Hence, the dispute revolves round the question of law as to what method of valuation of unquoted shares in a private company held by all the four assessee should be adopted for determining the market value as on 31.3.1981.

15. He submitted that before Ld. CIT(A), it was pleaded that the fair market value of the shares of Jyoti (P) Ltd. as on 1.4.1981 should be determined in accordance

with Rule 1-D of the Wealth Tax Rules, which were in force as on April 1 1981. Thus, the order of the Ld. CIT(A) makes it clear that:-

- a) the fair market value of the shares of Jyoti (P) Ltd. as 1.4.1981 should be determined as per Rule 1D of W. T. Rules.
- b) He has misled himself by using wrong text of the said Rule 1D of the WT Rules.
- c) The CIT(A) thus erroneously did not take the book value of the assets shown in the Balance Sheet of Jyoti (P) Ltd. as on 31.3.1981.
- d) The Ld. CIT(A) lost sight of the fact that the 'asset' to be valued was the 'unquoted share of Jyoti P. Ltd.' and not one of its assets which was only partly owned by it.

15.1 Ld. Special Counsel drew the attention of the Bench to para 7 at Pg. 6 of the order where he has mentioned as under:

“The hurdle however remains pertaining to valuation of land of the hotel since the Regd. Valuer has not based his valuation report on any sale instance ”

15.2 He submitted that this ruling of the CIT(A) relies the fact that the land on which the hotel is situated does not belong to the company Jyoti (P) Ltd. and nor is it shown in its Balance Sheet as on 31.3.1981. He accordingly submitted that the Ld. CIT(A) has held that

a) The assessee has exercised the option u/s 55(2)(b)(i) of the Act.

b) According to him valuation of shares as on 1.4.1981, made by the assessing officer is arbitrary.

c) According to CIT(A), the AO could not ignore the valuation of Gulab Bhawan and the land on which it is situated as per valuation certificate of land and building of the Regd. valuer.

d) It was a few years after 18.3.2003 (Date of CIT(A) order) that Sri Vikramaditya Singh, owner of Gulab

Bhawan land, filed a certificate dt. 28.3.2006 with CIT(A) by Tehsildar, Srinagar regarding the market value of the land appurtenant to Gulab Bhawan, Srinagar@ Rs. 30 lakhs per Kanal in 1998

e) It may be noted that the land on which Gulab Bhawan is situated is owned by Shri Vikramaditya Singh.

16. He submitted that the Ld. CIT(Appeal) has clearly not looked into the Balance Sheet of Jyoti (P) Ltd as on 31.3.1981 which clearly shows that the company owned several properties and carried on several businesses during F.Y, 1980-81. But, the B/S of Jyoti (P) Ltd. clearly reveals that Jyoti (P) Ltd. does not reflect adjoining 'Gulab Bhawan Building' even on the basis of lease deed of 1973, which was due to expire in 2003. He submitted that the balance sheet of Jyoti (P) Ltd. as on 31.3.1981, shows that as on that date the company had issued 38,650 equity shares of Rs. 100 each "fully called and paid up including Rs. 10,90,000/- for

consideration other than cash.". The B/S of the company disclose following properties & businesses:-

- i) Dogra Printing Press
- ii) Gulab Bhawan, Sri Nagar (Impu hotel property)
- iii Jyoti Cold Storage
- iv) Palace Motel, Taragarh
- v) Hari Niwas, Jammu
- vi) Lakshmi Kutir, Srinagar
- viii Central Unit.

(Pg. 60/Dept. PB in Dr. Karan Singh Annexure 2 at Pg. 13)

He submitted that the land on which Gulab Bhawan (subsequently, named Oberoi Place Hotel) is situated is not shown in Balance Sheet of the Company.

17. Ld. Special Counsel for the Revenue submitted that regardless of the stand taken by the assessee or by the department, the Tribunal is duty bound to apply correct law on the facts found by the lower tax authorities. He submitted that the Principle or method of valuation of unquoted shares or shares of a private company is a question of law as held by Hon'ble Supreme Court in the

case of Ambalal Modi, 170 ITR 144 S.C.). He submitted that the earning / yield method or any other method prescribed in a statute can be applied for determining FMV of a shares in private company which is a going concern as on valuation date. The 'Breakup method' can be applied only if the company is in the process of liquidation, or, if the conditions prevailing on the date of valuation are uncertain. He submitted that the value of assets not disclosed in the balance sheet of the company cannot be used for the purpose of valuing the shares even under the 'Break up Method'. No statute recognizes such a mode of valuation even under 'break up method' or any other method of valuation of shares. He submitted that "Inside Information" cannot be used for determining the Fair Market Value of the shares of Private Company; or, for that matter, even a public company. Use of Such information for the purpose of pricing a negotiated private sale is against the basic principle governing determination of Fair Market Value of the shares. It is antithesis of the concept of Fair Market Value. He submitted that the correct method of valuation of

private company, which is a going concern, is Yield or Earning method. He submitted that even in the case of shares of companies quoted on the Stock Exchange, the valuation is made on the basis of ratios like ROE (Return on Equity); EPS (Earning per share) and PE (Price to Earning) and not on the basis 'Breakup Method'.

18. Ld. Special counsel for the Revenue submitted that for the purpose of determining fair market value of the shares as on 1.4.1981, it is impermissible to consider events occurring subsequent to the valuation date particularly those occurring more than a decade later. Such a magical foresight is not available on 1.4.1981. Hence, the Revised Lease Deed of the impugned land as also Performance Agreement and the Agreement to Sell etc., which took place 17 year after the valuation date of 01.04.1981 are irrelevant. He submitted that apart from the fact that balance sheet etc. of the company for A.Y. 1994-95, 1997-98 & 1998-99 were filed before the Bench without application under Rule 29, these Balance sheets are absolutely irrelevant for

deciding the FMV of the shares as on 01-04- 1981. He submitted that the definition of 'Fair Market Value' as per Section 2(22B) of the IT Act is materially same as that of section 7 of W.T. Act prior to its amendment by the Finance Act 1965.

19. Ld. Special Counsel for the Revenue submitted that the impugned asset valued at Rs. 19.87 crores as on 1.4.1981 by the Regd. valuer is owned not by Jyoti (Pvt.) Ltd. but Shri Vikramaditya Singh, This land is not shown in the B/s as on 1.4.1981 of Jyoti Pvt. Ltd., and yet it is taken into account by the assessee for the purpose of determining the market value of its shares. In all other cases relied on by the Ld. Senior Counsel for the assessee as per case law compilation including Madhu Tyagi & Mrs. Shashi Dharnidharka the impugned asset was shown in the Balance Sheet of the company and the only dispute was as to whether the valuation of the unquoted share should be valued by taking the book value or the market value of that asset. He submitted that the land on which the building is situated is not shown in the B/S of Jyoti (P) Ltd. In fact, the

Regd. Valuer or the CIT(A) in the case of Ajatshatru Singh or the CIT(A) in the case of Dr. Karan Singh & others have not even referred to the B/S of Jyoti (P) Ltd.

20. Ld. Special Counsel submitted that another feature of arbitrary valuation of shares of Jyoti (P) Ltd. made by the assessee, which has been accepted by both the C.I.T.(Appeal), is that the rest of the properties and businesses as shown in Balance sheet of the company have been totally ignored. He submitted that the Regd. valuer's report of 2003 values not only the building Gulab Bhawan but also 225 Kanals of land appurtenant to it which was not shown in the B/S of Jyoti (P) Ltd. and which never belonged to the company. Further, the Registered valuer, whose certificate has been relied on, is not a registered valuer of shares. No certificate of a registered valuer of shares in a company has ever been filed. Further, the so-called valuation report of the registered valuer is in violation of Rule 8A read with Form 0-1 of W. T. Rules. Ld. Special Counsel submitted that when it became evident that Jyoti (P) Ltd. was not the owner of the impugned land, a long-

term lease of 99 years in favour of Jyoti (P) Ltd. was executed by Shri Vikramaditya Singh as late as on November 22, 1997. (Pg. 4/PB). This lease deed was not in existence in 1981.

21. Ld. Special Counsel submitted that the Hon'ble Supreme Court in the case of Mahadeo Jalan, 86 ITR 621 has laid down the following principles in absence of any rule to the effect of unquoted shares:

a) "the value is determined by reference to the dividends, if any, reflecting the profit earning capacity on a reasonable commercial basis. But, where they do not, the amount of yield on that basis will determine the value of shares. "

b) "Where the company is ripe for winding up then the break-up value method determines what would be realised by that process".

iii) As in Attorney General of Ceylon V. Mackie a valuation by references to the assets would be justified as in that case the fluctuations of profits and

uncertainty of the conditions at the date of valuation prevented any reasonable estimation of prospective profits and dividends".

21.1 He submitted that this legal position was reiterated by the Hon'ble Supreme Court again in *Kusumben Mahadevia* (122 ITR 38), *CIT v. Executors & Trustees of the Estate of Late Shri Ambalal Sarabhai* 170 ITR 144 (SC) and *Bharat Hari Singhania & Ors. vs. CWT* reported in 207 ITR 1(SC).

22. The Ld. Special Counsel further submitted that the Ld. CIT(A) has admitted a certificate filed which was obtained from the Divisional Commissioner, Kashmir which is not only vague; but which also seems to be unaware of the ownership of the impugned land and the terms of the Lease deed dated 21.3.1973. Further it was admitted in violation of Rule 46A of IT Rules. The said certificate also does not value the shares of Jyoti (P) Ltd.

23. Ld. Special Counsel referring to the following decisions submitted that these judgments are authority for

the proposition that Rule 1D can be applied where no rule for valuation of unquoted shares prescribed:

- i) CIT Vs. S. Balasubramaniam 159 ITR 288 (Mad.) 85
- ii) CIT Vs. Rajiv Gupta 292 ITR 262 (Del.) 182
- iii) CIT vs Steward & Lloyds (Overseas) Ltd. 197 ITR 406(Statutes.)
- iv) CIT Vs. Smt. Shakuntala Devi, 250 ITR 677 (P&H)
- v) CIT Vs. Mammen Mathew, 158 ITR 466 (Ker.)
- vi) Cont. of Estate Duty Vs. R. M. Sukhadvala 192 ITR 389 (Bom.)
- vii) Shyamsukh Garg Vs. Controller of ED 145 ITR 238 (MP)
- viii) Smt. Urmila Ranka Vs. Controller of ED 262 ITR 321 (Raj)
- ix) Controller of ED Vs. GK Swarup 275 ITR 137 (Guj)
- x) C.E.D Vs. Krishna Murthy, 96 ITR 87 (Mys)

xi) Madhusudan Dwarkadas Vora Vs. Supt. of Stamps

141 ITR 802 (Bom)

24. Referring to the decision of Hon'ble Bombay High Court in the case of CIT Vs. GM Abhayankar (HUF), 214 ITR 269 (Bom), he submitted that assets shown in the balance sheet of the company only to be considered. He submitted that Rule 1D of W.T. Rules is recognized method of valuation. For the above proposition, he relied on the following decisions:-

i) CIT Vs. S. Balasubramaniam, 159 ITR 288

ii) Controller of ED Vs. GK Swarup, 275 ITR 137 (Guj)

iii) Stewards & Lloyds, 197 ITR (St) 406 (SC) 8A

25. Ld. Special counsel for the Revenue submitted that the correct principle of valuation applicable to a given case is a question of law. The parties can agree upon a principle permissible under and recognised by law. If two or more alternative principles are equally valid and available, it might be permissible for the parties to agree upon one of the

alternative modes of valuation in preference to another." For the above proposition, he relied on the following decisions:-

Supreme Court in CIT Vs. Estate of Ambalal Modi 170
ITR 144 (SC)

Relying on various other decisions and reiterating that the company was a going concern owning several businesses and properties and that the land on which the Palace Hotel was situated was not shown in the balance sheet of the company and there were no uncertain conditions existed which could affect the profit earning capacity of the company. He submitted that the order of Ld. CIT(A) being not in accordance with law should be set aside and the grounds raised by the revenue should be allowed.

26. So far as the issue relating to agricultural income is concerned, he relied on the order of the A.O. So far as validity of reassessment proceedings are concerned, he submitted that due process of law has been followed by the A.O. and the Ld. CIT(A) has rightly dismissed the ground raised by the assessee on this issue and therefore the Cross

Objection filed by the assessee as well as the ground as per Rule 27 should be dismissed.

27. Ld. Senior Counsel for the assessee on the other hand heavily supported the order of the Ld. CIT(A) in so far as deletion of the addition made by the A.O. is concerned. He submitted at the outset that in ground no 2 and 4, the revenue has contended that the ld CIT(A) has invoked rule 1DD for determining the fair market value of the impugned shares as on 1.4.1981. However, neither the assessee nor the ld CIT(A) has adopted Rule 1D for determining the fair market value of the shares, and instead breakup method has been applied to determine the fair market value of shares. Ld. Senior Counsel submitted that the Revenue in fact had made an application u/s 154 of the Act before the CIT(A). When it so contended before the learned CIT(A) the application u/s 154 of the Act filed by the revenue against the order of the learned CIT(A) was also dismissed when it was held by him that he did not invoke Rule 1D of the Wealth Tax Rules. He accordingly submitted that the ground no. 2 and ground no. 4 raised by the revenue in the

concise grounds of appeal do not arise either from the order of the AO or from the impugned order of the learned CIT(A), and hence both the aforesaid grounds deserves to be dismissed on this ground alone.

28. Ld. Senior Counsel submitted that in ground no. 1, it has generally been contended that, the Learned CIT(A) erred in law in deleting the addition under the head 'capital gains' from sale of equity shares held by the assessee in Jyoti Pvt. Ltd. He submitted that the ground is non-specific and is a general ground.

28.1. He submitted that in ground no. 2, it has been contended by the revenue that Ld. CIT(A) has erred in applying wrong text of rule 1DD of W.T. Rules, 1957, the rule which the assessee as well as the Ld. CIT(A) had otherwise not invoked for the purpose of determining the fair market value of the impugned shares as on 01.04.1981. From the perusal of the order of learned CIT(A) (in the case of Shri M.K. Ajatshatru Singh) it would be seen that the learned CIT(A) has merely referred to Rule 1D of Wealth Tax

Rules. There is no rule 1DD in the Wealth Tax Rules. He accordingly submitted that no error has been committed by the learned CIT(A). In any case, he submitted that the said contention otherwise too is a non-issue, since the learned CIT(A) has not invoked rule 1DD of the Wealth Tax Rules or even 1D to determine the fair market value of the assets transferred and has been held by him in his order passed u/s 154 of the Act dated 30.04.2007 which order has been accepted by the revenue. Further, no such finding has been arrived at by the learned CIT(A).

28.2 He however submitted that it is not denied that the learned CIT(A) has merely stated that principle of breakup method of valuation which is similar to rule 1D of Wealth Tax Rules can be applied to determine the fair market value of an asset. However, he submitted that to determine the fair market value of an asset u/s 2(22B) of the Income Tax Act is different from the principle to determine value of an asset for the purpose of Wealth Tax Act as per rule 1D of the Wealth Tax Rules. The difference is that under the Wealth Tax Act, the value of the assets as

reflected in the balance sheet, has to be adopted: whereas for the purposes of section 2(22B) of the Act, it is the fair market value of the asset as reflected in the balance sheet, has to be adopted as also the value of any other asset which the company may have. He submitted that there is no restriction under the provisions of Income Tax Act to ignore the value of asset not reflected in the balance sheet. On the contrary, the fair market value of an asset held by a company where there is a transfer of shares in the company should be adopted. In this case, it cannot be disputed that M/s Jyoti Pvt. Ltd. owned the building Gulab Bhawan as also the leasehold interest in the land as on 01.04.1981, as such, fair market value of the aforesaid asset has to be determined while valuing the shares as on 01.04.1981.

28.3. Ld. Senior Counsel submitted that as on 01.04.1981, M/s Jyoti Pvt. Ltd. as per the balance sheet, was owning multiple assets as can be seen from the schedule of fixed asset, and if the fair market value of each of the asset is determined and value of liabilities is reduced, the fair market value of each of the asset would have been

much higher. However since by adopting fair market value of land and also building, there was no capital gain, as such, valuation of other assets as reflected in the balance sheet would have been merely an academic exercise, as none of the assessee had claimed any loss to be set off/carried forward.

28.4. So far as ground of appeal no.3 is concerned, he submitted that it has been contended by the revenue that the Ld. CIT(A) erred in law in admitting additional evidence by way of certificate from the Divisional Commissioner without giving any opportunity to the AO. He submitted that it would be seen from the revenue's record itself, i.e. from the paper book filed by the revenue in the case of Shri M.K. Ajatshatru Singh that the AO had obtained a report from the Tahsildar and is dated 28.03.2006, (Pg. 114 of DPB) wherein he had reported the value of land at Rs. 30 lacs per kanal in the year 1998, when the fair market value had substantially fallen on account of insurgencies and terrorist activities, which shows that the fair market value of land as adopted by registered valuer at Rs. 8.80 lacs per kanal as

on 01.04.1981 was supported by the evidence on record. It is thus incorrect to suggest that the learned CIT(A) had admitted any additional evidence by way of certificate from the Divisional Commissioner without giving any opportunity to the AO, since in the opinion of the AO the fair market value had far exceeded the fair market value of the land as on 01.04.1981. He thus submitted that no additional evidence had been filed by the assessee. In fact, such an evidence is only supporting evidence as held by the Tribunal in the case of Suresh Kumar Gupta vs. ITO reported in 14 TTJ 470. In fact, on the contrary it would be seen that the AO had himself made an application before the appellate proceedings in the case of Shri M.K. Ajatshatru Singh (Pg. 33 - 35) wherein he had prayed for the admission of additional evidence, when he contended that the facts in the instant case are identical to the facts of Dr. Karan Singh and others.

28.5. Ld. Senior Counsel for the assessee submitted that this ground has been raised in the case of Shri. Ajatshatru Singh, Dr. Karan Singh and Late Smt. Yasho

Raja Laxmi. He submitted that in so far as the case of Shri. Ajatshatru Singh is concerned, from the perusal of the order of the ld CIT(A) dated 18.03.2003, it would be seen that he has held that though the Divisional Commissioner in his certificate dated 17.01.2003 has estimated the value around 5-6 lakhs per kanal, however if the lower value is also adopted, then also there would be no capital gain. In fact from the concluding para of the order of the ld CIT(A), it would be seen that he has accepted the fair market value based on the report of valuer which was filed during the course of the assessment proceedings. Hence, the report of the Divisional Commissioner was merely in the nature of the supporting evidence and cannot be regarded as additional evidence.

28.6 Further in the case of Dr. Karan Singh and Late Smt. Yasho Raja Laxmi is concerned, such report of the Divisional Commissioner dated 17.01.2003 was filed before the AO vide its reply (see page 65 of PB Vol-1) and hence this ground of the revenue contending that additional

evidence was admitted by the 1d CIT(A) is wholly misconceived and deserves to be dismissed.

28.7. Even otherwise the AO himself has written a letter dated 24.03.2006 to the Divisional Commissioner, Kashmir, and in response thereto the Tehsildar has submitted a report on 28.03.2006, wherein value of land in the year 1998 (even when the insurgency activity and terrorist activities in the state of Jammu and Kashmir has been increased) has been estimated at Rs. 30 lacs per kanal.

29. He submitted that in Ground No. 4 revenue has contended that Ld. CIT(A) has erred in relying on certificate of valuation of land by approved valuer for the purpose of valuation of equity shares under Rule 1DD of W.T. Rules. He reiterated that Ld. CIT(A) had not invoked Rule ID or 1DD as has been stated in the grounds for the purpose of determining the fair market value of the impugned shares as on 01.04.1981, and on the contrary, he has computed the fair market value of asset held by the company to determine the fair market value of the shares. In the instant

case, the learned AO proceeded to determine the FMV on the basis of value estimated by the registered valuer of the hotel building, however since M/s Jyoti Pvt. Ltd. was also holding leasehold interest in land whose value has been determined by the registered valuer, and on the basis of the valuation of the registered valuer, the respondents have computed the capital gain, which has been upheld by the learned CIT(A). He submitted that once the value of building estimated by the registered valuer has been accepted by the ld. AO, then value of leasehold interest in land which was owned by M/s Jyoti Pvt. Ltd., and estimated by the registered valuer cannot be disregarded. However, the AO did not adopt the value of leasehold interest in land on the basis of his assumption that sale consideration of Rs. 30 crores in respect of shares transferred cannot include the value of land since the fair market value of land on the date of transfer of shares as per the estimation of Tehsildar dated 28.03.2006, comes out to Rs. 67.755 crores.

30. He submitted that the AO in fact accepted the valuation made by the registered valuer, however he was of

the erroneous opinion that consideration received of Rs. 30 crores cannot include the value of land. He submitted that while arriving at such an erroneous conclusion, he has completely ignored that agreement to sale of shares was subject to the Performance agreement and in view of the Agreements to Sell dated 3.10.1997 executed by all the four shareholders (agreeing thereby to sell their entire shareholdings in Jyoti Pvt. Ltd. to the Bharat Hotels Ltd.) and the Performance Agreement dated 3.10.1997 executed between Shri Vikramaditya Singh and Bharat Hotels Ltd., a Perpetual Lease Deed was executed and registered on 22.11.1997 by Shri Vikramaditya Singh thereby leasing out the said land in favour of Jyoti Pvt. Ltd. in perpetuity. Further, on 16.1.1998, Shri Vikramaditya Singh executed a Sale Deed (which was subject to the Perpetual Lease granted in favour of M/s Jyoti (P) Ltd. vide the aforesaid Perpetual Lease Deed dated 22.11.1997) in favour of Shri Narinder Batra (a state subject of J&K and the nominee of Bharat Hotels Ltd.) for a nominal consideration of Rs. 10 lacs thereby transferring him the residuary ownership rights

in the said land, and as such, the conclusion of the AO in disregarding the value of leasehold in land for the computation of capital gain was contrary to facts and was purely on the basis of suspicion and hence wholly misconceived.

31. Ld. Senior Counsel submitted that on the perusal of the fixed asset schedule of the M/s Jyoti Pvt. Ltd. as on 01.04.1981, it would be seen that the aforesaid company was holding various assets, however while computing the fair market value, the AO has merely adopted the fair market value of one building i.e. Gulab Bhawan, however the fair market value of the other assets held on 01.04.1981 has not been considered.

32. He submitted that in these cases, the assessments were not made under Wealth Tax Act as such the concept of valuation under Wealth tax of the shares as on 01.04.1981 is completely foreign to the issue involved, and since the FMV of the asset transferred is to be determined which in the instant case would be right, title

and interest in land held by the Company on the date of transfer is to be valued. He submitted that valuation of shares as provided under Wealth Tax Rules is entirely inapplicable for the purpose of determining the fair market value under section 55(2)(b) of the Act. He accordingly submitted that Ground No. 4 raised by revenue deserves to be dismissed.

33. Ld. Counsel for the assessee submitted his arguments regarding the Capital Gain deleted by the Ld. CIT(A) by stating as under:-

- (a) While adopting the fair market value as on 01.04.1981, the value of leasehold interest in the land be also held to be included in the value of asset of M/s Jyoti Private Limited, so as to determine the fair market value of shares held by the shareholders.
- (b) The leasehold interest in the land is an asset of the company and is capable of valuation.
- (c) That the assessee had made no capital gain instead the assessee has suffered a capital loss.
- (d) The method of valuation adopted under the Wealth Tax Act is not applicable, while arriving at the fair market value of shares as on 01.04.81 for the purpose of section 55(2)(b)(ii) of the Act;
- (e) There is conceptual difference between fair market value of assets while computing capital gain and the

value of an assets which is to be estimated u/s 7 of the Wealth Tax Act;

- (f) That fair market value has not been defined under the Wealth Tax Act, whereas the same has been define u/s 2(22A) of the Act and thus for the purposes of section 55(2)(b)(ii) of the Act it is a fair market value under the Income Tax Act which has to be adopted;

33.1. Ld. Counsel for the assessee referring to the following decisions submitted that the revenue cannot set up a new case for the first time before Hon'ble Tribunal, and argument of the revenue would tantamount to making the position of respondent worse than had he not filed an appeal;

- i. MCorp Global (P.) Ltd. vs. CIT reported in [2009] 309 ITR 434 (SC)
- ii. Hukumchand Mills Ltd. v. CIT [1967] 63 ITR 232

33.2. Referring to the following decisions he submitted that the AO cannot be permitted to take a contrary view than taken in the assessment and improve his assessment by adopting a new theory:

- i. Ms. Aishwarya K. Rai, 127 ITD 204 (Mum.)

ii. Mahindra & Mahindra Ltd. vs. DCIT, 313 ITR (AT) 263
(SB)

iii. Kwal Pro Exports vs. ACIT, 110 ITD 59

iv. ITO vs. Anant Y. Chaan, 126 TTJ (Pune) 984

v. CIT vs. Krishna Mining Co., 107 ITR 702

vi. Indian Steel and Wire Products Ltd. vs. CIT, 208 ITR
740 at Pg. 743

vii. CIT vs. Steel Cast Corporation, 107 ITR 683 at Pg.
700

viii. Erriccson AB vs. DDIT, (2012) 25 taxmann.com 466

33.3. Referring to the following decisions, he submitted that Leasehold interest in land is an asset, and the value thereof has to be included while adopting the net worth of the company for determining the cost of the shares:

(i) CWT v PN Sikand 107 ITR 922 (SC)

(ii) CIT vs. Kesri Chand 118 ITR 692 (Del)

(iii) A.R. Krishnamurthy and another vs. CIT
176 ITR 417 (SC)

(iv) M. Sulochanamma & others vs. CWT 85 ITR
201 (AP)

- (v) CIT vs. M.N. Enterprises 293 ITR 35 (Kar)
- (vi) Jaya Hind Sciaky Ltd. vs DCIT reported in 383 ITR 25 HC (Bom)
- (vii) Andhra Networks Ltd vs DCIT reported in 167 TTJ 496
- (viii) CIT vs HormasjiMancharjiVaid reported in 250 ITR 542,
- (ix) Andhra Networks Ltd vs DCIT reported in 167 TTJ 496

33.4. Referring to the following decisions, he submitted that the Fair Market Value has to be determined and not the value of shares:

- i. Smt. Krishna Bajaj v. ACIT [2014] 267 CTR 172 HC(Kamataka)
- ii. Jagatram Ahuja v. CGT [2000] 246 ITR 609 (SC)
- iii. Smt. B. Subhadra v ITO reported in 92 ITD 285 ITAT (HYD)
- iv. Addl CIT v Smt Indira Bai 151 ITR 692 (AP)
- v. Smt. Vasavi Pratap Chand v DCIT 89 ITD 73 (Del)
- vi. ACGT v K.K. Gosain 66 ITD 26 (Del)

vii. CGT v Smt. K.G. Rajyalakshmi 223 ITR 225 (AP)

ix.

C

WT V Shri Katur Bhai Mayabhai reported in 164 ITR
107 at page 127

ix. Rekha Mathur v ACIT reported in 98 TTJ 900
ITAT (Del)

x. Dr. Louis PrakasamKanaiya v ACIT reported in 74
ITD 379 (Mad)

xi. Bharat Hari Singhania vs. CWT reported in 207
ITR 1 (SC) at page 15

xii. Smt. Madhu Tyagi vs. DCIT 19 SOT 612 (Del)

xiii. Mrs. Shashi Dhamidharka vs. ITO ITA No.
5314/Mum/2008 A.Y. 2005-06

xiv. Jaya Hind Sciaky Ltd. vs DCIT reported in 383
ITR 25 HC (Bom)

xv. Andhra Networks Ltd [2015] 167 TTJ 496
(Hyderabad- Trib.)

xvi. CIT v. MormasjiMancharjiVaid [2001] 250 ITR
542 HC (Guj)

33.5. Referring to the following decisions, he submitted
that the appellate court interferes not because the judgment
is not right but because the judgment is wrong’;

i. The Dollar Company, Madras vs. Collector of Madras
reported in AIR 1975 SC 1670

ii. Snowtex Investment Ltd. vs. Pr. CIT reported in
414 ITR 227

33.6. Referring to the following decisions, he submitted that a precedent is an authority only for what it actually decides and not what may remotely or even logically follow from it:

- i. Goodyear India Ltd. vs. State of Haryana and another, 188 ITR 402
- ii. QUINN v. LEATHEM [1901] AC 495 (HL)
- iii. STATE OF ORISSA v. SUDHANSU SEKHAR MISRA [1968] 2 SCR 154

34. In so far as Ground No. 5 raised by revenue in the case of Shri. M.K. Ajatshatru Singh is concerned, he submitted that ld. AO has made the addition in respect of the agricultural income.

34.1 Ld. Senior counsel at the outset submitted that the aforesaid addition is out side the scope of section 147 of the Act, as in the reassessment proceedings, burden is on the ld AO that the income has escaped assessment, and unless there is any material that a particular income has escaped assessment, same cannot be subjected to the reassessment proceedings.

34.2 Ld. Senior Counsel for the assessee, without prejudice to the above submitted that during the course of the assessment proceedings, the assessee filed its reply along with the receipt of income of the agricultural produce (page 16 of the PB Vol-1). However the AO made the addition on the ground that no such income was offered in the preceding assessment year. He submitted that once the assessee has demonstrated that it had sufficient agricultural land and apple and cherry trees were planted three/four years before this year, and such trees have produced the fruits in respect of which the assessee has earned a sum of Rs. 1 lacs receipt of which was also produced before the AO, then the burden of the assessee

was duly discharged, and onus was on the AO to rebut the same by leading some material, and hence in the absence of the same, addition made was untenable. Ld. Counsel submitted that the Ld. CIT(A) after considering the details filed before him has deleted the addition. He accordingly submitted that Ground No. 5 raised by revenue in the case of Shri. M.K. Ajatshatru Singh deserves to be dismissed.

35. He accordingly submitted that apart from the aforesaid no other ground has been raised by the revenue in the concise grounds of appeal, therefore, all the appeals filed by the revenue deserves to be dismissed.

36. So far as validity of reopening of assessment in the case of Ajat Shatru Singh is concerned, the ld. Counsel for the assessee submitted that a perusal of the reasons to believe, (page 27 of DPB), shows that proceedings had been initiated to bring to tax a sum of Rs. 5,85,071/- (being the sum disclosed in the return of income filed on 28.01.2000, which return has been alleged to be invalid return). He submitted that, the return filed on 28.1.2000, which had

been held as invalid earlier has been treated as valid, while framing assessment u/s 147/143(3) of the Act. He submitted that if the return as filed on 28.1.2000 was an invalid return, then in the absence of any fresh return and the letter filed on 23.01.2002 to treat the earlier return as valid amounts to not filing of any valid return. It is thus evident that approach of the A.O. is contradictory. He submitted that, it is settled law that, an assessment made in pursuance to an invalid return is an invalid assessment and, therefore deserves to be quashed as such. For the above proposition, he relied on the judgment of Hon'ble Himachal Pradesh High Court in the case of Himachal Pradesh State Forest Corporation vs. ACIT, CWP No.125/95 dated 6.5.1997 (as extracted in 80 ITD 591 at P-594) where it has been held as under:

“In view of the order passed in CWPs No. 590/92 to 593/92, this writ petition does not survive as the entire proceedings commenced from an invalid return. It is needless to say that the subsequent orders of assessment passed by the Income-tax Officer and the Appellate orders passed on the appeals filed against the said assessment orders are invalid consequentially. The writ petition is dismissed with the above observations. Interim order is vacated.”

37. Ld. Senior Counsel submitted that from a perusal of the order of assessment, it would be seen that admittedly, return was filed by the assessee disclosing Gross total income of Rs. 5,85,071/- on which tax of Rs. 1,57,049/- was paid before filing of the return of income. He submitted that if the return filed is not valid then the action under section 139(9) of the Act can be justified, but the income disclosed in such returns, on which tax has already been paid cannot be held to have escaped assessment. He submitted that once the return filed was treated as invalid on 22.12.2000, and there was time available with the AO to frame the assessment, the AO should have completed the assessment u/s 143(3)/144 of the Act, which he could have done till 31.03.2001. However, instead of making an assessment u/s 143(3)/144, the AO merely to tax the income offered to tax in the return of income, has issued a notice u/s 148 of the Act on 10.01.2001, i.e. notice was issued even when the time was available to frame the

assessment u/s 143 (3)/144 of the Act. Thereafter, such a course adopted by the learned AO was impermissible in law.

38. Ld. Senior Counsel for the assessee drew the attention of the Bench to provisions of Section 147 of the Act and submitted that the foundational condition that “income should escaped assessment” has not been complied as the amount which has been alleged to be escaped assessment has already been offered to tax and tax has also been paid on such income, as such, once there is no escapement of income, assumption of jurisdiction itself is bad in law.

39. Referring to the reasons recorded by the A.O. he submitted that in the reasons to believe, the AO has stated that “since an invalid return is no return in the eyes of law, as such, I have reason to believe that income amounting to Rs. 5,85,071/- declared by the assessee in the invalid return has escaped assessment in terms of section 147 of the Act.” He submitted that the aforesaid reasons of the AO shows that no income of the assessee has escaped

assessment, since such income has already been offered to tax, and hence the prerequisite before issuance of notice of escapement of income being not satisfied, assumption of jurisdiction u/s 148 of the Act and consequent order of assessment passed is unsustainable in law. Ld. Senior Counsel for the assessee submitted that to justify the reopening of the assessment, it is settled law that only reasons recorded has to be looked into and nothing more. For the above proposition he relied on the following judicial pronouncements:

- I. Mohinder Singh Gill & Another Vs. The Chief Election Commissioner, New Delhi & others 1978 (1) SCC 405
- II. CIT vs. Living Media India Ltd [2013] 359 ITR 106 (Delhi)
- III. Signature Hotels (P.) Ltd. Vs. ITO [2011] 338 ITR 51 (Delhi)
- IV. Hindustan Lever Ltd. vs R.B. Wadkar 268 ITR 332(Bom)

V. Dynacraft Air Controls v. Smt. Sneha Joshi [2013]

214 Taxman 183 (Bombay)

VI. N.D. Bhatt IAC vs. IBM World Trade Corp. 216 ITR

811 (Bom)

VII. Prashant S. Joshi vs. ITO 324 ITR 154 HC (Bom)

VIII. Austin Engineering Co. Ltd. Vs. JCIT 312 ITR 70

HC (Gujarat)

IX. Aayojan Developers vs ITO 335 ITR 234 HC

(Gujarat)

X. Jamna Lal Kabra Vs. ITO 69 ITR 461(A11)

40. He submitted that in the order of re-assessment, the AO has brought to tax a sum of Rs. 4,43,09,048/- by way of capital gain which was not the ground for the reopening of the assessment, as such, addition made of the said sum is unsustainable in law. For the above proposition he relied on the following decisions.

- i. Commissioner of Income-tax v. Cheil Communications India (P.) Ltd. [2013] 33 taxmann.com 170 (Delhi)
- ii. Ranbaxy Laboratories Ltd. v. CIT 120111 336 ITR 136
- iii. CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236
- iv. CIT v. Shri Ram Singh [2008] 306 ITR 343 (Raj.)
- v. CIT vs Devendra Gupta reported in 174 Taxman 438 (Raj)
- vi. Commissioner of Income-tax v. Software Consultants [2012] 341 ITR 240 (DELHI)
- vii. Oriental Bank of Commerce v. Additional Commissioner of Income-tax [2014] 272 CTR 56 (Delhi)
- viii. Commissioner of Income-tax v. Mohmed Juned Dadani [2014] 355 ITR 172 (Gujarat)

40.1 So far as the argument of the Ld. Special Counsel for the Revenue that judgment in the case of Ranbaxy Laboratories Ltd. v. CIT 120111 336 ITR 136 is no longer good law since the judgment has been OVERTURNED by the later Bench in the case of CIT vs. Jakhotia Plastics P. Ltd

(2018) 94 Taxmann.com 89 (Del) when they have held differently is concerned, he submitted that in fact in a later development, on 07.02.2020, the revenue has withdrawn the appeal before the High Court in view of the lower tax effect. He accordingly submitted that judgment in the case of Ranbaxy Laboratories Ltd. v. CIT [2011 113 ITR 136] still holds good and applicable to the case of the assessee.

41. So far as the reopening in the case of Dr Karan Singh and other two assessee's are concerned, he submitted that proceedings u/s 148 of the Act was initiated after a period of four years from the end of the relevant assessment year without surfacing of any fresh tangible material and merely on the basis of the assessment made in the case of Shri M.K. Ajatshatru Singh. He submitted that assessment made in the case of Shri M.K. Ajatshatru Singh is merely an opinion of the AO which assessment was subject matter of appeal before the ld. CIT(A), wherein ld. CIT(A) has deleted the addition made by the AO vide his order dated 18.03.2003, which was available at the time of issuance of notice u/s 148 of the Act on 24.03.2005. It would therefore

be seen that since the ld. CIT(A) has reversed the finding the ld AO, as such reasons to believe recorded on the basis of an order which had been found untenable is unsustainable in law. In any case, such an assessment itself is unsustainable in law, hence assumption of jurisdiction in these cases u/s 147 of the Act is also unsustainable in law.

41.1. He further submitted that the entire basis on which the proceedings had been initiated u/s 147 of the Act in the case of three assessee was the findings recorded by the A.O. in the order of assessment dated 26.03.2002 in the case of Ajat Shatru Singh, which findings had ceased to remain valid findings when the learned CIT(A) had held that, no gain had accrued to the assessees. In other words, the foundation on which the structure was proposed did not exist. This is what has been held by High Court in the case of CIT vs. Atlas Cycle Industries reported in 180 ITR 319 and, Allahabad High Court in the case of Farrukhabad Gramin Bank v ITO reported in 273 ITR 113 and Bucyrus India (P.) Ltd. vs. DCIT reported in [2016] 65 taxmann.com 53 (Kolkata - Trib.). He submitted that, order of assessment

in the case of Ajatshatru Singh could not otherwise be made a basis much less a valid basis to initiate proceedings u/s 147 of the Act, as the same was an invalid order of assessment and, therefore vitiated in law.

41.2 Referring to the following decisions, he submitted that surfacing of fresh material is necessary even in a case, wherein the assessment was originally made u/s 143(1) of the Act:

- i) 319 ITR 221 (Del) Shipra Srivastava vs. ACIT
- ii) 292 ITR 49 (Del) KLM Royal Dutch Airlines vs. CIT A at page 63, placitum 19
- iii) 289 ITR37 (Mad) Bapalal and Company Exports vs. JCIT. At page 45 Placitum 12
- iv) 321 ITR526 (Del) CIT vs. Batra Bhatta Company. SLP dismissed in the case of CIT v Batra Bhatta Co.
- v) 220 CTR 369 (Raj) CIT vs. Bigbass Maheshwari Sewa Samiti
- vi) 218 CTR 264 (Raj) CIT vs. Smt. Jyoti Devi
- vii) ITA No.1682/Kol/2009 A.Y. 2003-04 dated 31.10.2011 Mahishadal Cooperative Marketing & Society Ltd. vs. ITO

- viii) ITA No.2230/Mum/2010 for A.Y. 2001-02 dated 7.10.2011 H.V. Transmissions Ltd. vs. ITO
- ix) ITA Nos 898/D/2008 and 1434/D/2008 A.Y. 2001-02 dated 28.3.2013 M/s Tera Construction Pvt. Ltd. vs. ITO
- x) 354ITR 536 (Del) CIT vs. Orient Craft Ltd.
- xi) ITA No. 4613/Mum/2005 Telco Dadajee Dhackjee Ltd. vs. DCIT
- xii) 153 TTJ 506 (Mum) Delta Air Lines, INC vs. ITO
- xiii) ITA 112/2014 (Del) CIT vs. Shri Atul Kumar Swami
- xiv) ITA No. 5216/Del/2012 ACIT vs. Sushma Gupta
- xv) 114 ITD 69 (Del) (TM) ACIT vs. O.P. Chawla
- xvi) 324 ITR 154 (Bom) Prashant S. Joshi and Dattaram Shridhar Bhosale vs. ITO and UOI
- xvii) 324 ITR 289 (Del) Jay Bharat Maruti Ltd. vs. CIT
- xviii) SCA 858 of 2006 Inductotherm (India) Pvt. Ltd. vs. CIT (Guj)
- xix) 252 CTR 316 Puri Brothers vs. CIT
- xx) 246 CTR 308 (MP) CIT vs. Trimurti Builders
- xxi) 348 ITR 299 (SC) ACIT vs. ICICI Securities Primary Dealership Ltd.
- xxii)[2008] 300 ITR 276 (Bom) Sanghvi Swiss Refills (P.) Ltd. vs. Asst. CIT

xxiii) [2007] 213 CTR 193 (Raj) CIT vs. Manohar Lai Gupta

xxiv) W.P. (C) 7660/2012 dated 28.1.2014 (Del) Mohan Gupta (HUF) vs. CIT

xxv) 291 ITR 500 (SC) Asst. CIT vs. Rajesh Jhaveri Stock brokers Pvt. Ltd.

xxvi) ITA No. 4613/Mum/2005 Telco Dadajee Dhackjee Ltd. vs DCIT

41.3 Referring to the following decisions, he submitted that the issue of reopening of assessment is a purely legal ground and can be raised before the Hon'ble Tribunal:

i. ACIT v. Pai Vaibhav Hotels (P) Limited in ITA No. 2638/ 2005 (High Court of Karnataka)

ii. VMT Spinning Co. Ltd. vs. CIT reported in 389 ITR 326 (P & H)

iii. B.R. Bamasi v. CIT 82 ITR 223 (Bom)

iv. CIT v. Varas International (P) Ltd. 284 ITR 80 (SC)

v. Marolia & Sons v. CIT 129 ITR 475 at page 480 (All)

vi. CIT v. Cochin Refineries Ltd. 220 ITR 398 at page 407 (Ker)

vii. CIT v. J. Vijaya Lakshmi 122 Taxman 649 (Mad)

viii. Assam Company (India) Ltd. v. CIT 256 ITR 423 (Gau)

ix. ITO v. Smt. Gurinder Kaur 102 ITD 189
(Del)

42. We have considered the rival arguments made by both sides, perused the orders of Assessing Officer and the Ld. CIT(A) and the paper book placed on behalf of the Assessee. We have also considered the various decisions cited before us. The first issue raised by the Revenue in the grounds of appeal in case of M.K. Ajat Shatru relates to the order of the Ld. CIT(A) in deleting the addition of Rs.4,43,09,048/- under the head Capital Gain. From the various details furnished by Ld. Sr. Counsel for the assessee in the paperbooks, we find the four assessee respondents who were the shareholders in M/s Jyoti Private Limited had transferred their entire shares to M/s Bharat Hotel Ltd and on the date of transfer, M/s Jyoti Private Limited had only hotel building along with leasehold interest on the land on which the hotel building stood. A copy of the balance sheet of M/s Jyoti Private Limited as on 31.03.1997 and on 15.01.1998 have been placed in the PB - III and are at Pg.

565 - 574 and at Pg. 575 - 584 respectively. This asset was acquired by M/s Jyoti Pvt. Ltd. in the following manner:-

a) Rights in the building and other superstructures were purchased by the Company from its owner Shri Vikramaditya Singh vide Relinquishment Deed dated 21.03.1973.

b) The land measuring 225 kanals 17 Marlas was acquired by the Company from its owner Shri Vikramaditya Singh vide Lease Deed dated 21.03.1973 for a period of 40 years.

43. This mode of acquisition of the asset was adopted due to the restrictions then prevailing in the State of J&K as per which a Company being a non-state subject cannot own land in the State. On 21.02.1978 a Supplementary Lease Deed was executed thereby permitting the Company to assign lease hold interests in the land in favour of J&K State Financial Corporation as security for the loan granted and recognise the rights of the said corporation to transfer such leasehold interest together with the structures put up there on to a third party in the event of default. Jyoti Pvt. Ltd. is a closely held Private Limited Company having only 4 (four) Shareholders namely Dr. Karan Singh, his wife Smt.

Yasho Rajya Lakshmi and two sons Shri Vikramaditya Singh and Shri Ajatshatru Singh. The Company had given the property under a management contract to M/s EIH Limited (the flagship Company of Oberoi Group of Hotels) which was operating the “ Hotel Oberoi Palace” in the said property. On account of increasing terrorist activities in the Kashmir Valley during 1990 the Oberois had abandoned the property. The property was lying vacant from 1990 to 1997. M/s Bharat Hotels Limited offered to purchase the property by way of acquiring all the shares of Jyoti Pvt. Ltd. The Shareholders agreed for the sale of the property by way of agreeing to transfer their entire shareholding to M/s Bharat Hotels Limited. Accordingly, each of the shareholders had simultaneously entered into Agreement to Sell with Bharat Hotels Ltd. on 03.10.1997 thereby agreeing to transfer their entire shareholding in Jyoti Private Ltd. in favour of Bharat Hotels. The Agreements to sell were subject to the stipulations under the Performance Agreement executed on the same day i.e. 03.10.1997 between Shri Vikramaditya Singh and Bharat Hotels Ltd.. Pursuant to the Agreements

to Sell dated 3.10.1997 executed by all the four shareholders and the Performance Agreement dated 3.10.1997 executed between Shri Vikramaditya Singh and Bharat Hotels Ltd., a Perpetual Lease Deed was executed and registered on 22.11.1997 by Shri Vikramaditya Singh thereby replacing the existing lease with a fresh lease of the said land in favour of Jyoti Pvt. Ltd. in perpetuity.

44. Further, on 16.1.1998, Shri Vikramaditya Singh executed a Sale Deed (which was subject to the Perpetual Lease granted in favour of M/s Jyoti (P) Ltd. vide the aforesaid Perpetual Lease Deed dated 22.11.1997) in favour of Shri Narinder Batra (a state subject of J&K and the nominee of Bharat Hotels Ltd.) for a consideration of Rs. 10 lacs thereby transferring him the residuary ownership rights in the said land i.e. title in the land. Upon fulfilment of the obligation as stipulated under the Performance Agreement dated 03.10.1997 and pursuant to the Agreements to Sell dated 03.10.1997, all the shares held by the shareholders in

Jyoti Pvt. Ltd. were transferred to Bharat Hotels Ltd on 19.01.1998 for a total consideration of Rs.30 Cr.

45. We find the AO while determining the capital gain did not dispute the sale consideration received by the shareholders. However, while determining the amount of capital gain, he proceeded to adopt the indexed cost of acquisition as on 01.04.1981 at face value in the case of Shri M.K. Ajatshatru Singh; whereas in the case of remaining three shareholders, he proceeded to determine the fair market value of the hotel as on 01.04.1981 so as to determine the cost of acquisition of shares as on 01.04.1981. The assessee and other shareholders however had adopted the fair market value of the asset transferred as on 01.04.1981 at Rs. 24.9187 crores (Rs. 19,87,48,000/- was the fair market value of the land and Rs. 5,04,38,520/- was the fair market value of building) on the basis of the report of the approved valuer (page 13-15 pf PB-1). In adopting the fair market value as on 01.04.1981 at Rs. 24.9187 crores the assessee had adopted the breakup value of the building alongwith the land as per the valuer's

certificate. However, the AO did not' accept the aforesaid computation, and adopted the face value of shares as cost of acquisition in the case of M. K. Ajatshatru Singh and made addition of Rs.4,43,09,048/- to the total income of the assessee under the head Capital Gain. Thereafter, assessments of the remaining three shareholders were framed when the AO had proceeded to determine the fair market value of said shares on the basis of the breakup method i.e. by adopting the fair market value of the hotel building (as per the report of the approved valuer) to be divided by the number of shares held by the shareholders. We find the Ld. CIT(A) deleted the addition the reasons of which are already reproduced in the preceding paragraphs.

46. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. We find the fair market value of the shares adopted by the AO in the case of Shri M. K. Ajatshatru Singh was Rs. 331 per share after indexation, whereas in the case of three other assessee's, same has been adopted at Rs.3262 per share after indexation.

However, the assessee computed the fair market value of the asset of the company as per the registered valuer, and the average fair market value of each share was computed Rs. 6,151.64 and after indexation the fair market value of each share was Rs. 20,362/- and since the shares were transferred @Rs. 4761.90 per shares, hence it was claimed that there is no capital gain on the transfer of the shares.

47. It is the submission of ld. Senior Counsel for the assessee that as a result of transfer of shares held by the four assessee in M/s Jyoti Private Limited, they did not make any gain since the indexed cost of acquisition of shares held by them as on the date of transfer i.e. on 19.01.1998, far exceeded the full value of consideration received on the date of transfer of shares. According to him, as a result of transfer of shares, the consideration received was far less than the indexed cost of acquisition of the shares, and hence there arose no capital gain. The assesseees have got evaluated fair market value of the asset held by the company and after reducing the liability, fair market value of shares as on 01.04.1981 has been

determined and since after indexation, cost was much higher than the full value of consideration, as such, long term capital gain was computed at NIL.

48. From the various details furnished by the assessee in the paper book, we find the estimated value of the land as per the registered valuer as on 01.04.1981 was Rs.8.80 lacs per kanal. However, the AO sought a report from Tehsildar who was of the opinion that the fair market value of the land was Rs. 30 lacs per kanal in the year of transfer of shares i.e. in 1998. We find the AO computed the value of shares as per breakup method as approved method after accepting the fair market value of building as per the report of the approved valuer but excluded the value of land on the ground that said land belongs to Shri Vikramaditya Singh. Even in the case of Shri Vikramaditya Singh we find the AO though had made assessment simultaneously did not include the value of the land. This action of the A.O. in our opinion is apparently erroneous and unsustainable in law. We find the Id CIT(A) after analysing the complete facts, accepted the fair market value

of land and building as has been estimated by the approved valuer and after indexation since the cost of acquisition of the shares were higher than the value at which shares were transferred as such, deleted the addition made by the AO.

49. It is the submission of the Ld. Special Counsel for the Revenue that the AO has erred in adopting the cost of acquisition on the basis of fair market value of the super structure. It has been contended by Ld. Special Counsel for Revenue that the value as reflected in the balance sheet be adopted as provided under Rule 1D of WT Rules. It is his submission that as on 01.04.1981 (Pg. 59-63 of Department Paper Book in the case of Dr Karan Singh) there were number of other buildings owned by M/s Jyoti Private Limited.

50. We find the AO himself had applied the fair market value of building and, other assets, while computing capital gain in the case of three other assessee's, namely Dr. Karan Singh and, others, which is conceptually different than the face value of shares as had been adopted in the

case of Shri M.K. Ajatshatru Singh. In those cases, the AO had merely not included the fair market value of the leasehold interest in the land since the land was not owned by the company and, was not reflected as an asset in the balance-sheet. Therefore, we find merit in the argument of the Ld. Sr. counsel for the assessee that in such a situation, to contend contrary to what has been adopted by Id AO, obviously amounts to setting up a new case, which is contrary to the basic principles of jurisprudence. This is apart from the basic submission of the assessee that Rule 1D is per se not applicable though assessee does not dispute that fair market value can be adopted by adopting the break up method. For doing so, it is obvious that having regard to the nature of transaction, the value of lease hold rights of M/s Jyoti (P) Ltd cannot be ignored. In other words, the prayer of the revenue to invoke Rule 1D simpliciter amounts to setting up a new case for the first time before the Tribunal, which in our opinion will tantamount to making the position of respondent worse than had he not filed an appeal. We find the Hon'ble S.C.

in MCorp Global (P.) Ltd. vs. CIT reported in [2009] 309 ITR 434 (SC) has held that u/s 254(1) of the Act, the Appellate Tribunal has no power to take back the benefit conferred by the A.O. or enhance the assessment. While so holding the Apex Court referred to its earlier judgment in the case of Hukumchand Mills Ltd. v. CIT [1967] 63 ITR 232.

51. It is also well settled rule of law that the AO (who is the appellant here) cannot be permitted to take a contrary view and improve his assessment by adopting a new theory. He cannot be permitted to proceed to frame a fresh assessment contrary to his own stand.

52. We further find the Revenue, in the instant case, has failed to appreciate that in order to determine the capital gain for the purpose of section 45 of the Act it was not the value of the asset which is to be adopted but is the fair market value of the asset. In other words, whatever may be the book value of the asset, is not a relevant consideration for the purpose of determining the cost of acquisition of an asset as is envisaged u/s 55(2)(b)(ii) of the

Act. We find Section 48 of the Act provides the mode of computation of capital gain. The income chargeable under the head 'capital gains' is to be computed by deducting from the full value of consideration received or accruing as a result of transfer of capital asset, the cost of acquisition of asset. The expression "cost of acquisition" in respect of a property acquired prior to 01.04.81 is at the option of the assessee either fair market value of the property as on 01.04.81 or cost of the acquisition to the assessee as has been provided u/s 55(2)(h)(ii) of the Act, So far as the shares acquired after 01.04.1981 are concerned, the same is the actual cost of acquisition of shares.

53. We find for the purposes of section 48 & 49 cost of acquisition has been defined in section 55(2)(b)(ii) of the Act which reads as under:

"(2) For the purposes of sections 48 and 49, "cost of acquisition"....., -

(b) in relation to any other capital asset,-

.....(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, and the capital asset became the property of the previous owner before the 1st day of

April, 1981, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of April, 1981, at the option of the assessee;....”

54. We find the term “fair market value” has been defined in section 2(22B) of the Income Tax Act and, reads as under:

“fair market value, in relation to a capital asset, means-

(i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.”

55. It is apparent from the reading of the aforesaid definition that, the “fair market value” of shares as on 01.04.81 is the fair market value of assets determined in accordance with provisions contained in section 2(22B) of the Act. So far as Wealth Tax Act is concerned, the value has to be determined as provided u/s 7 of the Act and, is subject to rules; whereas no such restriction is provided as far as Income Tax Act is concerned. In fact, if the definition

contained in section 2(22B) of the Act is carefully perused, it will be seen that, fair market value as per rules was to be estimated only when the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date is not ascertainable. The term "ordinarily" is not provided in section 7 of the Wealth Tax Act' 1957 and, therefore, in such a situation, the fair market value as contemplated under Rule 1D of the Wealth Tax Rules' 1957 can neither be applied simpliciter and, nor has been applied, either by the assessee or the Assessing Officer in the orders of assessment.

56. It is evident from the conjoint reading of the aforesaid provisions contained in section 55(2)(b)(ii) of the Act and, section 2(22B) of the Act that, cost of acquisition of shares acquired prior to 01.04.1981 by the shareholders of M/s Jyoti (P) Ltd. would be fair market value as on 01.04.1981 and, fair market value as on 01.04.1981 would be the price that such shares would ordinarily fetch on sale in the open market on 01.04.1981. We, therefore, find merit in the submission of the Ld. Sr. Counsel for the assessee

that in such a situation, it is obvious for determining the value of shares of a private limited company, one has to determine the value of assets on 01.04.1981, as if such assets were to be ordinarily sold in the open market on 01.04.81. In other words, while adopting the break up method, for the purpose of arriving at fair market value of shares of the company (of which shares are sold), it has to be necessarily held that, assets of the company have to be valued as if such assets are sold in the open market on 01.04.1981.

57. We find in the instant case the AO and the assessee both proceeded to determine the fair market value of the shares on the basis of the value of the assets held by the company. In our opinion, if the fair market value of all the assets held by the company as on 01.04.1981 as per the contention of the revenue is to be included then it would obviously mean a remand, which will only prejudice the interest of revenue since as on 01.04.1981, assets held by the company were many properties as against only one, which has been considered by the AO himself. The

contention of the revenue overlooks the facts that as on 01.04.1981 the company M/s Jyoti Private Limited had number of buildings as is reflected in their balance sheet, the fair market value whereof would be many times more and it was for this reason the AO apparently had not proceeded to determine the cost of acquisition of shares as on 01.04.1981 by adopting the fair market value of all the assets. There is substantial difference between the fair market value of the asset and the value of an asset. It may be for the purpose of Wealth Tax Act, the value of asset is to be determined on the basis of book value but so far as the Income Tax Act is concerned, the fair market value of all the asset has been defined in section 2(22B) of the Act and is thus to be adopted.

58. So far as the contention of the Ld. Special Counsel for the revenue that the Apex Court has universally held that while adopting the value of shares, the only method is yield method is concerned, we find the said judgments were rendered in the context of the provisions of Wealth Tax Act which specifically provide the valuation of

the shares to be made under Rule ID of the Wealth Tax Rules, whereas for the purpose of the computation of the capital gain, the Fair Market Value has to be determined and not the value of shares. There is a word of difference between the Fair Market Value and value to be determined in accordance with Wealth Tax Rules, that too only for the limited purpose. There is no dispute that breakup method is to be adopted in either of the case. In the judgments cited by the Ld. Special Counsel for the Revenue, we find the Hon'ble Supreme Court had neither considered nor decided the question of fair market value under section 2(22B) of the Act and are thus inapplicable.

59. We find the fair market value has not been defined under the Wealth Tax Act, whereas the same has been defined u/s 2(22B) of the Income Tax Act and thus for the purposes of section 55(2)(b)(ii) of the Act since it is a fair market value under the Income Tax Act which has to be adopted. We find in the case of Smt. Krishna Bajajv. Assistant Commissioner of Income-tax [2014] 267 CTR 172 HC(Karnataka), the Hon'ble High Court has held as under:-

“5. When once under the Act, fair market value has been defined, specifically in relation to the capital asset to calculate the capital gain tax, the question of relying on the definition under any other enactment is not permissible. A reading of the aforesaid definition clause makes it clear that fair market value is the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date. Therefore, for levying capital gain tax under the Act for the purpose of computing the capital gain tax, the fair market value, which is to be taken into consideration, is the price the property would fetch on sale in the open market on the relevant date. The material on record discloses the guideline value as on 1.4.1981 in respect of the property in dispute would work out to Rs.110/- per sq.ft. The assessee was assessed to wealth tax in respect of the aforesaid property. The material produced by her shows the property was valued at Rs.2,25,000/- as on 31.3.1992 i.e., the net wealth on which the wealth tax was payable. The Wealth Tax Act provides a mechanism, under which the property is valued and net wealth determined for the purpose of payment of wealth tax. It is not a fair market value. Therefore, in determining the fair market value under the Act, neither the guideline value prescribed for the purpose of stamp duty and registration under the Karnataka Stamp Act and the Indian Registration Act nor the net wealth value arrived at under the provisions of the Wealth Tax Act, cannot be the guiding factor. The market value of the property is certainly far more than the guideline value. Similarly, the value of the property, which is the subject matter of wealth tax, is also far more than the value for which it is assessed under the Wealth Tax Act. Therefore, the authorities were not justified in relying on those two inadmissible piece of evidence to arrive at a fair market value.”

60. Similar view has been taken by the Delhi Bench in the case of *Madhu Tyagi vs DCIT* reported in 19 SOT 612 and appeal filed by the Revenue has been dismissed by the Hon'ble Delhi High Court in ITA No.685/2008 dated 07.07.2008. Similar view has also been taken in the following decisions:-

- i. *Narender Kumar Singh vs CIT* reported in 191 ITR 316(All.)
- ii. *Grindlays Bank ltd. vs CIT* reported in 158 ITR 799 (Cal.)
- iii. *CIT vs S. Balasubramainiam* reported in 159 ITR 288 (Mad)
- iv. *Iqbal Singh Atwal vs CIT* reported in 147 ITR 599 (Cal.)

61. So far as the contention of the Revenue that aforesaid judgments of the Tribunal and the High Court are per incurium of Supreme Court judgments in *Mahadeo Jalan, Kusumben Mahadevia* and particularly *Ambalal Sarabhai* since at no stage these judgments were brought to the notice of the Tribunal or the High Court is concerned, we are of the concerned opinion that since the judgments cited by the revenue were not rendered in the

context of the Income Tax Act, 1961 but were rendered in the context of Wealth Tax Act and Gift Tax Act and therefore such judgments being distinguishable on facts cannot be relied to determine the fair market value of the shares. We find merit in the arguments of the Ld. Sr. Counsel for the assessee that it is well-settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it

62. We find that the learned CIT(A) while deciding the appeal of the assessee has held that value of leasehold interest in land is to be included while determining the fair market value of the shares held and owned by the shareholders as on 01.04.1981, which is in accordance with the breakup method.

63. On consideration of the orders of assessment and, the orders of the learned CIT(A), it is evident that, the only question for consideration is whether the value of leasehold interest in the land is to be included to determine the fair market value of each share on 1.4.1981.

64. In the instant case, we find that the assessee's were shareholders of M/s Jyoti (P) Ltd., who undisputedly owned the hotel building which stood on the land owned by Shri Vikramaditya Singh one of the shareholder, who had become the owner of the land by virtue of the partition of the family properties and the land falling to his share had in fact been leased out by him to the company, M/s Jyoti (P)Ltd. and as such in order to determine the cost of acquisition, as provided under break up method, the fair market value of the lease hold interest in the land of the aforesaid company in any case has to be adopted which had been estimated at Rs. 1987.48 lacs and represented the value of land. We find force in the arguments of Ld. Sr. Counsel for the assessee that since in the state of Jammu and Kashmir no person other than the resident of the state can own the land, the title to the land stood in the name of Shri Vikramditya Singh and even the Hotel Building would have no independent value, if the land on which the building stood is not considered. Further, we find from deed of lease dt. 21.3.1973 that at the time when M/s Jyoti P.

Ltd., had purchased the building by another deed of relinquishment on 21.3.1973, the Hotel Building was already existing on the land so leased and as such virtually it was a case where M/s Jyoti P. Ltd., had an absolute interest despite the fact it was only where the title of the land remained in the name of Shri Vikramaditya Singh. We find even the residual ownership rights were transferred in favour of Sh. Narendra Batra (who was the state subject i.e. resident of Jammu & Kashmir), who was a nominee of Bharat Hotels Ltd. on 16.1.1998 for a nominal value of Rs. 10 lacs when Perpetual Lease Deed was granted in favour of M/s Jyoti (P) Ltd.

65. We, therefore, find merit in the arguments of the ld. Senior Counsel for the assessee that virtually Shri Vikramditya Singh had divested his rights title and interest in respect of the aforesaid land as early as from 21.3.1973 and for all practical purposes the land was considered to be the property of the company. Since under the state laws of Jammu and Kashmir any immovable property could not be owned by a person who is not a resident, only title of the

property remained in the name of Shri Vikramaditya Singh.

It is true that, lessee had only disclosed the value of the building in its Balance Sheet, despite the fact that it had also acquired and held lease hold rights. We find as on 1.4.1981 un-expired period of lease was 32 years as the lease granted was to expire only on 20.3.2013.

66. We therefore hold that in order to determine the fair market value of each share as on 01.04.1981, it is necessary to adopt the aggregate of fair market value of the assets which would obviously include the value of leasehold interest in the land. In *CWT vs. PN Sikand* reported in 107 ITR 922, the Hon'ble Apex Court had held that an asset also consists of leasehold interest in a land and should be included in the valuation of such leasehold interest in the land. Similar view has also been taken in the decisions relied on by Ld. Sr. Counsel for the assessee in the case law compilation.

67. In view of our above discussion, we hold that while adopting the fair market value as on 01.04.1981, the

value of leasehold interest in the land be also held to be included in the value of asset of M/s Jyoti Private Limited, so as to determine the fair market value of shares held by the shareholders. The lease hold interest in the land is an asset of company and is capable of valuation. That the assessee had made no capital gain and the method of valuation adopted under the Wealth Tax Act is not applicable, while arriving at the fair market value of shares as on 01.04.1981 for the purpose of section 55(2)(b)(ii) of the Act. The various decision relied on by Ld. Special Counsel for the Revenue are distinguishable and not applicable to the present case. Accordingly, the order of the Ld. CIT(A) on this issue is upheld and the grounds raised by the Revenue on this issue of Capital Gain are dismissed.

68. Since, the other three appeals i.e. Dr. Karan Singh, Yashorajya Lakshmi and Vikramaditya Singh are identical, therefore, following similar reasoning, the ground raised by the Revenue on this issue are dismissed.

69. The second issue that requires adjudication is regarding the order of the ld. CIT(A) in deleting the addition of rupees one lakh treating the same as agricultural income as against 'income from other sources' held by the AO.

70. After hearing both the sides, we find the Assessing Officer treated the agricultural income of rupees one lakh declared by the assessee as 'income from other sources' on the ground that the assessee could not substantiate its agricultural income and the assessee was not showing any agricultural income in the past years. We find the Ld. CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph.

71. We do not find any infirmity in the order of the ld. CIT(A) on this issue. The assessee before the Assessing Officer as well as the Ld. CIT(A) had filed the details of agriculture produce and the details of sale etc. It is also submitted before the Ld. CIT(A) that the apple and Cherry trees which were planted before three four years earlier had

started giving fruits during the year and therefore the assessee has shown agricultural income from this year. Merely because the assessee had not shown agricultural income in the past, in our opinion, cannot be a ground for rejecting the claim of agricultural income during the impugned year especially when the assessee had filed the details of agricultural land and the receipts of the buyers who had purchased the apple and cherry. We, therefore, uphold the order of the Id. CIT(A) on this issue and the ground raised by the Revenue on this issue is dismissed.

72. So far as the ground challenging the validity of reassessment proceedings are concerned, we find in the case of Shri M.K. Ajat Shatru, the assessee through Rule-27 of the I.T. Rules has challenged the validity of reopening of the assessment and such ground has already been admitted for adjudication. A perusal of the reasons recorded shows that the Assessing Officer had reopened the assessment on the ground that income amounting to Rs.5,85,071/- declared by the assessee in the invalid return has escaped assessment in terms of section 147 of the Act. Since, such

income has already been offered to tax and due taxes have already been paid, therefore, pre-requisite before the issuance of notice of escapement of income on 10.01.2001 being not satisfied, assumption of jurisdiction u/s 148 of the Act and consequent assessment order passed in our opinion is unsustainable in law especially when there was time available with the AO to complete the assessment u/s 143(3)/144 upto 31.03.2001. Further, the Assessing Officer in the order passed u/s 143/147 of the Act has brought to tax a sum of Rs.4,43,09,048/- by way of capital gain which was not the ground of reopening of the assessment. Therefore, we agree with the contention of the ld. Sr. Counsel for the assessee that such addition made in the assessment order is unsustainable in law in view of the decision of the Hon'ble Delhi High Court in the case of *Ranbaxy Laboratories Ltd. v. CIT* reported in 336 ITR 136(Del.) and the decision of the Hon'ble Bombay High Court in the case of *CIT v. Jet Airways (I) Ltd.* 331 ITR 236 (Bom.).

73. So far as the contention of the Ld. Special Counsel for the Revenue that the decision in the case of Ranbaxy Laboratories Ltd. (supra) is no longer good law since, the judgment has been overruled by the later Bench in the case of CIT vs. Jakhotia Plastics P. Ltd (2018) 94 Taxmann.com 89 (Del) when they have held differently is concerned, we find from the details furnished by Ld. Sr. Counsel for the assessee that the Revenue had withdrawn the appeal before the Hon'ble High Court on 7th February, 2020 on account of low tax effect. The ld. Special Counsel for the Revenue could not controvert the above submission of Ld. Senior Counsel for the assessee. Therefore, we agree with the ld. Sr. Counsel for the assessee that the judgment in the case of Ranbaxy Laboratories Ltd. v. CIT (supra) still holds good and applicable to the case of the assessee. The reopening of assessment in the case of Mr. M.K. Ajat Shatru Singh is accordingly liable to be quashed. We hold accordingly.

74. So far as the reopening of the assessment in the case of Dr. Karan Singh and other two assesseees are

concerned, we find the proceedings u/s 148 of the Act was initiated after a period of four years from the end of the relevant assessment year. The entire basis on which the proceedings had been initiated u/s 147 of the Act in the case of the three assessees was on the basis of the findings recorded by the A.O. in the order of assessment dated 26.03.2002 in the case of Mr. M.K. Ajat Shatru Singh, such findings had ceased to remain valid findings when the learned CIT(A) had held that no gain had accrued to the assessees. Therefore, such reopening of assessment after the order of the Ld. CIT(A) holding that no gain had accrued to the assessees in our opinion makes the reassessment proceedings unsustainable in law since the foundation on which the structure was proposed did not exist. The above view of ours finds support from the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Atlas Cycle Industries reported in 180 ITR 319 and the decision of the Hon'ble Allahabad High Court in the case of Farrukhabad Gramin Bank v ITO reported in 273 ITR 113 (ALL.). Further, the order of the assessment in the case of

Shri M.K. Ajat Shatru, cannot otherwise be the basis to initiate proceedings u/s 147 of the Act as the same was invalid order of assessment and therefore vitiated in law. In this view of the matter, the reopening of the assessment in the remaining three cases are held to be not in accordance with law. Accordingly, all the Cross Objections filed by the respective assesseees are allowed.

75. In the result, all the four appeals filed by the Revenue are dismissed and the three Cross Objections as well as the ground as per Rule 27 are allowed.

Order pronounced in the open court on 24.01.2022.

-Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

-Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated : 24th January, 2022.

VBP/- & *Shekhar*

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned

4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.